1932

Present : **Jayewardene A.J.**

SINNIAH *v.* ELIAKUTTY.

142—C. R. Kayts, 8,939.

Res judicata—*Judgment entered by consent—Estoppel.*

A judgment entered by consent creates an effective estoppel by *res judicata.*

APPEAL from a judgment of the Commissioner of Requests, Kayts.

H. V. Peréra, for defendant, appellants.

Nadaraja, for plaintiffs, respondents.

May 9, 1932. JAYEWARDENE A.J.—

The plaintiffs claimed a land called Thampalai, in extent ½ lacham varagu culture and 3 kulies, by virtue of a deed dated November 20, 1927, and prescriptive possession. The defence was that the land claimed

[1] *(1866) L. R. 1 Q. B. 433.*

[2] *(1882) 1 N. L. R. 129. 16 Emp. Dig. 364 (note)*

by the plaintiff formed a part of lot 2 in the plan filed in C. R., Kayts, 5,512, which was declared in that case to be the exclusive property of the present defendants and that the matter was *res judicata*. In that case it was ordered on February 4, 1924, of consent (decree D 2) that the whole of lot 2 should go to the defendants. Both parties there pleaded title by prescriptive possession. It is abundantly clear that the portion of land now claimed by the plaintiff is included in lot 2, in C. R. 5,512, which was decreed to be the property of the defendants. In fact the plaintiff's vendor, Kadiravelu, says that that case was sent to the Maniagar for settlement, and that he (Kadiravelu) attended the inquiry and produced his deeds before him, and told the Maniagar that his land was within lot 2.

In 1927 by deed P 1 Kadiravelu sold his rights to the plaintiffs, who instituted this action in 1930.

The decree was entered of consent in C. R. 5,512, but a judgment by consent is as effective by way of estoppel as a judgment whereby the Court exercised its mind in a contested case and has the full effect of a *res judicata* between the parties (*In re South American and Mexican Co.*[1]).

Our law of *res judicata*, which is founded on the Civil law . . . . *Res judicata dicitur quae finem controversiarum pronuntiatione judicis accepit, quod vel condemnatione vel absolutione contingit* . . . . (*Digest XLII. 1, 1*) is to be found in sections 207, 34 and 406 of the Civil Procedure Code, supplemented by the English law (*Samitchy Appu v. Perera*[2]). A decree is decisive as to every right of property which can be claimed, set up, or put in issue between the parties upon the cause of action for which the action is brought according to the explanation to section 207 of the Code.

The doctrine of *res judicata* applies to all matters which existed at the time of giving the judgment and which the party had an opportunity of bringing before the Court. The conditions for the exclusion of jurisdiction on the grounds of *res judicata* are, that the identical matter shall have come in question already, that the matter shall have been controverted, and that it should have been decided. If the parties have had an opportunity of controverting it, that is the same thing as if the matter had actually been controverted and decided (*Newington v. Levy*[3]). By consenting to judgment for defendants for lot 2, the plaintiffs said in so many words that they could not succeed on the matters pleaded and put in issue. The question of prescriptive possession of lot 2 was clearly in issue in C. R. 5,512. An estoppel by *res judicata* is created where a question is put in issue and withdrawn (*Perera v. Perera*[4]).

In *Abdul Rahiman v. Ismail and others*,[5] where the planitiff had succeeded in proving prescriptive possession against the two heirs of the original owner in a former action, the first defendant purchased the land *pendente lite* from those two heirs and another heir who was no party to the original action. It was held that the first defendant was himself bound by the first decree, whatever might be the position of the

[1] *(1895) L. R. 1 Ch. 37 (45).*
[2] *3 C. A. C. 30.*
[3] *L. R. 6 C. P. 180.*
[4] *(1931) 32 N. L. R. 197.*
[5] *4 C. W. R. 1.*

third heir in the matter. There had been an issue as to prescription and it was held that the first defendant could not reagitate the same issue merely by acquiring the interest of another heir.

In my opinion the plaintiffs in this case are in the same position and cannot now be permitted to contest the title of the defendant to the land by prescriptive possession. In the result their action fails. I would set aside the judgment of the learned Commissioner and enter judgment dismissing the plaintiffs' action with costs in both Courts.

Appeal allowed.