

## APPELLATE CIVIL.

Before Sir. L. H. Jenkins, K.C.I.E., Chief Justice, and  
Mr. Justice Batty.

1904.  
January 20.

GHULAPPA BIN BALAPPA (ORIGINAL DEFENDANT 1), APPLICANT, v.  
RAGHAVENDRA SWAMIRAO (ORIGINAL PLAINTIFF), OPPONENT.\*

*Res judicata*—Court competent to try suit.

The plea of *res judicata* should be given effect to if the Court which passed the decree in the first suit is a Court of jurisdiction competent to try the subsequent suit, whenever its inability to entertain the subsequent suit arises, not from incompetence, but from the existence of another Court with preferential jurisdiction.

APPLICATION under the extraordinary jurisdiction (section 25 of the Provincial Small Cause Courts' Act, IX of 1887) against the decision of R. R. Gangolli, First Class Subordinate Judge of Dhárwár, in Small Cause suit No. 9 of 1898.

Question of *res judicata*.

One Raghavendrarao Swamirao brought the following three suits against his debtor Ghulappa bin Balappa in the Court of the First Class Subordinate Judge of Dhárwár,

(1) Suit, No. 162 of 1897, to recover Rs. 658 including principal and interest under a money bond for Rs. 400, dated the 18th March, 1891. The suit was brought against Gulappa, the debtor, Balaji, Narayan and Raghavendra, three sons of the deceased surety Udpirao Lakshman and one Yamappa bin Lakshmappa. This suit was within the cognizance of the Subordinate Judge in his ordinary jurisdiction.

(2) Suit, No. 380 of 1897, to recover Rs. 361 including principal and interest under a money bond for Rs. 200, dated the 4th February, 1892. This suit was within the cognizance of the Subordinate Judge in his Small Cause jurisdiction.

(3) Suit, No. 9 of 1898, to recover Rs. 207 including principal and interest under a money bond for Rs. 125, dated the 4th July, 1894. The suit was brought against the debtor Ghulappa and the abovementioned three sons of his deceased surety Udpirao.

\* Application No. 309 of 1902 under the Extraordinary Jurisdiction.

This suit also was within the cognizance of the Subordinate Judge in his Small Cause jurisdiction.

At the trial of the said suits, the parties agreed to abide by the decision of the Court in suit No. 162 of 1897, which was cognizable in the ordinary jurisdiction.

The defendant Ghulappa bin Balappa relied on a receipt, Exhibit 85, passed to him by the plaintiff and pleaded satisfaction of the several debts. The Subordinate Judge found that Exhibit 85 was forged and allowed the claim in suit No. 162 of 1897 as well as in the other two suits which were cognizable in the Small Cause jurisdiction. Against the decree in suit No. 162 of 1897, the defendant Ghulappa preferred an appeal, No. 281 of 1898, to the District Court at Dhárwár, which reversed the decree and dismissed the suit holding that Exhibit 85 was a genuine document. The decree of the District Court was confirmed by the High Court in second appeal No. 179 of 1900. On the strength of the decree in the second appeal, the defendant Ghulappa applied for review of the decisions in suits No. 380 of 1897 and No. 9 of 1898. The Subordinate Judge admitted the review petitions and after hearing arguments on both sides held on the authority of the rulings in *Abdul Majid v. Jew Narain Mahto* <sup>(1)</sup>, *Sheoraj Rai v. Kashi Nath* <sup>(2)</sup>, *Ghela Ichharam v. Sankalchand* <sup>(3)</sup>, *Sheo Ratan Singh v. Sheosahai Misr* <sup>(4)</sup>, that the decision of the District Court in appeal No. 281 of 1898 did not operate as *res judicata* and directed the defendant to pay to the plaintiff the amounts claimed with all costs.

The defendant, thereupon, applied under the extraordinary jurisdiction (section 25 of the Provincial Small Cause Courts' Act IX of 1887) urging *inter alia* that the Subordinate Judge erred in holding that the decision of the District Court in the appeal and that of the High Court in the second appeal did not operate as *res judicata* and that he erred in not taking into consideration the fact that the parties had agreed to abide by the decision in suit No. 162 of 1897. A *rule nisi* having been issued calling on the defendants to show cause why the plea of *res judicata* should not apply,

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(1) (1888) 16 Cal. 233.

(2) (1884) 7 All. 247.

(3) (1893) 18 Bom. 597.

(4) (1884) 6 All. 355.

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*M. B. Chaubal* appeared for the applicant (defendant 1) in support of the rule.

*S. R. Bakhle* appeared for the opponent 1 (plaintiff) to show cause.

*H. C. Coyaji* appeared for the opponents 2 and 4 (defendants 2 and 4) and supported the rule.

JENKINS, C. J. :—In our opinion effect should have been given to the plea of *res judicata* on the rehearing of the suit, for the Court which passed the decree in suit No. 162 of 1897 was a Court of jurisdiction competent to try this suit. Its inability to entertain it arose not from incompetence, but from the existence of another Court with a preferential jurisdiction. The rule must therefore be made absolute and the suit dismissed. The plaintiff must pay the costs of suit and rule but only one set.

*Rule made absolute.*

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## APPELLATE CIVIL.

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*Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.*

ACHRATLAL HARILAL (ORIGINAL PLAINTIFF), APPELLANT, v. THE AHMEDABAD MUNICIPALITY (ORIGINAL DEFENDANT), OPPONENT.\*

*The District Municipal Act (Bom. Act III of 1901)—Non-feasance—Negligence in performance of duty towards plaintiff—Suit for damages.*

The plaintiff, an inhabitant of Ahmedabad, having brought a suit against the Ahmedabad Municipality to recover damages sustained by him in respect of an injury caused to his horse and carriage in consequence of the neglect of the Municipality to repair a road,

*Held* that as the default leading to the damage was a mere non-feasance, the suit must fail, for the statute does not impose upon the Municipality a duty towards the plaintiff which they negligently failed to perform.

APPLICATION under the extraordinary jurisdiction (section 25 of the Provincial Small Cause Courts' Act IX of 1887) against the decision of L. P. Parekh, Judge of the Court of Small Causes at Ahmedabad, in suit No. 725 of 1903.

\* Application No. 210 of 1908 under the Extraordinary Jurisdiction.

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