Special Appeal No. 405 *of* 1865.

1866.
Feb. 7.

B'ALA'JI VISHVANA'TH JOSHI .....*Appellant.*
DHARMA', HARIA', BHURIA', RA'GHU, AND NA'GU, sons of VIT PA'TI'L.....*Respondents.*

Judgments in rem *and* inter partes—*Hindú Family Property—Alienation —Issues—Remand.*

A judgment *inter partes* between A and B cannot be considered to conclude A, in a suit between A and C; and is not admissible in the second suit as evidence of the truth of the facts adjudicated in the former one.

The High Court remanded the case to the District Court for the determination of material issue, regarding the alienation of Hindú family property in land.

THIS was a special appeal from the decision of R. H. Pinhey, District Judge of the Konkaṇ.

The case was heard before TUCKER and WARDEN, JJ.

Shántáram Náráyáṇ for the appellant.

Ganpatráv Bháskar for the respondents.

The facts are stated in the judgment of the Court, delivered this day by

TUCKER, J.:—This suit was brought by Báláji Vishvanáth against three brothers, Dharmá, Hariá, and Bhuriá, sons of Viṭ Pátíl, to recover possession of certain lands, which he alleged had been sold to him by the said defendants, by a deed dated Phálgun Vadya 7th, Shake 1766 (21st March 1854): and had been subsequently leased by him to the defendants.

At the first trial, which was *ex parte,* a decree was passed in favour of the plaintiff; but this decree was set aside by Mr. Gonne, Acting Judge of the Konkaṇ, and a new trial ordered. At the second trial the defendants Dharmá and Bhuriá appeared, and denied the execution of the deed of sale; and two other brothers, Nágu and Rághu, were admitted as defendants, as they stated that they were joint owners in the lands conveyed by the deed of sale, which had been fraudulently executed by their brothers.

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At the second trial a decree in a former suit, in which the plaintiff had sued one Vrindávan A'bherám to set aside a decree obtained by the said Vrindávan against the same lands, and in which the alleged sale to the plaintiff by Dharmá was declared to have been a fraudulent transaction was admitted as evidence; and defendant Dharmá was examined as a witness, and acknowledged that he had signed the deed for himself, and had written his brothers' names, in their presence and by their direction, but that no consideration had been given for the deed.

The Munsif, A'zám Mukundráv Bháskar, did not consider the previous judgment conclusive, but held the sale to have been a fraudulent transaction; and that, the lands being the joint property of five brothers, the alienation by three of them could not be upheld, as the circumstances required by Hindú law to make such an alienation valid, had not been established. He, therefore, decreed for the defendants.

In appeal, the District Judge, Mr. Pinhey, found that the deed had not been executed *bonâ fide* and for valid consideration; and for this decision he assigned the following reasons:—

"It was ruled by the appellate court, in Appeal No. 219 of 1858 (*vide* judgment, exhibit No. 51, of the Joint Judge, Mr. Newton), that this deed was fraudulently and collusively executed, and that no money passed on account of it. Mr. Newton's judgment discusses the value of this document so perfectly, that I see no reason for going over the same ground again in this judgment. The only objection taken to this judgment by the plaintiff's pleader in this court is, that the parties to the present action are not the same as those in Appeal No. 219 of 1858. This is so far true, that the defendants in this suit were not then defendants; but this action and that action were both brought by the same plaintiff, and it was against the plaintiff that the Joint Judge decided. The Joint Judge's judgment, therefore, as to the merits of the deed on which the plaintiff now sues, is binding and conclusive as against the plaintiff."

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It has been argued against this decision, on behalf of the plaintiff, who is the special appellant, that the previous judgment, having been given in a suit to which the defendants were not parties, was not admissible as evidence in their favour, and was certainly not conclusive proof of the facts adjudicated; while, on the other hand, it has been contended for the respondents, that the previous judgment partook of the nature of a judgment *in rem*, which determined finally the character of the transaction which formed the subject of adjudication, and was binding, not only upon the persons who were litigants in the suit in which it was pronounced, but on all others.

We are of opinion that the previous judgment, which has been held by the District Judge to be conclusive, is not what is technically termed a judgment *in rem*; but that it is a judgment *inter partes*. The rule of law, as administered by English and American tribunals, with respect to such judgments, is, that they are not, except when adjudications upon subjects of a public nature, admissible for or against a stranger as evidence of the facts adjudicated. They cannot be used against a stranger, on account of the obvious principle *res inter alios actæ alteri nocere non debent*; and they cannot be produced in his favour, even against a party engaged in the former suit, because it has been held to be equitable that a person should not be benefited by a verdict, who would not have been prejudiced by it if the decision had been the other way; and on the still stronger ground, that if the stranger had been a party to the previous suit, instead of the person who succeeded in it, the result might have been different. (*a*)

The propriety of the rule, which prevents a stranger from taking advantage of a previous judgment to which he was not a party, has been questioned by Mr. Pitt Taylor and other text-writers on the law of evidence; but no deviation from it, that we are aware of, has been permitted by courts of

(*a*) See Taylor on Evidence, 4th Edn., vol. 2, p. 1418, sec. 1495, *et seq.*; Phillips on Evidence, 10th Edn., vol. 2, p. 8, ch. 1, sec. 1; Starkie's Law of Evidence, 3rd Edn., vol. 1, p. 261; Greenleaf on Evidence, 3rd Edn., vol. 1, p. 673, sec. 524.

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justice in England or India; and the present case would have been a good illustration of the correctness of the rule, if the previous judgment, which has been treated by the District Judge as conclusive, had really decided the matter in issue in the present suit, namely, the execution of the deed of sale, and its validity against the persons who executed it.

On examination of the former decree in the vernacular language (the English judgment is not recorded), we do not find that the deed was pronounced to have been a forgery, and not to have been executed by the persons whose names it purports to bear; it was only held to be a fraudulent and collusive transaction, made to injure the defendant in the former suit. Admitting this to be a true statement of the facts, it is no reason why the contract should not be enforced, by the vendee against the vendors, if the deed had really been executed by the latter for a good consideration.

We, therefore, reverse the District Judge's decree; and remand the suit to the lower appellate court, in order that the following issues may be determined, on the evidence, adduced by either side, irrespectively of the previous judgment in the suit brought by the plaintiff against Vrindávan A'bherám:—(1) Is the execution of the deed (copy of which is recorded, exhibit No. 10), by the defendants Dharmá, Hariá, and Bhuriá, established, and was a good consideration given by the plaintiff for the said deed (and, if the first issue be decided in favour of the plaintiff); (2) Was the said deed, which is only alleged to have been executed by three members of a family which is admitted to consist of at least five members, and to be undivided, made under circumstances which, under Hindú law, would make it a valid conveyance of the whole or any portion of the estate to which it refers, and if so, of what portion?

The lower court will determine these issues, and pass a new decree in accordance with its decision thereon, apportioning costs.

Decree reversed and suit remanded.