

1900.
November 2.

PONNAMPALAM *et al.* v. MURUGASAR *et al.*

C. R., Point Pedro, 6,854.

Res judicata—Evidence.

M., being a decree-holder in D. C. case No. 24,475 against G., caused a certain land to be seized in execution as the property of G. P. claimed the land. On the District Judge rejecting his claim, he sued M. and G. to have it declared that the land was not liable to be seized by M., and that it may be declared P.'s property.

M. pleaded the judgment in D. C. case No. 288 as *res judicata*, whereby P.'s claim to part of the same land, upon a seizure made by another judgment-creditor of G., was rejected.

Held, that such judgment was not *res judicata*, though it may serve as evidence against P.

THE first defendant in this case, being the decree-holder in case No. 24,475 of the District Court of Jaffna, sued out

writ against the property of the second defendant and caused the Fiscal to seize and advertise for sale an undivided two-thirds share of a divided two-thirds of a certain land which the plaintiffs claimed as the property of the second plaintiff, who was the wife of the first plaintiff. The Fiscal duly reported the plaintiffs' claim to the District Court of Jaffna, which inquired into the matter and disallowed the plaintiffs' claim with costs.

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The plaintiffs now brought the present action under section 247 of the Civil Procedure Code, praying that an undivided one-third share out of the said divided two-thirds share of the said land be declared the property of the second plaintiff; that the same be ordered to be released from seizure under the said writ; and that the first defendant be decreed to pay to plaintiffs Rs. 25 damages and the costs of this action.

The first defendant pleaded *inter alia*, as matter of law, that an action for the land in dispute was instituted between the same parties in case No. 288 of the District Court of Jaffna, in which a final decree, which had been affirmed by the Supreme Court, was passed against defendant, and that the decree in question was *res judicata* as against the plaintiffs.

The Commissioner upheld the plea of *res judicata* and dismissed plaintiffs' action with costs.

The plaintiffs appealed.

Maartensz, for appellant.—The judgment in case No. 288 pleaded as *res judicata* was not between the same parties as in the present case. In that case, the claim made by the present plaintiff was as against another execution-creditor, and the claim was for a portion of a land half a lacham in extent, and the District Judge dismissed it. In the present case, the claim of the plaintiff is for an undivided one-third share of the land. A decree for a portion cannot operate as a bar to a subsequent suit for the remainder, even though the two suits may be between the same parties. In *Gunawardana v. Nachiappa Chetty* (1 S. C. R. 227), the plaintiffs claimed certain lands as against a judgment-creditor, and his claim being disallowed, it was held that that order was no bar to another action by the same claimant as against another judgment-creditor who was not privy to the previous creditor.

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The first defendant in this case, who was the execution-creditor in case No. 24,775 of the District Court of Jaffna, caused a certain land, which he alleged belonged to his judgment-debtor, to be seized. The plaintiff in the present case claimed the land, but

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his claim was rejected. He thereupon brought this action to have it declared that the land was not liable to be seized in execution by the first defendant.

It appears that on a previous occasion another judgment-creditor who had a judgment against the same judgment-debtor had seized this same land and that the plaintiff put in a claim to it, and that his claim was rejected, and that he then brought a similar action to the present, which action was dismissed.

The Commissioner in the present case held that the previous decision was binding upon the plaintiff and was a bar to the present action.

The plaintiff has appealed.

It is quite clear that the former action was not a conclusive bar to the present action. It may be that the plaintiff has since acquired a title to the land by donation or some other means. Moreover, the action was not between the same parties, and it cannot therefore be treated as *res judicata*, even though there has been no change in the title since the previous action. It is only evidence against the plaintiff.

The point was considered by the Collective Court in the case of *Gunawardana v. Nachiappa Chetty*, reported in *1 S. C. R. 227*.

The case must go back to the Court of Requests for the purpose of being tried.

The plaintiff is entitled to the costs of the appeal.

