

5 B. 685.

## [686] APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr.  
Justice West.

NARAYAN GOP HABBU AND ANOTHER (*Original Plaintiffs*),  
Appellants v. PANDURANG GANU AND ANOTHER (*Original*  
*Defendants*), Respondents. [21st July, 1881.]

*Hindu law—Joint Hindu family—Manager—Practice—Parties—Decree against manager binding on members of family, although not parties to suit—Civil Procedure Code, Act VIII of 1859; s. 2—Res judicata.*

In 1870 A sued B for a piece of land, and obtained a decree against him in the original suit and appeal. Subsequently, in 1875, C and D, the nephews of B, brought a suit against A and B for their shares in the land, alleging that there was collusion between A and B in the previous suit. It was found that C and D and their uncle B had lived together as members of an undivided Hindu family at the time of the former suit and that he (B) was the manager of the family and assisted by his nephews C and D in defending the former suit. C and D made no allegation in their plaint that they were minors at the time of the former suit, nor did they assign any reason for not asking to have been made co-defendant in it. Their allegation of collusion between A and B was not proved.

*Held*—that the plaintiffs' suit, under those circumstances, was barred by the former suit under s. 2 of Act VIII of 1859.

*Jogendra Deb Roy Kut v. Pundro Deb Roy Kut* (1) and *Mayaram Sevaram v. Jayvantrao Panāurang* (2) referred to.

[F., 10 B. 21 (24); 15 Bom. L.R. 36 (39) = 18 Ind. Cas. 385; R., 33 A. 71 (76) = 7 A.L.J. 945 = 7 Ind. Cas. 902; 6 B. 708 (714); 7 B. 467; 9 B. 193; 141 P.R. 1908 = 189 P. W.R. 1908; D., 10 A. 411 (413).]

THIS was a second appeal from the decision of A. L. Spens, District Judge of Kanara, affirming the decree of Ramrao Subaji, First Class Subordinate Judge, of Karwar.

The plaintiff sued for certain shares in a piece of land under the following circumstances:—In 1870, Pandurang (defendant No. 1) sued Anant (defendant No. 2) for the piece of land in dispute, and obtained a decree against him, both in the original suit and in appeal. The plaintiffs, Narayan and Balkrishna (who were the nephews of Anant, defendant No. 2), brought the present suit in 1875 against Pandurang (defendant No. 1) and their uncle, Anant (defendant No. 2), for their shares in the land in dispute, alleging that defendant No. 1 had obtained the decree in the former suit by collusion with defendant No. 2.

Defendant No. 1 (Pandurang) answered, *inter alia*, that the plaintiffs and defendant No. 2 (Anant), were members of a joint [686] Hindu family, of which Anant was the manager, and that the claim was barred by the suit of 1870, under s. 2 of the Civil Procedure Code, Act VIII of 1859.

Both the lower Courts dismissed the suit, finding that the plaintiffs and their uncle, defendant No. 2 (Anant), were members of an undivided Hindu family, and lived together in one house, both at the time of the former and the present suits; that defendant No. 2 (Anant) managed the family affairs and paid Government assessment on their lands; that the plaintiffs assisted him (Anant) in his defence in the former suit; that they, therefore, were bound by the decree in that suit; that they failed to prove

\* Second Appeal, No. 425 of 1880.

(1) 14 M. I. A. 367 = 11 B. L. R. 244 = 17 W. R. 104. See note (1) 5 B. 687.

(2) See note 2, 5 B. p. 687.

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collusion between their uncle and defendant No. 1, Pandurang; and that their claim was barred under s. 2 of Act VIII of 1859.

The plaintiffs appealed to the High Court.

*Pandurang Balibhadra* for the appellants.—The plaintiffs were no parties to the former suit, and could not, therefore, be bound by it.

*Shamrav Vithal*, for respondent No. 1, relied upon *Mayaram Sevaram v. Jayvantrao Pandurang* (1).

WEST, J., referred to *Jogendro Deb Roy v. Funindro Deb Roy* (2).

### JUDGMENT.

The following is the judgment of the Court:—

WESTROPP, C. J.—It has been found by the District Judge on clear and satisfactory evidence that, at the time of the former suit brought by the first defendant Pandurang against the second defendant Anant, the latter was manager of the undivided family of which the plaintiffs and he are members, and that they all three resided together, and the plaintiffs assisted the second defendant in that suit. The plaintiffs do not allege that they were then minors, or give any other reason for not asking to have been made co-defendants in that suit. The second defendant is still manager of the family, and the allegation of the plaintiffs, that he colluded with the first defendant in the former suit, has altogether failed in proof. Under these circumstances, we act [687] consistently with the view of the Privy Council, expressed in *Jogendro Deb Roy Kut v. Funindro Roy Kut* (3) and with *Mayaram Sevaram v. Jayvantrao Pandurang* (4) in affirming the decrees of the Courts below with costs.

*Decrees affirmed.*

(1) 5 B. 687.

(2) 14 M.I.A., 367=11 B.L.R., 244=17 W.R. 104. See note (1) 5 B. 687.

(3) Note (1).—The passage in the judgment of the Privy Council in *Jogendro Deb Roy Kut v. Funindro Deb Roy Kut* referred to above and which bears upon the reported case, is as follows:—"Their Lordships think that this case cannot in any degree be likened to those which sometimes occur in India, wherein the interest of a joint and undivided family being in issue, one member of that family has prosecuted a suit, or has defended a suit, and a decree has been made in that suit which may afterwards be considered as binding upon all the members of the family, their interest being taken to have been sufficiently represented by the party in the original suit." 14 M.I.A. 376=11 B.L.R. 244=17 W.R. O. R. 104. [R., 5 B. 685.]

(4) Note (2).—In *Mayaram Sevaram v. Jayvant Pandurang* (Special Appeal No. 435 of 1873) above referred to, the plaintiff Mayaram sued to recover possession of a piece of land, alleging that he had purchased it at a Court sale in execution of a decree against one Govind and his son Mahadev. The defendant Jayvant answered, *inter alia*, that the land in dispute had been mortgaged to him in 1863 by Govind with the consent of his son Mahadev; that he sued Govind for foreclosure of the mortgage and obtained a decree, under which he was put in possession of the land by the Court; that Mayaram brought the suit against him (defendant) in collusion with Govind and Mahadev. It was found that the mortgage on which the defendant Jayvant had obtained a decree in the foreclosure suit was written by Mahadev for his father Govind, and that the father and son were united in interest.

Both the lower Courts dismissed plaintiff's suit, holding that Govind and Mahadev were undivided in interest, and that the land had ceased to be their property at the time when the plaintiff purchased it at the Court sale.

The plaintiff specially appealed to the High Court.

*Bhairavnath Mangesh* for the appellant.

*Pandurang Balibhadra* for the respondent.

It was contended in special appeal that the plaintiff was entitled, at least, to the share of Mahadev, who was no party to the foreclosure suit brought by Jayvant. The following is the judgment of the Court:—

WEST, J.—The son, Mahadev, was effectively represented in the suit, brought by Jayvantrao by his father Govind for whom he had written the mortgage on