

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Beaman.

BHARMA BIN SHIDAPPA PUJARI (ORIGINAL DEFENDANT 1),
APPELLANT, v. BHAMAGAVDA SHIVAGAVDA DHAMANAVAR AND
OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS 2 AND 3), RESPONDENTS, AND
—BHARMA BIN SHIDAPPA PUJARI AND ANOTHER (ORIGINAL DEFENDANTS
1 AND 2), APPELLANTS, v. BHAMAGAVDA SHIVAGAVDA DHAMA-
NAVAR AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT 3),
RESPONDENTS.*

1915.

January 28.

*Civil Procedure Code (Act V of 1908), section 97—Preliminary decree—
Appeal—Decision as to res judicata.*

A decision that a matter is not *res judicata* is not a preliminary decree.

Chamalswami v. Gangadharappa⁽¹⁾, followed.

FIRST appeals against the decision of S. R. Koppikar,
First Class Subordinate Judge of Belgaum.

The plaintiff claiming to be the owner under the will of his maternal uncle Ramgavada Marigavada sued for a declaration that defendant 1 was not duly adopted by Bayaka, widow of Ramgavda, and for possession of lands in suit; or in the alternative of the will being held not proved, for possession of the said property jointly with defendant 3 as the sons of the sister of the original owner.

The defendant 1 contended that he was the legally adopted son of Ramgavda; that Bayaka passed a registered deed of adoption to that effect on 14th December 1911; that the will alleged was false; that the value of the property was overstated; that the claim was barred as *res judicata* in virtue of previous litigation between the parties.

The Subordinate Judge found in favour of the plaintiff on a preliminary issue and held that the suit was not barred as *res judicata*.

* First Appeals Nos. 48 and 110 of 1914.

(1) (1914) 39 Bom. 339.

1915.

BHARMA
BIN
SHIDAPPA
v.
BHAMA-
GAVDA.

The defendants preferred these appeals.

S. R. Bakhale for the appellants.

S. M. Kaikini for the respondents.

SCOTT, C. J. :—Applying the Full Bench ruling in *Chanmalswami v. Gangadharappa*⁽¹⁾, we hold that, a decision that a matter is not *res judicata*, and that, therefore, the trial can proceed is not a preliminary decree from which an appeal will lie at this stage. We dismiss both the appeals. Costs, costs in the cause.

Appeals dismissed.

J. G. R.

⁽¹⁾ (1914) 39 Bom. 339.

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Shah.

1915.

February 2.

THE MUNICIPAL COMMITTEE OF NASIK CITY (ORIGINAL DEFENDANT), APPELLANT, v. THE COLLECTOR OF NASIK ON BEHALF OF THE COURT OF WARDS, THE ADMINISTRATOR OF THE ESTATE OF SARDAR GOPALRAO SHIVADEV-RAO RAJE BAHADUR (ORIGINAL PLAINTIFF), RESPONDENT⁽¹⁾.

AMIRUDDIN VALAD MAHOMED HUSSEIN AND OTHERS (ORIGINAL DEFENDANTS Nos. 2, 3 AND 4), APPELLANTS, v. MAHOMED SAYAD VALAD MAHOMED ALI ISANE (ORIGINAL PLAINTIFF No. 10), RESPONDENT⁽²⁾.

EKOBA GUNASHET VANI (ORIGINAL PLAINTIFF), APPELLANT, v. SARAF ALLI MAHMAD ALLI BOHARI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS⁽³⁾.

MAHAMAD HUSSEIN VALAD MAHAMAD ALLI ISANE (ORIGINAL PLAINTIFF No. 2), APPELLANT, v. MARYAMBIBI AYAL SAMSUDDIN VALAD BHAUDIN ZATAM (ORIGINAL DEFENDANTS Nos. 1, 2, 3 AND 4), RESPONDENTS⁽⁴⁾.

⁽¹⁾ First appeal No. 293 of 1912.

⁽²⁾ First appeal No. 271 of 1913.

⁽³⁾ First appeal No. 26 of 1914.

⁽⁴⁾ First appeal No. 50 of 1914.