Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Rajah Row Venkata Mahipiti Gangadhara Ram Row v. *Sri Rajah Row Buchi Sitayya and others from the High Court of Judicature at Madras; delivered November 21st, 1884.*

Present:

LORD FITZGERALD.
SIR BARNES PEACOCK.
SIR ROBERT COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THIS is a suit brought by the Appellant Venkata Row against the mother and sisters of Venkata Surya, deceased, and the object of the suit is to have it declared that the Plaintiff is entitled as reversionary heir of Venkata Surya to certain property which he claims in the plaint. In consequence of Venkata Surya's having died without a son, the mother succeeded to his property and took a Hindu mother's estate therein, and she has conveyed the estate absolutely to her daughters, who are also made Defendants. Venkata Surya was the son of Buchi Tamayya, and the Plaintiff is the son of Venkata Surya Row. The Plaintiff by his plaint claims as reversionary heir to the property left by the son of the first Defendant, and now in her possession and enjoyment, and he also asks a declaration that the alienation of the property mentioned in the plaint which the first Defendant has made in favour of the second and third Defendants was made without any legal necessity or justifying cause, and is void and inoperative beyond the lifetime of the first

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Defendant, and that the Plaintiff is entitled as reversionary heir to the portions so alienated.

The case of the Plaintiff is that Venkata Row, the father of the Plaintiff, was the brother of Buchi Tamayya, the father of Venkata Surya, the deceased, and he says he was the brother of Buchi Tamayya, because Buchi Tamayya was adopted by Niladri Row, his father's father. The Defendants contend that the Plaintiff's father and Buchi Tamayya were no relations, and that the Plaintiff is estopped from saying that Buchi Tamayya was his father's brother; that he was not his brother by birth, and that he has no right to say that he was his brother by adoption, because in a former suit between the father of the Plaintiff and Buchi Tamayya it had been conclusively determined, upon an issue raised in a Court of competent jurisdiction, that Buchi Tamayya had not been adopted. Thereupon an issue was raised in the present suit, "whether the suit is barred by *res judicata*." The Courts below have both found that the suit is barred by *res judicata*, and the Appellant now contends that the judgement of the High Court, which affirmed the judgement of the first Court, ought to be reversed upon the ground that the suit is not so barred. One of the contentions of the learned counsel for the Plaintiff is that although in the suit between Venkata Row and Buchi Tamayya it had been found upon an issue raised between them that Buchi Tamayya was not the adopted son of Niladri Row, still he is not bound by it, because this suit does not relate to the property which is the subject of the present suit. It is true that the former suit did not relate to the same property as that which is the subject of the present suit; but the issue has been tried between them by a Court of competent jurisdiction whether Buchi Tamayya was adopted or not. In fact the allegation of the Plaintiff is

substantially this: that Venkata Row had a right to say that Buchi Tamayya was not adopted when the establishment of his adoption would have given him a right to participate in the property of Niladri Row to which Venkata Row in the former suit claimed to be solely interested; but that the Plaintiff, deriving title through his father Venkata Row, has a right to say that Buchi Tamayya was adopted when the fact of his adoption would entitle the Plaintiff to inherit property as the reversionary heir of Tamayya's son. If ever there was a case in which the law of estoppel ought to apply, it appears to their Lordships that this is such a case.

It appears to their Lordships that the High Court was right in holding that the decision of the Provincial Court in 1840, upon an issue directly raised in a cause which they were competent to try, that Buchi Tamayya was not adopted, would have been conclusive against Venkata Row, the father of the Plaintiff, and is also conclusive against the Plaintiff himself, who cannot make a title except through his father.

It was contended on the part of the Plaintiff, by his learned counsel, that the cases do not establish that an estoppel is binding unless the suit relates to the same subject matter, but it appears to their Lordships that the cases which have been referred to do not establish that position. In the case of *Outram v. Morewood* the second action was not brought for the same subject matter for which the first action had been brought. The first action was for damages sustained by the Plaintiff in consequence of the wife of Morewood's having entered upon certain mines and taken coal from them before she was married. The wife contended that she was entitled to those mines by virtue of a certain conveyance; but it was found by the Court that the wife was not

entitled to the mines, and the Court gave damages against her. Another action was brought subsequently against Morewood, who had afterwards married the lady, for a second trespass committed by them upon the same mines, and the question then arose whether the finding in the first suit, with reference to the damages claimed in that suit, was binding upon the two Defendants in respect of the damages claimed against them in the second suit. It was held that it was. There were two distinct claims. The damages claimed in the two actions were distinct; the trespasses were distinct, and yet it was held that the decision in the first case with regard to the damages claimed in the first case was binding in the second case as an estoppel, the matter having been conclusively tried between the Plaintiff and the Defendant's wife when a *femme sole* in the first case.

The case of *Barrs v. Jackson* was also referred to, but there the subjects of the two suits were different. [In that case it was held that a decision of an Ecclesiastical Court, holding that the Plaintiff was a next-of-kin for the purpose of obtaining letters of administration, was binding in a suit brought in the Court of Chancery for the distribution of the estate. The Ecclesiastical Court decided that the Plaintiff was a next-of-kin for the purpose of having administration and managing the property. Subsequently the question was raised in the Court of Chancery whether he was a next-of-kin for the purpose of taking a share of the property. Those were perfectly distinct claims. Yet it was held that inasmuch as the Ecclesiastical Court would have had concurrent jurisdiction with the Court of Chancery to try the question with respect to distribution, the decision of the Ecclesiastical Court between the same parties with reference to administration was binding upon the Court of Chancery with

reference to distribution. The learned Vice-Chancellor Knight Bruce had held that it was not binding, but his decision was overruled by the Lord Chancellor, who held that it was binding.]

Certain remarks of the Vice-Chancellor Knight Bruce in that case have been referred to, but in their Lordships' opinion they are not applicable to the present case, inasmuch as it depends upon the construction of an Act of the Legislature of India. It may be as well to refer to the remarks which were made by their Lordships in the case of *Krishna Behari Roy* v. *Bropswari Chowdranee*, reported in the 2nd volume of the Law Reports, Indian Appeals, page 285. The question there was with regard to the construction of the expression "cause of action," in the 2nd section of Act VIII. of 1859. That Act is not so extensive as the Act of 1877, because it merely declares that a second trial shall not take place upon a cause of action which has already been decided. The question arose as to what was the meaning of cause of action in that section, and it was there said, "Their Lordships are of "opinion that the expression 'cause of action' "cannot be taken in its literal and most restricted "sense, but however that may be by the general "law where a material issue has been tried and "determined between the same parties in a proper "suit and in a competent Court as to the status "of one of them in relation to the other, it can-"not in their opinion be tried again in another "suit between them." The point here has been determined in the first suit. It was there determined that the Plaintiff's father and Buchi Tamayya were not brothers, because it was found that Tamayya had not been adopted. In the present suit the Plaintiff says the parties to the first suit were brothers, and the Court below have held that he is estopped from saying that

they were brothers because it was determined in the former suit that they were not brothers.

The Act which governs the present case is the Procedure Code of 1877, by section 13 of which Act it is enacted that "No Court shall try any "suit or issue in which the matter directly and "substantially in issue has been heard and finally "decided by a Court of competent jurisdiction in "a former suit between the same parties or "between parties under whom they, or any of "them claim, litigating under the same title." The issue which was tried in the former suit in this case was whether Buchi Tamayya was adopted by Niladri Row, and the issue which the Plaintiff wishes to try in the present case is the same, whether Buchi Tamayya was the adopted son of Niladri Row.

Their Lordships are clearly of opinion that the issue which was tried in the former suit is the same as that which the Plaintiff wished to be tried in this suit, and that the Plaintiff is estopped from making the allegation which he attempts now to support.

It was contended further, that even if the decision on the issue in the former suit was an estoppel between the parties as to the fact of the adoption of Buchi Tamayya, still that estoppel has been got rid of by reason of an arrangement which was afterwards come to by the parties by a razinamah, of which there were two parts, one which is set out at page 9 of the record and the other at page 964. Looking to those documents it appears to be clear that the object of them was not to get rid of the judgement which was passed in the Provincial Court, but, on the contrary, to maintain it. Buchi Tamayya was about to appeal against the decision of the Provincial Court to the Sudder Court, and thereupon Venkata Row entered into this razinamah, by which he agreed that if Buchi Tamayya would

withdraw his appeal Venkata Row would pay him Rs. 30,000. It was further stipulated that if Venkata Row should break that agreement and not pay the Rs. 30,000, Buchi Tamayya should be at liberty to apply to the Court to enforce the payment of the Rs. 30,000 in the same way as if Buchi Tamayya had obtained a judgement against Venkata Row for the amount. But that did not get rid of the judgement of the Provincial Court, in which it was held that Buchi Tamayya was not the adopted son, and that he was not entitled to recover the property. It was a judgement intended to prevent Buchi Tamayya from proceeding with his appeal and to allow the judgement of the Provincial Court to remain in force. The decision, therefore, of the Provincial Court stands, and being an estoppel between the parties the razinamah does not prevent it from having the effect which would have been given to it if the razinamah had not been entered into.

Their Lordships are clearly of opinion that the High Court was right in affirming the decision of the Lower Court, and thereby holding that the Plaintiff was barred by the finding of the Provincial Court in the suit between his father Venkata Row and Buchi Tamayya. They will therefore humbly advise Her Majesty to affirm the decision of the High Court, and to dismiss the Appeal. The Appellant must pay the costs of the Appeal.

Their Lordships wish to make a remark with reference to the record which has been sent up. It appears that over 900 pages of the record have nothing to do with the question raised by the Appeal. It is a great abuse for parties to bring before this tribunal a record with 900 pages of documents and figures, none of which have the least bearing upon the case. It does not appear that they were ever proved

in the First Court or that they were ever referred to by that Court or by the High Court. The whole of them which were sent by the First Court to the High Court have been incorporated in the record which the High Court has sent up to the Judicial Committee for the purpose of determining this Appeal. Their Lordships have frequently called attention to similar abuses, and a circular has been issued directing the High Courts not to send up documents or evidence which have no bearing upon the case. The expenses of this Appeal must have been enormously increased by that portion of the record which has been unnecessarily sent up. Under these circumstances their Lordships, in order to prevent a repetition of such an abuse, think it right to direct that the Registrar, in taxing the costs, shall tax them in the same manner as if the record had not contained such parts as the Registrar may consider to have been unnecessarily and improperly introduced into it.