APPELLATE JURISDICTION (a)

Regular Appeal No. 81 *of* 1865.

SAIKAPPA CHETTI..................................*Appellant.*

RÁNI KULANDÁPURI NÁCHIYÁR, *alias* KÁTTAMA NÁCHIYÁR.................. } *Respondent.*

To conclude a plaintiff by a plea of res judicata, it is not sufficient show that there was a former suit between the same parties for the same matter upon the same cause of action. It is necessary also to show that there was a decision, finally granting or withholding the relief sought.

1866. *March* 24. *R. A. No.* 81 *of* 1865.

THIS was a regular appeal from the decree of C. N. Pochin, the Acting Civil Judge of Madura, in Original Suit No. 2 of 1865. The plaintiff, the present Ráni of the Zamindáry of Shivaganga, sought to recover from the defendant Rupees 26,714-10-7, principal and interest due under a Karárnáma executed by the defendant to the agent of the plaintiff under date 2nd April 1864. The defendant admitted the execution of the Karàrnáma and also the amount claimed, but pleaded that the Court had no jurisdiction, as the cause of action had already been disposed of in Original Suit No. 5 of 1864 between the same parties. The Civil Judge decided that the cause of action in this suit was not res judicata, on the ground that the only point decided in No. 5 of 1864 was that the suit, as then brought, was premature. The defendant appealed.

Rajagopala Charlu, for the appellant, the defendant.

O'Sullivan, for the respondent, the plaintiff.

The Court delivered the following

JUDGMENT:—Before plaintiff was placed in possession of the Zamindáry, defendant had undertaken with the person then holding as Zamindár to collect the rents of the Zamindáry in kind, to realize the proceeds and to pay into the treasury of the Zamindáry the sums so received. Plaintiff was installed under the decree of the Privy Council of 30th November 1863, and on the 2nd April 1864 defendant gave her a bond for Rupees 23,902-6-2, the balance

(a) Present Innes and Collett, J. J.

1866.
March 24.
R. A. No. 81
of 1865.

still due by him to the Zamindáry, and it is upon this bond that plaintiff seeks to recover Rupees 26,714-10-7, the principal and interest due upon it. Defendant set up that the claim had been already adjudicated upon in Original Suit No. 5 of 1864 of the Civil Court.

The Civil Judge considered that this was no case of res judicata, as all that was decided by the judgment in Original Suit No. 5 of 1864, was that the suit as then brought was premature, and he gave judgment for plaintiff.

The same question is now raised in appeal. At the time at which Suit No. 5 of 1864 came before the Civil Court of Madura for decision, an enquiry, which had been directed by the High Court, was pending as to the question of mesne profits due by the person lately in possession as Zamindár, and as the claim of plaintiff was for a sum which had formed a portion of the mesne profits, the Civil Judge considered that the question of whether the amount was due by the defendant to plaintiff should not be decided until the decision of the question of mesne profits as between plaintiff and the ex-zamindár. Notwithstanding therefore that the defendant admitted the debt and tendered a rázinâma, agreeing to pay the amount by instalments, the Civil Judge dismissed the suit as premature. It is urged for defendant that as there was no appeal preferred from the decision of the Judge in the former suit, that decision is final, and the question between these two parties, having been once adjudicated upon, cannot be re-opened in a fresh suit.

To conclude a plaintiff by a plea of res judicata, it is not sufficient to show that there was a former suit between the same parties for the same matter upon the same cause of action. It is necessary also to show that there was a decision, finally granting or withholding the relief sought. "Res judicata dicitur quæ *finem* controversiarum pronun-"tiatione Judicis accepit, quod vel condemnatione vel "absolutione contingit."(b)

In the present case there was no such decision, all that was decided being that plaintiff could not bring the suit

(b) Dig XLII. Tit I. § I.

1866.
March 24.
R. A. No. 81
of 1865.

pending the settlement of the question of mesne profits. It was equivalent to an informal permission, under Section 97 of the Code of Civil Procedure, to withdraw the suit with liberty to bring a fresh suit for the same matter.

This being so, we think the plaintiff was entitled to recover. We therefore affirm the decree of the Civil Judge and dismiss this appeal with costs.

Appeal dismissed.

APPELLATE JURISDICTION (*a*)

Referred Case No. 1 *of* 1866.

PONNAPPA MUDALI *against* SRINIVÁSA MUDALI.

A plaint was rejected by a Court of Small Causes on the ground that that Court had no jurisdiction. It was then filed in the Court of a District Munsif who decreed for the plaintiff. On appeal to the Principal Sadr Amin it was objected that Munsif had no jurisdiction, as the suit was one cognisable by the Small Cause Court.

Held, (the Court having decided that the Small Cause Court had jurisdiction) that the District Munsif's Court had no jurisdiction, that the erroneous dismissal of a former suit for the same cause of action by a Small Cause Court could not warrant the institution of the suit in the District Munsif's Court, and that the Principal Sadr Amin rightly concluded that the suit ought to be dismissed.

1866.
April 16.
R. C. No. 1
of 1866.

THIS was a case referred for the opinion of the High Court by Krishnasámy Aiyar, the Principal Sadr Amin for Chittoor.

No Counsel were instructed.

The facts sufficiently appear in the following

JUDGMENT :—The plaint in this case was first presented to the Court of Small Causes, but rejected on the ground that that Court had no jurisdiction. It was then filed in the Court of a District Munsif who gave a decree for the plaintiff. On appeal to the Principal Sadr Amin it was objected that the Munsif had no jurisdiction, as the suit was one cognizable by the Small Cause Court. The Principal Sadr Amin now submits for our decision the following questions :—

(1). " Whether the suit was, or was not cognizable by the Court of Small Causes.

(2.) "Whether the fact of the Small Cause Court having dismissed the suit as beyond its jurisdiction, while in

(*a*) Present Scotland C. J. and Innes, J.