

1939

Present : Moseley A.C.J. and Soertsz S.P.J.

FERNANDO *v.* FERNANDO.12—D. C. *Avissawella*, 2,486.

*Res judicata*—Application of rule as between defendants *inter se*—Final decision between parties.

Where it is sought to apply the rule of *res judicata* as between defendants *inter se*, the following conditions must be present:—

- (1) There must be a conflict of interest between the defendants concerned.
- (2) It must be necessary to decide this conflict in order to give the plaintiff the relief he claims.
- (3) The question between the defendants must have been finally decided.

**A** PPEAL from an order of the District Judge of *Avissawella*.

*H. V. Perera*, K.C. (with him *C. V. Ranawake*), for the plaintiff, appellant.

*Cassius Jansz*, for the defendant, respondent.

*Cur. adv. vult.*

October 19, 1939. MOSELEY A.C.J.—

This was an action in which the plaintiff asked for the cancellation of a lease which she had granted to the defendant of certain property in which she had a life interest. The defendant pleaded in his answer, *inter alia*, that the plaintiff was estopped from bringing this action by reason of a consent decree in another case, namely, D. C. *Avissawella*, No. 2,360, to which she was a party. A number of issues were framed, all of which were answered in the plaintiff's favour with the exception of that dealing with the question of estoppel. That issue was answered in the defendant's favour and the plaintiff's action was dismissed. The appeal is confined to the question whether or not the consent decree in D. C. *Avissawella*, No. 2,360, amounted to *res judicata*.

The land in question had belonged to the plaintiff's deceased husband and was half of an entire block, the other half of which belonged to some people named *Wickremeratne*. In his last will the late husband devised his share, subject to a life interest, in favour of the plaintiff. After the death of the deceased the executor and the devisee sold the deceased's share to the *Wickremeratnes* who thus became the owners of the whole property subject to the plaintiff's life interest in half. The *Wickremeratnes* then brought the action No. 2,360 to which reference has been made. They sued the defendant and the plaintiff in this action together with the executor and the devisee of the plaintiff's husband's estate. The defendants in case No. 2,360 filed a joint answer. The case was settled and it is this settlement which the defendant pleaded as a bar to the present action. The learned District Judge held that all the rights as between the parties to the lease and arising out of it were merged in



the consent order, and that the parties ought not to be allowed to re-agitate the same matter. The plaintiff's action was accordingly dismissed and she now appeals.

In the replication of the plaintiff she alleged that the defendant had appropriated to himself certain rubber coupons which he had obtained in respect of the property and she prayed that he should be directed to render an account in respect thereof. This matter, I may say at once, is not one covered by the terms of the consent order.

It must be conceded that a judgment which would amount to *res judicata* between plaintiff and defendant is not necessarily so between defendants *inter se*. In *Senaratna v. Perera*<sup>1</sup>, Jayewardene A.J. expressed himself as follows:—

“In my opinion, formed after a careful examination of the authorities on the subject, the principle that a decision is not *res judicata* between co-defendants is subject to two exceptions:

- (a) When a plaintiff cannot obtain the relief he claims without an adjudication between the defendants, and such an adjudication is made, the adjudication so made is *res judicata* not only between the plaintiff and the defendants, but also between the defendants.
- (b) When adverse claims are set up by the defendants to an action, the Court may adjudicate upon the claims of such defendants among themselves, and such adjudication will be *res judicata* between the adversary defendants as well as between the plaintiff and the defendants.

Provided that in either case the real rights and obligations of the defendants *inter se* have been defined in the judgment.”

Mr. Perera referred me to several Indian cases which affirm the principle as set out by Jayewardene A.J. All are decisions of the Privy Council and it is only useful to refer to one, since in the others the same principle was adopted. In *Mt. Munni Bibi and another v. Tirloki Nath and others*<sup>2</sup> Sir George Lowndes set out the three conditions which the Board adopted as the correct criterion in cases where it is sought to apply the rule of *res judicata* as between co-defendants. They are set out concisely in terms similar to those used by Jayewardene A.J., and are as follows:—

- (1) There must be a conflict of interest between the defendants concerned;
- (2) It must be necessary to decide this conflict in order to give the plaintiff the relief he claims; and
- (3) The question between the defendants must have been finally decided.

It would seem that in the present case the learned District Judge overlooked the plaintiff's claim for an accounting in respect of the coupons, a matter which, as I have observed, was not touched upon by the consent order. In my opinion therefore he erred in holding that the defendant's plea of *res judicata* was entitled to prevail.

<sup>1</sup> 26 N. L. R. 225.

<sup>2</sup> A. I. R. 1931 P. C. 114.

I would allow the appeal with costs and direct that the case be returned to the District Court in order that an account may be rendered by the defendant of the rubber coupons obtained by him in respect of the property. The defendant must be credited with expenses incurred by him in obtaining the coupons and with any other expenses which he has been authorized by the plaintiff to incur. The costs in the District Court will depend upon the result of the account.

SOERTSZ S.P.J.—I agree.

*Appeal allowed.*

