Present: Mr. Justice Wendt and Mr. Justice Middleton.

1909.
June 4.

IBRAHIM BAAY *et al. v.* ABDUL RAHIM.

D. C., Galle, 8,577.

Res judicata—*Action for rent—Denial of title—Subsequent action to vindicate title—Bar by* res judicata—*Civil Procedure Code, ss. 34, 207, and 406.*

The plaintiffs sued the defendant in C. R., Galle, 8,405, for rent of certain premises, averring that the defendant had held over the said premises upon a tenancy created by the plaintiffs. The defendant denied the plaintiffs' title, and set up title in himself. No issue as to title was framed; but the Commissioner dismissed the plaintiffs' action, on the ground that no tenancy was proved. The plaintiffs then brought this action in the District Court to vindicate title to the premises.

Held, that the previous judgment would be a bar to the present action, if the Court of Requests had jurisdiction to entertain the previous action.

MIDDLETON J.—The cause of action is the same in both cases, viz., the alleged wrongful detention of the premises by the defendant; and it is obligatory on a plaintiff, under section 207 of the Civil Procedure Code, to set up on his cause of action every right of property he alleges he possesses.

ACTION *rei vindicatio*. Appeal by the defendant from a judgment of the District Judge. The facts sufficiently appear in the judgment.

Tambiah (with him *A. Drieberg*), for the defendant, appellant.

Cur. adv. vult.

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The question in this case is whether a decree passed in C. R., Galle, 8,405, in which the parties to this action occupied the same positions, is *res adjudicata* of the question sought to be decided in the present action.

To constitute a valid estoppel by judgment *in personam* under English Law, I think I am right in saying that the judgment relied on must be given by a court of competent jurisdiction, must be between the same parties or their privies, must be for the same cause of action, must have comprised a finding on the same question, and the question must have been directly in point in the former case; but such estoppel will also be valid by our Ceylon procedure law where there was an omission or relinquishment of any part of the claim which the plaintiff was entitled to make in respect of the same cause of action as regards such part of the claim, or where there was an omission of a remedy which might have been claimed without the leave of the Court as regards such remedy (section 34, Civil Procedure Code); and where any right of property or relief of any kind which could have been set up on the cause of action for which the action was brought was not set up as regards such right, or relief not so set up (section 207, *ubi supra*), or where an action has been withdrawn without the leave of the Court (section 406, *ubi supra*).

In action C. R., Galle, 8,405, the present plaintiffs sued the present defendant for rent of certain premises bearing assessment number 199, which it was alleged the defendant had held over upon a tenancy granted by the plaintiffs. The defendant denied in his answer that he had held over the premises, but averred that he was the owner of premises bearing assessment No. 199 A standing on the land in question, together with the soil covered by the premises. The plaintiffs' claim was apparently intended to cover both the premises 199 and what the defendant called 199 A.

The issues framed were :—

(1) Was the defendant a tenant of the plaintiffs from February 24, 1904, to February 24, 1905 ?

(2) Has defendant had use and occupation of the premises since February 24, 1905 ?

(3) What would be a reasonable amount for such use and occupation ?

(4) What amount is due ?

(5) Is house 199 different from the house 199 A ?

No issue was actually settled as to the defendant's claim of right to 199 A, and the plaintiffs' cause of action was for holding over 199 A as a part of an entirety, including both 199 and 199 A.

The Commissioner of Requests held that the defendant was a tenant of 199 but not of 199 A, that he had not held over, and that

199 and 199 A were two separate premises, and dismissed the plaintiffs' action. The Commissioner of Requests therefore decided that 199 A was not a part of the plaintiffs' property comprised in 199, and practically gave judgment in the defendant's favour for 199 A.

In that action it was obligatory on the plaintiffs, under section 207 of the Civil Procedure Code, on their cause of action, to set up any right of property they alleged they possessed to the premises 199 A, but the only title they apparently put forward was that their title to 199 included the premises 199 A. The answer of the defendant very clearly indicates a claim of title to 199 A by the defendant, and it was therefore incumbent on the plaintiffs who asserted the possession of the defendant to prove their title to 199 A if they desired to succeed. I think therefore it is not quite correct to say, as the learned District Judge says in the judgment under consideration, that the question of title was not in issue in C. R., Galle, 8,405. Their title to 199 A was not specifically made an issue but was in issue, and must have been decided by the finding of the Commissioner of Requests when he held that 199 and 199 A were separate premises. The judgment of my brother Wendt, with which I entirely agree, in *Baban Appu v. Gunawardene et al.*,[1] very clearly depicts the stringency of section 207 of the Civil Procedure Code.

In C. R., Galle, 8,405, the plaintiffs did set up a right of property in, or title to, 199 A upon the cause of action for which the action was brought, which was traversed in the answer; and if they neglected to prove it, or any other right they had in it than the one set out, the right becomes a *res adjudicata*, which cannot be made the subject of action for the same cause of action between the same parties. All this assumes that the Court of Requests had jurisdiction on the ground of value to hear the action, and that the cause of action in both Courts was the same.

The plaint in the District Court was for a declaration of title to, and ejectment from, a portion of the premises alleged in the Court of Requests case to have been leased to the defendant, and are clearly identifiable as the premises 199 A as to which judgment was given in the Court of Requests. The answer pleads the decree of the Court of Requests in bar of the claim. The District Judge says in his judgment that the defendant says the value of the soil and house on C in the plan which represents 199 A is Rs. 300.

The action in the Court of Requests as laid by the plaintiffs involved the inclusion of 199 A in 199, and thus a claim to rent on a property the combined value of which must have exceeded Rs. 300 in the aggregate. The claim was for rent and holding over 199 A, and the amount did not apparently exceed the Court's jurisdiction. The defendant raised the question of title and so made

[1] *(1907) 10 N. L. R. 167.*

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the action a dispute as to the ownership of a part of the land, which therefore may have been beyond the jurisdiction of the Court of Requests.

It might be argued that the causes of action were different in the two Courts, *i.e.*, that the cause of action in the District Court was an assertion of title by the defendant to 199 A, while in the Court of Requests the cause of action was for non-payment of rent for alleged holding over of premises, the entirety of which the plaintiff assumed he had let to the defendant; that in the Court of Requests case the cause of action was the refusal to fulfil an obligation, while in the District Court it was the denial of a right. I think, however, that the cause of action was the same in both cases, *i.e.*, the alleged wrongful detention of the premises, but that the Court deciding the question may not have been competent to do so on the ground of value.

In my opinion, therefore, the case must go back for the ascertainment of the value of 199 A, and if it is proved that such value exceeds Rs. 300, then the decision of the District Judge will stand, and the case go for trial unbarred by the defence of *res adjudicata*. If the value prove to be less than Rs. 300, then the defence of *res adjudicata* will hold good, and the appeal be allowed, and the action be dismissed with costs in both Courts. In the first alternative the appellant will have the costs of this appeal, and other costs incurred will be costs in the cause.

WENDT J.—I agree.

Appeal allowed; case remitted.