1868

RAMLOCHAN DAS v. KANSUR ALI.

whether the plaintiffs were to recover the share in an undivided estate which they had purchased, or specific lands as representing that share, the Judgment says that the plaintiffs will get possession with wasilat. But the lands, of which they were to get possession, is wholly undefined, and it is uncertain whether the Judge meant that they should get possession of a share of an undivided estate or of some specific lands.

The Principal Sudder Ameen and the present Judge have both, as it appears to me, put a proper construction upon the judgment of Mr. Balfour.

In preparing decrees, the Judges ought clearly to define what are their intentions, and the vakeels who represent the parties do not perform their duty simply by arguing the case, but they ought always to see that the decrees are drawn up according to the judgments of the Judge. If the Judges and the vakeels were more attentive to their duties in this respect, much of the litigation which commences after a decree is pronounced, and which frequently lasts for many years afterwards, would be avoided. A little time bestowed in seeing that the decrees are drawn up properly, would save the expenditure of much valuable time, which is often incurred in endeavouring to arrive at the real meaning of the decree.

The order of the lower Court is affirmed.

Before Mr. Justice Phear and Mr. Justice Hobhouse.

KRIPARAM *v.* BHAGAWAN DAS.*

1868
July 2.

Res judicata—Cause of Action—Estoppel.

A. claimed certain property as the adopted son of B., and it was decided in that suit, that A. had failed to prove that he was the adopted son of B. *Held*, that this decision was no legal bar to A.'s proving in another suit that he was the adopted son of B., in which A. sought to obtain a different property upon a different cause of action, though the parties to the suit were the same.

See also ante p. 1.

* Special Appeal, No. 80 of 1863, from a decree of the Principal Sudder Ameen of Sarup, affirming a decree of a Moonsiff of that district.

1863

KRIPARAM v. BHAGAWAN DAS.

This was a suit instituted in the Court of the Moonsiff of Pursa, in the district of Sarun, to recover possession of certain mouzas of land, by right of inheritance. The plaintiff, Kriparam, alleged that he was the adopted son of Ramnath, brother of Kadam Lal, and as such adopted son, claimed certain property which belonged to Kadam Lal, on the ground that Kadam Lal's widow had forfeited her right to the enjoyment of the same by reason of her unchastity and consequent excommunication.

The plaintiff, in 1862, had instituted a suit for succession to the estate of Ramnath, as well as to that of Kadam Lal, alleging that the property was the joint property of the two brothers, and that the plaintiff was the surviving male heir of the family. In that suit the widow of Kadam Lal, who was the defendant, stated in her written statement that the two brothers had separated in their life-time, and also denied that the plaintiff was the adopted son of Ramnath. The first Court found the second issue, *viz.*, that of adoption, in favour of the plaintiff, but the Principal Sudder Ameen, on appeal, held that the adoption in due form, according to the Mitakshara law, was not proved, and dismissed the plaintiff's suit. The High Court, on appeal, remanded the case for the trial of the following issues :

"1*st*.—Whether the plaintiff was validly adopted according to the *kritrima* form, and if so, whether Mithila law governs the case or not ?

"2*nd*.—Whether the plaintiff (although he may not be the adopted son) is not entitled to claim the property under a deed of grant of 18th February 1850 ?"

The first issue was decided against the plaintiff, but the second being decided in his favour, he obtained a decree for the estate of Ramnath. This decision was upheld by the High Court on special appeal.

In the present suit, which was for the estate of Kadam Lal, the Moonsiff held, that inasmuch as the plaintiff had obtained a decree in the previous suit for the estate of Ramnath, on the strength of the deed of grant, and not as the adopted son of Ramnath, and as the issue of adoption had been decided against the plaintiff in that suit, he could not now claim to be

1868

KRIPARAM v. BHAGAWAN DAS.

the heir of Kadam Lal, the brother of Ramnath.

On appeal, the Principal Sudder Ameen affirmed the decision of the Moonsiff, and dismissed the plaintiff's suit.

The plaintiff now appealed to the High Court.

Baboo *Durga Das Dutt* for appellant.—In the former suit, the issue of adoption was not directly tried in respect of Kadam Lal's share. In that suit there were two issues: *First*,—Whether plaintiff was the adopted son of Ramnath; *Second*,—Whether Ramnath and his brother lived jointly or separately. It cannot now be ascertained on which of these two issues the plaintiff's suit was dismissed. The cause of action in the present suit being different, the plaintiff is not estopped from raising the issue of adoption again.

Baboo *Anukul Chandra Mookerjee* (Baboo *Girija Sankar Mazumdar* with him) for respondents.—The issue of adoption has been tried in a former suit, and the Court held that there was no proof that the plaintiff was adopted by Ramnath in the *Kritrima* form, as alleged. Plaintiff appealed to the High Court against that decision, and the High Court rejected that appeal. In the present case, plaintiff can only be allowed to sue on proof that he is the son of Ramnath, but that issue has been already decided against him. In the former case that issue was not a collateral issue, but an important and a most material issue. As the same point has been already decided, the lower Courts are right in refusing to decide it again.

The judgment of the Court was delivered by

PHEAR, J.—The plaintiff's cause of action in this suit is, that he is entitled to obtain certain property, which belonged to Kadam Lal, in consequence of Kadam Lal's widow having forfeited her right to the enjoyment of the same by reason of her profligate conduct. The plaintiff seeks to make out his title to this property on the occurrence of the contingency I have mentioned, by setting up, that he is the adopted son of Ramnath, Kadam Lal's brother. The lower appellate Court

1868

KRIPARAM v. BHAGAWAN DAS.

has held that he is barred from setting up this title, because in a former suit against the same defendants, when he sought to obtain other property which had belonged to Ramnath, it was decided between the parties that he, the present plaintiff, was not the adopted son of Ramnath. I think that this last mentioned decision does not afford a legal bar to his proving in the present suit, if he can, by legal evidence, that he is the adopted son of Ramnath, for he here seeks to obtain a different property upon a different cause of action. It seems to me, therefore, that the lower appellate Court has made a mistake in this respect, and that the suit ought to be remanded for re-trial. The first issue will, of course, be whether the plaintiff is, as he says he is, the adopted son of Ramnath, and the other issues will be those which properly arise on the merits of the question, whether or not he is, supposing him to be found to be the adopted son, entitled now to recover the property which he seeks.

The costs will abide the event.

Before Mr. Justice Phear and Mr. Justice Hobhouse,

LALA JAGAT NARAYAN *v.* TULSIRAM.*

1868
July 2.

Validity of Attachment—Decree—Act VIII. of 1859, *ss.* 119 *and* 240.

The effect of granting an application under section 119 of Act VIII. of 1859, is to declare that there has not been yet a valid decree in the suit, and thereby any attachment, that has issued in execution of the decree which has been set aside, becomes invalid.

See also Page 56 Page 84

A. obtained a decree *ex parte* against B. Property belonging to B was attached in execution. While under attachment, B. sold the property to C. Afterwards B. applied for, and obtained an order, under section 119 of Act VIII. of 1859, to set aside A.'s decree and for a new trial.

Held, that C.'s purchase was not null and void, under section 240 of Act VIII. of 1859.

THIS was a suit to obtain possession of a certain share of a village in Pergunna Bal, in the district of Sarun. The plaintiff alleged that he had purchased the property from one Gobind Ram for Rs 6,000; and that the said vendor had caused his

* Special Appeal, No. 81 of 1868, from a decree of the Principal Sudder Ameen of Sarun, reversing a decree of a Moonsiff of that district.