

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, Nov. 23, 1909
and Mr. Justice Wood Renton.

KANTAIYER v. RAMU

D. C., Jaffna, 1,334.

Decision in an action under section 247, Civil Procedure Code, that minor was not guardian's legitimate son—Subsequent application by guardian for letters of administration to minor's alleged mother's estate—May administrator re-open the question of minor's legitimacy?—Res judicata—Civil Procedure Code, s. 207.

In an action under section 247, Civil Procedure Code, to which the respondents were parties, the appellant, as guardian of his minor son B, was unsuccessful in claiming certain lands as property belonging to B by inheritance from his (appellant's) wife C. Subsequently the appellant obtained letters of administration to C's estate, and conveyed the lands to B as C's son and heir.

On objection taken by respondents, it was held that the decision in the action under section 247, Civil Procedure Code, that B was not appellant's son by C was no bar to the appellant raising the question of B's legitimacy in the testamentary proceedings, as the appellant did not appear in the same capacity in both the cases.

A PPEAL from a judgment of the District Judge of Jaffna (R. N. Thaine, Esq.).

One Sapapathy, as judgment-creditor in C. R., Point Pedro, 7,896, seized certain lands as belonging to the judgment-debtors, the first and second respondents to the present appeal.

The appellant, as natural guardian of his minor son Velupillai, claimed the lands on behalf of Velupillai. The claim was upheld. Thereupon Sapapathy instituted C. R., Point Pedro, 8,511, under section 247, Civil Procedure Code, to have the lands declared to be seized and sold in execution of his writ 7,896. The Court held that Velupillai was not entitled to the lands, on the ground that he was not a son of Walinachi, who was admitted to be the original owner. Thereupon the appellant took out letters of administration to the estate of Walinachi in the present case and conveyed the estate to Velupillai, and filed his final account accordingly. The first and second respondents filed their objection to the final account being passed, on the ground that the property had been conveyed to Velupillai, who was not the son of the intestate, but the illegitimate son of the appellant by one Meenachi. They further contended that the question of Velupillai's legitimacy was finally decided between the parties in C. R., Point Pedro, 8,511. The learned

Nov. 23, 1909 District Judge held that the decision in C. R., Point Pedro, 8,511, estopped the administrator from re-opening the question of Velupillai's legitimacy.

*Kantaiyer
v. Ramu*

The administrator appealed.

Kanagasabai, for the appellant.

Wadsworth, for the respondent.

Cur. adv. vult.

November 23, 1909. WOOD RENTON J.—

The short question raised by this appeal is whether a finding by the Court of Requests of Point Pedro in case No. 8,511 of that Court that one Velupilai was the illegitimate son of the appellant by a woman Meenachi, and not his legitimate son by his deceased wife Walinachi, of whose estate he is now administrator, bars the appellant, by way of *res judicata*, from re-opening the issue of Velupillai's legitimacy in the present proceedings.

In C. R., Point Pedro, 8,511, one Sapapathy, a judgment-creditor, had seized land alleged to belong to his judgment-debtors, Ramu and his wife Theywanai a sister of Walinachi. Velupillai and the appellant, as his guardian, claimed the land on the ground that Velupillai was Walinachi's legitimate son. The Court of Requests set aside the claim, holding that Velupillai was illegitimate. Against that decision there was apparently no appeal. The real parties in that case were on the one hand Ramu and Theywanai, and on the other Velupillai and the appellant in his personal capacity. The value of the land brought the claim within the jurisdiction of the Court of Requests; and it was not disputed by Mr. Kanagasabai, on the argument of the appeal, that that Court had a right to determine the issue of Velupillai's legitimacy, for the purpose of disposing of the particular claim with which it had there to deal. Subsequently to the decision in C. R., Point Pedro, 8,511, the appellant obtained letters of administration to Walinachi's estate in testamentary case, D. C., Jaffna, 1,334, conveyed the whole estate to Velupillai, and filed his final account. Ramu and Theywanai filed objections to the account, alleging, *inter alia*, that the judgment in C. R., Point Pedro, 8,511, operated as *res judicata* against Velupillai and the appellant. The learned District Judge upheld this objection. I have come with regret—for the appellant deserves no sympathy—to the conclusion that this decision is wrong. The parties in D. C., Jaffna, 1,334, are personally the same as the real contestants in C. R., Point Pedro, 8,511. The legitimacy of Velupillai is in issue in both cases. The District Court of Jaffna has undoubted jurisdiction over the subject-matter of this suit. Mr. Kanagasabai argued that, inasmuch as the Court of Requests could not have entertained the testamentary suit, or adjudicated on the title to the whole estate, it was not a Court of competent

jurisdiction to decide the issue of legitimacy for the purpose of the present proceedings. I cannot agree. The Indian cases cited by Mr. Kanagasabai in support of this contention, of which *Dinkar Ballal Chakrader v. Harishridar Apte* ¹ and *Misir Raghobardial v. Sheo Baksh Singh* ² may be taken as examples, turn on the terms of section 13 of the Indian Act X. of 1877, which finds no analogy in our local Statute Law. The only point that has given me difficulty is as to whether the issue of Velupillai's legitimacy can be held to come within the words "right to relief" in the explanation to section 207 of the Civil Procedure Code. It clearly comes within the following words of the Explanation, since it could be "set up or put in issue between the parties" to the Court of Requests action. Keeping in view the very comprehensive terms in which section 207 and its Explanation are couched, and the manifest intention of the Legislature, in using that language, to prevent multiplicity of suits over the same subject-matter or issues, I think that where, as in C. R., Point Pedro, 8,511, the fact of legitimacy is asserted or denied as a ground for the acceptance or rejection of a claim, it may fairly be said that a "right to relief" has been set up or put in issue between the parties. But here the appellant does not appear in the same capacity as in C. R., Point Pedro, 8,511. There he claimed as guardian of Velupillai. Here he has filed his final account as administrator of Walinachi.

Nov. 23, 1909

WOOD
RENTON J.
Kantaiyer
v. Ramu

The appeal must be allowed with costs of the appeal, costs in the District Court to abide the event. The case will go back for trial.

HUTCHINSON C.J.—

I agree that the appeal should be allowed on the ground that the appellant, the administrator of Walinachi's estate, was not a party to the action in the Court of Requests.

Appeal allowed; case remitted.

¹ (1889) I. L. R. 14 Bom. 206.

² (1882) I. L. R. 9 Cal. 439