FERNANDO *v.* MENIKRALA.

1902.
February 11.

D. C., Kegalla, 1,168.

Res judicata—*Dismissal of action for partition, as plaintiff failed to prove his right to a share in the land—Action against same defendants for declaration of title to a share in the land—Dismissal of former action pleaded in bar—Badness of such plea.*

The dismissal of an action for partition of a land on the ground that plaintiff had failed to prove that he had a share cannot be pleaded as *res judicata* in a subsequent action brought by the plaintiff for a declaration of title to that share, because, while in the partition action he has to prove an absolutely good title as against all the world, in the other action he has to prove only a better title than the defendants.

IN this case plaintiff prayed for a declaration of title to an undivided one-fifth share of a certain land, and for an order to put him in quiet possession thereof.

The defendants pleaded, *inter alia*, that the cause of action alleged here was the same as that alleged in case No. 1,016, between the plaintiff and the defendants, which after evidence heard had been dismissed in appeal by the Supreme Court.

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Upon the issue of *res judicata* thus raised the District Judge held as follows:—

"Although nominally a partition suit, it was really an action for declaration of title, and the Supreme Court dismissed the action in these terms: 'We think that plaintiff has not proved, as against the parties in possession, that he had a right to a share.'" The District Judge dismissed the plaintiff's action.

Plaintiff appealed.

Bawa, for appellant.—The previous action was for partition, in which the plaintiff had to prove his title as against all the world, and the decree, if in his favour, would have been a decree binding on all the world. The present case, which is one for declaration of title, is against the defendants only, and he need only prove that, as between himself and the defendants, he has a superior title, and the decree in this case can bind the defendants only, and nobody else who is not a party. The partition decree, which went against the plaintiff, is therefore no bar to the present case. The effect of that decree was to decide that the plaintiff's title was not so good as to bind the whole world. The decree in the present case, if in favour of plaintiff, would mean that his title is good as against the defendants, but not so as against anybody else. In the present case we are not concerned with the rights of anybody but those of the plaintiff and those whom he has made defendants. The partition decree cannot help them. The plea of *res judicata* is therefore bad.

Sampayo, for respondent.

11th February, 1902. BONSER, C.J.—

This appeal raises the question whether the plaintiff is entitled to bring this action or not. It is alleged that he is not entitled to do so, because the issue in this action has already been the subject of judicial determination between the same parties. The District Judge has held that to be *res judicata*. I am unable to agree with him. The previous action brought by the plaintiff against the same defendants was a partition suit in which he claimed to be the owner of one-fifth of the land, allotting to the defendants the remaining four-fifths. The District Judge held that the plaintiff had made out his title to the one-fifth claimed, and made an interlocutory decree on that footing. Defendants appealed to this Court, and it reversed the finding of the Court below and dismissed the action. It is this dismissal which is said to be a bar to the present action, which is one claiming a declaration. The plaintiff is entitled, as against these defendants, to one-fifth—the one-fifth which was claimed in the partition action.

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Now, if the nature and scope of the two actions be considered, I think it is plain that the decision in the former action is no bar to the present action. In the partition action the plaintiff has to make out what I may call an absolutely good title, for the result of the decree is to give him a title against the whole world, which cannot be impeached by any one. In an action like the present, all that the plaintiff has to prove is that he has got a better title than the defendant, or what I may call a relatively good title. It may be a title which cannot be upheld against some existing third person, but it may be good enough on which to found a decree in an action such as is the present. It seems to me, therefore, that the finding that the plaintiff has not proved a title which would entitle him to maintain a partition suit is no bar to an action in which he claims to establish merely a better title than the defendants. The order will be that the case go back for trial.

WENDT, J., agreed.