1924.

Present : Jayewardene A.J.

ANDRIS *v.* SIRIYA *et al.*

185—C. R. Gampola, 6,12 .

Jurisdiction—Value of subject-matter stated in plaint not questioned——Plea of res judicata*—Compentency of Court—Evidence Act, ss. 11 and 50.*

Where, in a case in which the question of jurisdiction depended on the value of the property, no objection was raised as to the valuation of the subject-matter given in the plaint, the competency of the Court in respect of its monetary jurisdiction cannot be challenged in a subsequent action between the parties.

The principle that parties cannot by consent give jurisdiction, where none exists, applies only where the law confers no jurisdiction.

It does not prevent parties from waiving inquiry by the Court as to facts necessary for the determination of the question of jurisdiction, when that question depends on facts to be proved.

[1] *(1905) 1 Leem, 15.*

ACTION by the plaintiff for declaration of title to the half share of a land called Kandehena against the defendants, appellants. It would appear that the present plaintiff sued the defendants in case No. 4,731 of the same Court for a declaration of title to the same land. There the plaintiff valued the interest he claimed at Rs. 200. The defendants denied the local but not the monetary jurisdiction of the Court. Eventually, a decree was entered in favour of the plaintiff to what, in effect, amounted to a one-fourth share as against the first defendant. The present action was brought by the same plaintiff against the same defendants, and it was contended that the decision in the previous action was *res judicata*. The first defendant attempted to get over the binding effect of the decree in the previous action against him by alleging that the share claimed by the plaintiff was worth more than Rs. 300, and that the Court of Requests had no jurisdiction to try and determine that action. The Commissioner of Requests held that the previous decree was *res judicata* as against the first defendant.

Navaratnam, for first and second defendants, appellants.

Garvin, for plaintiff, respondent.

September 19, 1924. JAYEWARDENE A.J.—

I have had the advantage of a full argument in this case, and I have decided on the course which I ought to follow with respect to its disposal. The action raises questions relating to the jurisdiction of the Court and to *res judicata*. It would appear that the present plaintiff sued the defendants, appellants, in case No. 4,731 of the Court of Requests of Gampola to be declared entitled to a half share of a land called Kandehena. The appellants denied the title of the plaintiff, and asked that his claim be dismissed. There the plaintiff valued the interest he claimed at Rs. 200. This value was given not in the numbered paragraphs of the plaint, but in the first paragraph of the prayer. The defendants denied the jurisdiction of the Court as stated in paragraph 1 of the plaint. That statement referred to the local jurisdiction of the Court and not to its monetary jurisdiction. On May 27, 1921, according to the journal entry of that date, the Court was informed that the second defendant's interest in the land, namely, an undivided three-fourth share, had been sold by the Fiscal. In view of this fact, the case was ordered to proceed in respect of the remaining undivided one-fourth share. According to my reading of this journal entry, after May 27, 1921, the second defendant ceased to be a party to the action, and the case proceeded only with regard to the one-fourth interest which the first defendant claimed. On October 31 the case came up for trial. The first defendant was present, the second defendant was absent ; and Mr. Halangoda, who was a partner of the

1924.

JAYEWARDENE A.J.

Andris v. Siriya

proctors who had filed a proxy from the first and second defendants, was present for the defendants according to the entry in the record. On the day of trial after some discussion, the details of which are entered in the journal, the Court said that the only issue was whether Gunamala had any interest in the land in claim, and that the burden of proving that issue was on the defendants, whose proctor said he was not prepared to lead evidence. Thereupon, the learned Commissioner answered the issue in the negative, and made the following entry :—" At this stage defendants consent to judgment being entered for plaintiff as prayed for with costs, but without damages. If Rs. 25 is paid full satisfaction as regards costs to be entered." On this order a decree has been drawn up declaring the plaintiff entitled to a half share as against the appellants, that is, the first and second defendants, and a party called Babee, the third defendant in the case, who however never appeared. Now, I do not think that in view of the order made on May 27, 1921, and in the absence of the second defendant on October 31, 1921, the Court had any right to adjudicate on the claim of the second defendant, a claim which had been expressly excluded from consideration by the Court. No doubt Mr. Halangoda is recorded as appearing for the defendants, but that must be attributed to the fact that Mr. Halangoda was appearing for the first defendant also. I am unable to hold that this decree in any way binds the second defendant. The decree, in my opinion, only affects the first defendant, and only entitles the plaintiff to claim a one-fourth share of the land. The present action has been brought by the same plaintiff against the same defendants (the appellants) and also against the third party, Babee, and the plaintiff claims to be entitled to a half share of the land on the ground that the previous decision is *res judicata* as against both defendants. In the view which I take of the decree in the first case No. 4,731, that decree is not *res judicata* as against the second defendant. It is, in my opinion, open to the second defendant to assert his rights in this action.

As regards the first defendant the decree is binding on him, but he tries to get over the effect of that decree by alleging that the share which the plaintiff claims in the present action is worth more than Rs. 300, and that the Court of Requests had no jurisdiction to try and determine that action. The learned Commissioner has refused to go into the question of the value of the land at the time the first action was brought, and has held that the previous decree is *res judicata*. In support of his contention, Mr. Navaratnam, who appears for the defendants, appellants, has relied upon various cases. Two of the cases cited by him relate to the effect of judgments in Village Tribunals. One is the case of *Puncha v. Sethuhamy*[1] and the other case is *Pusama v.*

[1] *(1916) 19 N. L. R. 217.*

Sendeliya.[1] It must be borne in mind in considering these cases that the Village Tribunals Ordinance makes no provision for pleadings, and it would not be safe to treat the proceedings had before these tribunals with the strictness with which proceedings before Courts of Requests and District Courts are treated. In both those cases it was held that a judgment given by a Village Tribunal was not *res judicata* where title to the same land is disputed in a case before the Court of Requests, on the ground that the value of the land exceeded the jurisdiction of the Village Tribunals. The Village Tribunals are tribunals of extremely limited jurisdiction, and in my humble opinion the judgments in these two cases must be taken as applying to the peculiar facts arising for decision there. He also relies upon the case of *Neelakutty v. Alvar*,[2] where it was held that a partition decree entered by a Court of Requests with reference to a piece of land exceeding Rs. 300 in value is not binding on a person claiming an interest in the property, but who was not a party to the action. This is a judgment of two Judges, and Bertram C.J. in the course of his judgment said—

> "It is a recognized principle of law that a decree purporting to be made by a Court of limited jurisdiction with regard to a matter outside its jurisdiction is a nullity (see *Attorney-General v. Lord Hotham*[3]). The jurisdiction of a Court may be limited either in respect of area, or in respect of value, or in respect of subject-matter, or in respect of a combination of all or any of these matters. It does not seem to me that the authorities justify any distinction being drawn between these various sorts of limitations. It may be taken therefore, that, in view of the limitation of the Courts of Requests jurisdiction with respect to value, the decree in a partition action made by a Court of Requests affecting immovable property exceeding Rs. 300 in value is of no legal force."

Then proceeding to deal with section 44 of the Evidence Ordinance the learned Judge said that the remedy provided by that section is open not only to strangers, but also to a party to the former action. To use his own words—

> "There is no distinction for this purpose between a party to a suit and a stranger, even a party to the suit is not estopped by the decree if the Court was not a competent Court. It has been expressly held in the Indian Courts that a party to a suit is as much entitled to the benefit of section 44 of the Evidence Ordinance as a stranger (*Rajib Panda v. Lakhan Sendh*[4]). It is open to any party to the action to impeach the validity of the judgment as it is to the plaintiff himself."

[1] *(1920) 22 N. L. R. 364.*
[2] *(1918) 20 N. L. R. 372.*
[3] *(1827) 3 Russell 415.*
[4] *(1899) 27 Cal. 11.*

1924.

JAYEWARDENE A.J.

Andris v. Siriya

De Sampayo J. said—

> "Having considered the matter in the point of view of law, I cannot think that the decree of a Court without competent jurisdiction, whatever its effects might be as between the parties to it, could bind a stranger, such as the plaintiff in this action is."

The right of a party to the relief provided by section 44 was not in question in that case, but the opinion of the learned Chief Justice is entitled to the greatest weight. De Sampayo J. was, however, not himself prepared to accept unreservedly the statement that the parties to a suit would be in the same position as strangers with regard to section 44, but, in my opinion, if I may say so respectfully, section 44 must clearly apply to the parties to the previous action. Otherwise, the section would be meaningless. But there may be circumstances which would prevent a party to the action from taking advantage of the provisions of section 44. If the ground on which the previous judgment is sought to be impeached was a ground which had to be decided on evidence, and the party subsequently seeking to impeach it has failed to adduce the necessary evidence, it may be that he would not be free to question the binding effect of the previous judgment.

To come to the facts of these two cases, in the first place, the plaintiff had expressly stated the value of the share which he claimed to be Rs. 200. This value was never disputed. If it had been questioned, it would have been open to the plaintiff to prove by evidence that his valuation was correct, but the defendants tacitly admitted the correctness of the valuation placed on the land by the plaintiff, and prevented the plaintiff from establishing to the satisfaction of the Court the fact that it had jurisdiction to decide the matter which had been brought before it.

In these circumstances, I think, it is possible to hold that a party may be barred from questioning the competency of the Court without doing violence to the principles which have been laid down in the cases above referred to. I might in this connection refer to the case of *Jose Antonio Baretto v. Francisco Antonio Rodrigues*,[1] where it was held in a case in which the question of jurisdiction depended upon the value of the property, that where neither party raised any question as to the want of jurisdiction any by their silence and conduct accepted the value to be of the amount required to give jurisdiction to the Court, they had dispensed with proof on the question by their tacit admissions, and that the rule contained in section 58 of the Evidence Ordinance came into operation and prevented the statement of the value being thereafter questioned.

[1] *(1910) 35 Bom. 24.*

The Court there said that, as a rule, the parties cannot by consent give jurisdiction where none exists. But this rule applies only where the law confers no jurisdiction, such, for instance, as the actions referred to in the proviso to section 77 of the Courts Ordinance which a Court of Requests is prohibited from taking cognizance of.

It does not prevent parties from waiving inquiry by the Court as to facts necessary for the determination of the question as to jurisdiction where that question depends on facts to be proved.

It is a fundamental rule governing the question of jurisdiction that the valuation of the subject-matter as given in the plaint *primâ facie* determines the jurisdiction of the Court, and the value thus placed having given the Court jurisdiction, the jurisdiction itself continues whatever the result of the suit, unless a different principle comes into operation to prevent such a result or to make the proceedings from the first abortive. (See the case of *Lakshman Bhatkar v. Babaji Bhatkar*.[1]) Applying these principles to the case before me, I think that the Court of Requests of Gampola had jurisdiction to try the previous case. Its right to do so was determined by the value placed on the share claimed by the plaintiff in his plaint. The jurisdiction of the Court depended on the value of the share or interest claimed by the plaintiff in his plaint. The defendants at no stage disputed the correctness of the valuation given by the plaintiff. It must, I think, be taken that they were satisfied that the proper value was given and they did not think that any inquiry would show that the property was beyond the jurisdiction of the Court of Requests as regards its monetary value.

I would, therefore, hold that as regards the first defendant the decision in the previous case is *res judicata*, and that it is not open to him to impeach it on the ground that it was passed by a Court without jurisdiction.

As regards the rights of the second defendant no question of *res judicata* arises, because, in my opinion, the decree in the previous case cannot be construed as in any way affecting his rights. The appellant has succeeded partly and has failed partly. In the circumstances I would make no order as to costs.

Let the case be returned to the Court of Requests to be proceeded with in due course.

Set aside ; case remitted.

[1] *(1883) 8 Bom. 31–33.*