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in mind. The appeal, therefore, will be dismissed and the decree of the lower Court affirmed with costs.

Attorneys for plaintiffs:—Messrs. *Crawford, Brown & Co.*

Attorneys for defendants:—Messrs. *Daftary and Ferreira.*

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

BALAMBHAT (ORIGINAL DEFENDANT No. 3), APPELLANT, v.

NARAYANBHAT (ORIGINAL PLAINTIFF), RESPONDENT.

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April 3.

Res judicata—Co-defendants—Decision in previous suit in which parties were co-defendants, when binding—Such decision not binding when one defendant was only a nominal party.

A judgment in a previous suit is not *res judicata* as between co-defendants so as to bar a subsequent suit brought by one of them, unless there was a conflict of interest between them and the judgment determines the real rights and obligations of the defendants *inter se*.

Such previous judgment is not *res judicata* when the plaintiff in the subsequent suit was only a nominal party in the prior suit.

APPEAL against the order of F. C. O. Beaman, District Judge of Belgaum, remanding a suit for trial on the merits to the Court of Ráo Sáheb C. R. Karkare, Subordinate Judge of Athni.

The plaintiff Narayanbhat mortgaged the land in question to one Gundabhat, who in 1895 sued on the mortgage and obtained a decree for possession. When, however, he proceeded to execute the decree, he was obstructed by Narayanbhat's brother, Balambhat, who claimed to be owner of a half share of the land. The Court thereupon under section 331 of the Civil Procedure Code (Act XIV of 1882) registered Balambhat's objection as a suit (No. 581 of 1896) in which Gundabhat the mortgagee was made plaintiff and Balambhat and Narayanbhat (the present plaintiff) were made defendants. This suit was apparently not contested, and a decree was passed in April, 1897, awarding only half the land to Gundabhat.

While that suit was pending, Narayanbhat filed this suit (No. 669 of 1896) against Gundabhat (the mortgagee) and Balam-

*Appeal, No. 2 of 1900, from order.

bhat, praying for an injunction restraining them from obstructing him in the enjoyment of the land, alleging that it belonged to him and was in his possession, and that the defendants interfered with his enjoyment.

Gundabhat did not appear, but Balambhat pleaded that the land belonged to him and the plaintiff jointly, and that he was entitled to a half share.

The Subordinate Judge framed issues and took evidence, but without recording findings on the issues, held that the plaintiff's claim was *res judicata* by the decree in Suit No. 581 of 1896, and that not being the exclusive owner of the land, he was not entitled to the injunction.

On appeal by the plaintiff the Judge found that the plaintiff had only been a nominal party to Suit No. 581 of 1896 and he remanded the case for the Subordinate Judge to find on the issues.

Against this order of remand, Balambhat now appealed.

Mahadev V. Bhat, for the appellant (Balambhat) :—This suit was rightly dismissed by the Subordinate Judge and the case ought not to have been remanded by the Appellate Court. In Suit No. 581 of 1896 we contended that we had a moiety in the land, and that the present plaintiff Narayanbhat owned the other moiety. The Court thereupon raised an issue as to the interest which passed to Gundabhat under the mortgage-deed passed by Narayanbhat. The finding on that issue was that Gundabhat should recover possession of a moiety of the property, and he was ordered to pay our costs. We contend that, in order to award relief to Gundabhat in that suit, it was absolutely necessary to determine the rights of the defendants, Balambhat and Narayanbhat, *inter se*, in that suit. The Court found that Narayanbhat was the owner of a moiety and the other moiety belonged to Balambhat. That decision operates as *res judicata* in the present suit—*Ramchandra v. Narayan* ⁽¹⁾; *Venkayya v. Narasamma* ⁽²⁾; *Madhavi v. Kelu* ⁽³⁾; *Ahmad Ali v. Najabat Khan* ⁽⁴⁾. These rulings establish the proposition that when there is active controversy between defend-

(1) (1886) 11 Bom., 216.

(2) (1887) 11 Mad., 204.

(3) (1892) 15 Mad., 264

(4) (1895) 18 All., 65.

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ants *inter se* and in order to award relief to the plaintiff it is necessary to adjudicate on their rights and obligations, the decision operates as *res judicata* between them in a subsequent suit.

Gokuldas K. Parekh, for the respondent (Narayanbhat):—As we instituted the present suit soon after the Suit No. 581 of 1896 was registered, we did not make any defence to that suit. Narayanbhat was only a nominal party to that suit, which related to the removal of the obstruction caused by Balambhat. There was no conflict of interest between the defendants in the former suit and there was no decision defining their rights *inter se*. That decision, therefore, cannot operate as a bar to the present suit.

PARSONS, J.:—The only point for consideration in this appeal relates to the question of *res judicata*. So far as the facts relate to this point, they appear to be beyond dispute. One Gundabhat obtained a decree in 1895 on a mortgage-bond executed by the present plaintiff-respondent Narayanbhat for possession of the mortgage property. When he went to take possession, the present appellant Balambhat obstructed the delivery of possession on the ground that he was owner of a moiety of the property. The objection was allowed by the Court, which registered the objection as a Regular Suit No. 581 of 1896, in which Gundabhat was made plaintiff, and Balambhat and Narayanbhat were made defendants. Narayanbhat put in no defence, and Gundabhat also gave no evidence, and thereupon a decree was passed awarding only half the property to Gundabhat. This decree was passed on 14th April, 1897.

Shortly after the registration of this suit, No. 581 of 1896, Narayanbhat brought a separate suit, No. 669 of 1896, in which he claimed an injunction to restrain both Gundabhat and Balambhat and a third person from obstructing his enjoyment of the entire land. The Court of first instance, relying on its decision of the previous suit, No. 581 of 1896, held that the present Narayanbhat's claim in the suit for injunction was *res judicata* by the decision in the previous suit. In appeal the District Judge held that the decision in the previous suit did not operate as *res judicata*, because Narayanbhat was only a nominal party in the previous

suit, and no determination of his rights as against Balambhat had been made in that suit. He accordingly remanded the case for inquiry on the merits.

The present appellant Balambhat contends before us that the decision in the previous suit did operate as *res judicata*. The question thus turns entirely on the inquiry whether Narayanbhat was a nominal party in the previous proceeding, or whether the decision in that suit determined his right as against the appellant Balambhat. The leading case on the subject is *Ramchandra v. Narayan* ⁽¹⁾. It will be seen that in the old suit both Narayanbhat and Balambhat were co-defendants, and the general rule laid down by Sir Raymond West on the subject of *res judicata* as between co-defendants is that "without necessity the judgment will not be *res judicata* unless there was a conflict of interests amongst the defendants, and the judgment defines the real rights and obligations of the defendants *inter se*." In the present case there was no such determination of rights and obligations as between Balambhat and Narayanbhat in the previous proceeding. Narayanbhat, having simultaneously instituted a separate suit, apparently did not care to defend his interests in the suit brought by Gundabhat against him and Balambhat. Gundabhat's claim was only on a mortgage-bond, and he sought to recover possession as mortgagee. Gundabhat did not apparently care also to assert Narayanbhat's rights as against Balambhat, for he gave no evidence. To all intents and purposes, therefore, Narayanbhat was only a nominal party in Gundabhat's suit No. 581 of 1896. Narayanbhat was under no obligation to make any defence in Gundabhat's suit, as he had brought a separate suit. He was, in fact, not a necessary party to that suit, which was to remove obstruction caused by Balambhat. In such a case the unnecessary co-defendant is only a nominal party, and he is not precluded from bringing a suit against the other defendants to assert his rights.

In *Brojo Behari Mitter v. Kedar Nath* ⁽²⁾, the distinction is pointed out between formal and necessary defendants. In that case the landlord was made a nominal defendant in a suit brought against his tenant by another tenant of the same landlord who sued for

(1) (886) 11 Bom., 216.

(2) (1886) 12 Cal., 580.

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possession. It was held that the decision in favour of the tenant plaintiff against the other tenant did not operate as *res judicata* in a subsequent suit brought by the landlord against the first tenant. The tests by which a nominal and a necessary party may be distinguished are laid down in *Ahmad Ali v. Najabat Khan* ⁽¹⁾, in which the Allahabad Judges followed the decision in *Ramchandra v. Narayan* noted above. There must be a conflict of interests among the defendants, and the judgment must define the real rights and obligations of the defendants *inter se*. Where the question about the family being joint or divided had not been determined in the previous suit as between the defendants *inter se*, but simply as against the plaintiff who was a stranger, the decision did not operate as *res judicata* when one of the defendants sued the other on the ground that the family was joint—*Bhagwant Singh v. Tej Kuar* ⁽²⁾. This was also the view taken by the Madras High Court in *Ramanuja v. Narayana* ⁽³⁾.

On the strength of these rulings it seems clear that the District Judge very properly held that the decision in Gundabhat's suit No. 581 of 1896 did not preclude the respondent-plaintiff Narayanbhat from bringing his present suit against Balambhat and Gundabhat. We, therefore, confirm the order of the lower Court and dismiss the appeal with costs.

Order confirmed.

(1) (1895) 18 All., 65.

(2) (1885) 8 All., 91.

(3) (1893 & 1895) 18 Mad., 374.

APPELLATE CIVIL.

Before Mr. Justice Candy, Acting Chief Justice, and Mr. Justice Ranade.

VITHAI (ORIGINAL PLAINTIFF), APPELLANT, v. HARI (ORIGINAL DEFENDANT),
RESPONDENT.*

*Limitation Act (XV of 1877), Art. 91—Suit to cancel a document—
Cause of action.*

Where a plaintiff sought for the cancellation of a mortgage-bond and for possession of the mortgaged property, alleging that the mortgage was a sham transaction and that she, the plaintiff, had subsequently remained in possession and had only been dispossessed within three years before suit,

* Second Appeal, No. 800 of 1899.

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July 5.