converting it into a *res judicata*. That is the distinction which I have set myself to bring out clearly and I hope simply and intelligibly. Applying it in the present case the result is this, that while we may, deferring to the authorities, concede that the judgment was admissible to prove that in 1886 there was a dispute about the genuineness of this sale deed, we cannot use it for any ulterior purpose. We certainly cannot look at the issues in the judgment and the findings which the judge came to upon them, and then treat those findings as of any legal probative value in this suit. I am therefore prepared to allow on the strength of that judgment that the genuineness of the sale deed was questioned in 1886, but that alone is not enough I think in the total absence of all other proof given by the defendant to discharge the *onus* which was admittedly on him.

1906.

MAHAMAD v. HASAN.

This is meant for the guidance of the Court in dealing with this piece of evidence on the remand.

Issue sent down.

G. B. R.

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Beaman.

1906.

November 16.

MANJAPPA SUBBAYA AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* VENKATESH BAB PRABHU (ORIGINAL PLAINTIFF), RESPONDENT.*

Right to sue—Suit for rent—Relationship of landlord and tenant must be shown to arise out of contract or privity of estate.

Before a plaintiff can succeed in a suit to recover rent, he must establish relationship of landlord and tenant existing between himself and the defendant and resting either on contract or privity of estate.

SECOND appeal from the decision of G. D. Madgavkar, District Judge of Kánara, confirming the decree passed by E. F. Rego, Subordinate Judge of Honávar.

Suit to recover rent.

* Second Appeal No. 8 of 1906.

1906.

MANJAPPA v. VENKATESH.

One Hanmant was the original mulgenidar of the lands in dispute. His rights passed at a Court-sale to defendant No. 1, who was placed in possession of the property.

The plaintiff then purchased from the original lessors the right of recovering rent of the lands in dispute.

Subsequently, defendant No. 1 sold to defendant No. 2 his rights under the lease.

The plaintiff brought this suit against both the defendants for rent of the lands.

Defendant No. 1 contended that as there was no agreement between him and the plaintiff and as the land was not in his possession, he was not liable to pay any rent to plaintiff. Defendant No. 2 admitted the claim.

The Subordinate Judge passed a decree against defendant No. 2 alone.

On appeal the District Judge varied the decree by making the defendant No. 1 also liable to plaintiff's claim.

Defendant No. 1 appealed to the High Court.

Nilkant Atmaram for the appellant:—I admit my liability for the one year during which I was in possession of the lands; but I submit that I am not liable to pay rent after the property passed into the possession of defendant No. 2. For those years, there was neither privity of contract nor privity of estate between plaintiff and defendant No. 1. An assignee of the lessee is liable to the original lessor or his assigns only in respect of privity of estate. He can get rid of the liability by an assignment over: Woodfall, 10th Edn., p. 289; *Taylor* v. *Shum*(1); *Valliant* v. *Dodemede*(2); *Harley* v. *King*(3); *Pitcher* v. *Tovey*(4); *Kamala Nayak* v. *Ranga Rau*(5).

D. A. Hattiangdi for the respondent:—We seek to make defendant No. 1 liable on the privity of contract. He is the auction-purchaser at a Court-sale, and he must be deemed to be bound by all the present covenants which the original lessee entered into with the lessor.

(1) (1797) 1 B. & P. 21.
(2) (1742) 2 Atk. 546.
(3) (1835) 2 C. M. R. 18.
(4) (1796) 12 Mod. Rep. 23.
(5) (1862) 1 Mad. H. C. R. 24.

JENKINS, C. J.—The plaintiff has brought this suit against two defendants claiming against them the rent of four years.

The first Court passed a decree against the second defendant only and on appeal the District Judge has passed a decree against both the defendants for the whole of the rent claimed.

From this decree the defendant No. 1 now prefers this present appeal urging that though he may be liable in respect of the first year's rent, that is, for the year 1901, he is not liable for the subsequent years.

The ground on which he bases this contention is that having been merely an assignee himself he is only liable for the rent accrued during the time that he was the owner of the *Mulgeni* interest.

Now the facts are that the plaintiff purchased from the original lessor. The defendant No. 1 acquired, at a Court-sale, the interest of the original Mulgenidar, and on the 9th of May 1901, the first defendant sold and transferred to the second defendant the *Mulgeni* interest acquired by him.

On these facts there can, we think, be no doubt that the contention of defendant No. 1 is correct.

In order to recover rent the relationship of landlord and tenant must be established between the parties, resting either on contract or privity of estate.

The only relationship that ever came into existence between the plaintiff and defendant No. 1 was one arising out of privity of estate, and that ceased when defendant No. 1 transferred his interest in the month of May 1901. Defendant No. 1 therefore can be liable for no rent that accrued after that date.

The result is that we must vary the decree of the District Judge by passing against defendant No. 1 a decree only for the rent that accrued upto May 1901, *i. e.*, for Rs. 37-11-0.

The defendant No. 1 must get his costs of this appeal; and costs in the lower Courts should be in proportion.

Decree varied.

R. R.