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decided that the plaintiff had already obtained symbolical possession, and that no further possession could be awarded to him in execution. This appears to us to be decisive of the question. The matter has become *res judicata* between the parties, and it is immaterial upon what grounds the judgment proceeded, and it is also immaterial that the plaintiff did not originally in his pleadings rely upon the judgment as absolutely decisive in his favour. He put the judgment in evidence, and full effect ought, in our opinion, to have been allowed to it. We must allow the appeal with costs.

Appeal allowed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

CHAMANLAL AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* BAPUBHAI (ORIGINAL PLAINTIFF), RESPONDENT.*

1897. *February* 25.

Vatan—Cash allowance—Suit for arrears of share—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 62—Res judicata—Point of law decided in previous suit between same parties—Decree for future payment of share—Practice—Procedure.

The plaintiff in this suit sought to recover eleven years' arrears of his share in a certain Government allowance received by the defendants and also prayed for an order directing the defendants to pay him and his heirs his proper share in future. The defendants contended that under the Limitation Act (XV of 1877) only three years' arrears could be recovered. In a previous suit brought by the plaintiff in 1874 against the same defendants it was decided by the High Court that twelve years' arrears could be recovered. The lower Court now held that this decision continued to bind the parties, and that, therefore, the present claim should be allowed. It accordingly passed a decree for the plaintiff for the amount claimed, and also directed that the defendants should pay to the plaintiff and his heirs for the future his share in the allowance.

Held (varying the decree) that the plaintiff under the Limitation Act (XV of 1877) was only entitled to recover arrears for three years.

A point of law though decided in a suit between the same parties can never be *res judicata*.

Held, also, that the order in the decree as to payment in future was bad. It could not be executed, as the amount of the allowance was variable and the

* Second Appeal, No. 739 of 1896.

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defendants were not liable until they obtained payment of the allowance from Government.

SECOND appeal from the decision of G. McCorkell, District Judge of Ahmedabad.

In 1894 the plaintiff brought this suit to recover eleven years' arrears (*viz.* 1882—1893) of his share in a cash allowance received annually by the defendants from the Government treasury and for an order directing the defendants to pay him and his heirs his proper share in future.

The defendants pleaded that under the Limitation Act (XV of 1877), article 62, the plaintiff could only recover three years' arrears.

It appeared that in 1869 the plaintiff had obtained a decree declaring his title to a share of this allowance, and by that decree six years' arrears were awarded to him.

In 1874 he sued again for arrears for twelve years, *viz.*, from 1862 to 1874, and in that suit the High Court awarded the whole of his claim, holding that it was not barred by limitation under section 132 of Act IX of 1871 (I. L. R., 5 Bom., 68).

In the present suit the Subordinate Judge awarded the plaintiff's claim, and also directed the defendants to pay in future to the plaintiff and his heirs his share in the allowance.

This decree was confirmed, on appeal, by the District Judge, who held that the High Court's decree in the former suit of 1874 being between the same parties was conclusive and binding on the parties as to the plaintiff's right to claim twelve years' arrears. His judgment on this point was as follows :—

"The next point which arises is that of limitation. While the plaintiff claims eleven years' arrears, the defendant contends that he can claim only three years' arrears. In the judgment in I. L. R., 5 Bom., p. 68, the High Court held that the plaintiff could recover up to twelve years. It is true that that ruling has been dissented from by their Lordships in I. L. R., 7 Bom., 191, and I. L. R., 8 Bom., 426. I am, however, humbly of opinion that the early ruling, which was in a suit between the same parties, continues to bind those parties, although in other causes and as between other litigants the ruling may have been dissented from or overruled. The only way in which the decision in I. L. R., 5 Bom., 68 can be set aside as between the parties is by a judgment of the Privy Council, and pending such decision I hold that the plaintiff can recover up to twelve years of arrears."

Against this decision the defendants preferred a second appeal to the High Court.

Ghanasham Nilkant with *G. S. Rao* for appellants:—The lower Court was wrong in holding that the High Court's ruling in the former suit on the question of limitation operates as *res judicata* between the parties. That ruling is no longer good law. It is expressly dissented from in subsequent cases—*Harmukhgauri* v. *Harisukhprasad*[1]; *Manecklal* v. *Shivlal*[2]; *Dulabh* v. *Bansidharrai*[3]. A decision on a question of law does not operate as *res judicata*—*Parthasaradi* v. *Chinnakrishna*[4].

G. M. Tripathi for respondent:—The ruling in *Chhaganlal* v. *Bapubhai*[5] is conclusive and binding on the parties to this suit.

PARSONS, J.:—We do not think that the decision of this High Court in a suit between the same parties, that arrears for twelve years could be awarded—*Chhaganlal* v. *Bapubhai*[5]—is *res judicata* in the sense that this Court is bound ever after to decide that a claim for twelve years' arrears is good. That decision was passed when either Act XIV of 1859 or Act IX of 1871 applied to the claim. The present suit was brought after Act XV of 1877 came into force, and it, therefore, must be applied. This Court has, in several more recent cases, held that the decision in *Chhaganlal* v. *Bapubhai* was not a correct one—see *Harmukhgauri* v. *Harisukhprasad*[1]; *Desai Manecklal* v. *Desai Shivlal*[2]; *Dulabh Vahuji* v. *Bansidharrai*[3]. It appears to us that a point of law can never be *res judicata*. It has been held in *Parthasaradi* v. *Chinnakrishna*[4] that "the erroneous decision by a competent tribunal of a question of law directly or substantially in issue between the parties to a suit does not prevent a Court from deciding the same question, arising between the same parties in a subsequent suit, according to law."

We must, therefore, decide this case according to what we believe to be the correct interpretation of the law contained in the Limitation Act and reduce the amount of arrears awarded to

(1) I. L. R., 7 Bom., 191.
(2) I. L. R., 8 Bom., 426.
(3) I. L. R., 9 Bom., 111.
(4) I. L. R., 5 Mad., 304.
(5) I. L. R., 5 Bom. 68.

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that due for the three years preceding suit, *viz.*, Rs. 17-7-10. We can find no precedent for such an order in the decree as that the defendants shall pay in future to the plaintiff and his heirs his share in the allowance without giving any further trouble. It could not be executed, for the amount of the allowance is variable, and defendants are not liable till they recover payment from Government. We must erase that from the decree, substituting therefor a declaration of the plaintiff's title. We amend the decree in the two points above mentioned; in other respects we confirm it. The respondent must bear the costs of this appeal.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1897. *March* 2.

RAVJI APPAJI KULKARNI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* MAHADEV BAPUJI KULKARNI (ORIGINAL DEFENDANT), RESPONDENT.*

Limitation—Limitation Act (XV of 1877), Sec. 22—Civil Procedure Code (Act XIV of 1882), Sec. 27—Court sale—Benami purchase—Suit by benami purchaser—Addition of real purchaser as co-plaintiff—Continuation of suit.

The plaintiff Ravji as owner of certain land brought this suit on the 31st January, 1894, for damages for loss of crops, and in respect of loss caused by the defendant's obstructing him in cultivating the land. The dates of the causes of action set forth in the plaint were, respectively, the 12th September, 1891, the 12th March, 1892, February, 1892, and 27th October, 1892. In the course of the proceedings, the defendant ascertained that Ravji was not the real owner of the land, but had purchased it and was holding it *benami* for his uncle. Ravji admitted that he had no interest in the land. On the 30th March, 1895, Ravji's uncle applied to be made a party to the suit, and was thereupon added as second plaintiff. The Subordinate Judge on the merits passed a decree awarding damages to the second plaintiff. The defendant appealed, and in appeal for the first time objected that Ravji (plaintiff No. 1) being only a *benamidár* could not bring the suit in his own name, and that the claim of the second plaintiff, or a large portion of it, was barred by limitation under section 22 of the Limitation Act (XV of 1877). The District Judge reversed the decree on the point of limitation and dismissed the suit. On second appeal to the High Court,

* Second Appeal, No. 688 of 1896.