1952 *Present :* **Nagalingam A.C.J. and Swan J.**

DADALLE DHARMALANKARA THERO, Appellant,
*and* AHAMADULEBBE MARIKKAR, Respondent

*S. C. 43—D.C. Colombo, 5,389*

Actio rei vindicatio—Jus tertii—*Scope of such plea*—Res judicata.

**Where, in an action *rei vindicatio*, the defendant sets up a *jus tertii*, though he himself may not be claiming under that title, it will be sufficient and competent for the plaintiff to repel that plea by shewing that a judgment secured by him against the third party operates as *res judicata* as between himself and the third party.**

APPEAL from a judgment of the District Court, Colombo.

*H. V. Perera, Q.C.*, with *E. D. Cosme* and *O. M. da Silva*, for the 1st defendant appellant.

*C. Thiagalingam, Q.C.*, with *L. G. Weeramantry* and *T. Parathalingam*, for the plaintiff respondent.

*Cur. adv. vult.*

May 21, 1952. NAGALINGAM A.C.J.—

The defendant appeals from a judgment of the District Court of Colombo whereby the plaintiff has been declared entitled to the land described in the schedule to the plaint, of which the defendant is in possession, and the defendant ordered to be ejected therefrom and to pay damages and costs to the plaintiff.

The appeal can be disposed of on a short point, and I do not therefore propose to consider the various points raised on appeal. Admittedly the land in question belonged to one Don Hendrick Seneviratne, under whose last will, it is common ground, the land was devised to his son Granville subject to certain conditions, of which the only one that needs be noticed is that on Granville's death without children the property was to devolve on his brothers and sisters, subject to the proviso that if his wife survived him she was to be entitled to certain limited interests. According to the plaintiff, Granville died unmarried and issueless, and thereupon the property devolved on his two brothers Irwin and Vincent and his sister Helena Dias, whose interests have now been acquired by him. Granville died in 1944. The defendant has no conveyance in his favour but asserts that in 1934 Granville had dedicated the land to the Sangha and delivered possession of it to him, who is a Buddhist priest, and that he has been in possession of it ever since.

The defendant, conceding that though he may have no title himself to the land, yet says that he is entitled to show, as he undoubtedly is, that the plaintiff himself, who seeks a declaration of title, is one who has no title, and that the title is in some third party. His case is that the real title is in one Pandula, who, he alleges, is a legitimate child of Granville, and that therefore the conveyances in favour of the plaintiff from the brothers and sisters or their descendents are of no avail.

The plaintiff answers this by saying that the two brothers of Granville instituted an action against *inter alios* Pandula, claiming a declaration of title to a 2/3 share *inter alia* in the land in dispute and allotting to their sister Helena Dias the remaining 1/3. In that case the plaintiffs expressly averred that Pandula was not a son of Granville and that he was entitled to no interests in the land ; after trial decree was entered in favour of the plaintiffs declaring them entitled as against Pandula and certain others to a 2/3 share of the land in dispute, and the judgment further held that Pandula was not a child of Granville and that the remaining 1/3 share in the land in dispute was vested in Helena Dias, or more properly, in Helena Dias' heirs, as Helena Dias was dead at the time the decree came to be entered.

In reply to this the contention put forward on behalf of the defendant is that whilst a privy in estate to Pandula claiming the land could successfully be met by a plea of *res judicata*, the defendant is not so bound, as he is not a privy in estate, and that therefore the matter is at large so far as he is concerned, and that he is entitled to show that Pandula in point of fact was a legitimate child of Granville and so entitled to the property.

No authority has been cited either in support of or against this proposition. The matter, therefore, has to be adjudicated upon on first principles. If a person who is privy in estate to Pandula cannot be permitted to dispute the findings in the case instituted against Pandula and to show that Pandula was a son of Granville as against the brothers of Granville or their successors-in-title, it seems to me that *a fortiori* the principle must more strongly apply in the case of a third party who, though not a privy in estate, sets up the title of Pandula to resist the claim of his opponent ; the third party must be held debarred from reagitating the questions finally disposed of by that case and showing the contrary of what was decided in it—though the label of *res judicata* cannot properly be applied.

In regard to Helena Dias's title, too, the finding that Pandula was not a child of Granville completely disposes of the contention that a 1/3 share is vested in Pandula. I think, where a defendant sets up a *jus tertii*, though he himself may not be claiming under that title, it will be sufficient and competent for the plaintiff to repel that plea by showing that a judgment secured by him against the third party operates as *res judicata* as between himself and the third party, for such a judgment is the best proof that the third party has no title as against the plaintiff and puts an end to the plea. Indeed, if a contrary view be taken, it would be obvious that the very principles underlying the doctrine of *res judicata* would be set at nought and the unfortunate result would be that the

same question would be permitted to be litigated as many times as the number of trespassers without title who could be found willing and capable of interfering with a plaintiff's possession.

I therefore hold that the defendant is debarred from showing that the title is not in the plaintiff but in Pandula. The appeal therefore fails and is dismissed with costs.

SWAN J.—I agree.

*Appeal dismissed.*