

1922.

Present: Ennis and Schneider JJ.

RATNAJOTI v. SOMANANDA.

71—D. C. Matara, 8,922.

Civil Procedure Code s. 325—Action for incumbency and possession of a temple—Denial by second defendant that he made any claim—Dismissal of action against second defendant—Writ of possession against first defendant—Resistance by second defendant—Is second defendant bounded by decree?

Plaintiff sued the defendants for the incumbency and possession of a temple. The second defendant filed answer denying that plaintiff was the chief incumbent, and that he (second defendant) set up any claim himself. Plaintiff obtained judgment against the first defendant, but the action was dismissed as against the second defendant. When plaintiff sought to be placed in possession of the temple, the second defendant resisted. The District Judge held that as the action was dismissed as against the second defendant, he was not bound by the decree.

Held, that the decree bound the second defendant, and that he could not deny the plaintiff's right to the chief incumbency.

Zoysa, for plaintiff, appellant.

Samarawickreme (with him *D. B. Jayatileke* and *Weerasuriya*), for second defendant, respondent.

September 5, 1922. ENNIS J.—

This is an appeal from an order made in the following circumstances. The plaintiff made a claim against the first and second defendants for the incumbency and possession of the temple. The second defendant filed answer, in which he denied that the plaintiff was chief incumbent of the temple. He did not set up any claim

1922.

ENNIS J.

*Ratnajoti v.
Somananda*

to the office himself. At the trial certain issues were framed, namely, whether the plaintiff, or the first defendant, was the lawful successor to the chief incumbency; secondly, whether the plaintiff's cause of action is prescribed; and thirdly, whether the plaintiff has any cause of action against the second defendant. The learned Judge gave judgment in the plaintiff's favour as against the first defendant, and he dismissed the plaintiff's action against the second defendant, with costs. The plaintiff thereupon sought to be placed in possession of the temple, but the Fiscal was resisted when he tried to put the plaintiff in possession. The plaintiff then presented a petition to Court under section 325 of the Civil Procedure Code. The first defendant then appeared, and said that he had not resisted the Fiscal, but that second defendant had the key and had objected to the plaintiff being put in possession. Thereupon notice was issued to second defendant, and proceedings under section 377 of the Civil Procedure Code taken. When the matter came up for adjudication, the learned Judge made order, holding that the decree had definitely dismissed the action against the second defendant, and declared that plaintiff to be the chief incumbent, and that it did not, therefore, bind second defendant. The Judge proceeded to add that if the second defendant objected to the plaintiff being placed in possession, the Fiscal could do nothing. The appeal is from that order. The action having been dismissed on the issue as to whether the plaintiff had a cause of action against the second defendant the second defendant cannot now assert a cause of action, and deny the plaintiff's rights to the chief incumbency. The issues as framed show that the second defendant did not himself claim the office of chief incumbent, and that the contest in the case was between the plaintiff and first defendant; the second defendant asserting, for the purpose of the issues, that the plaintiff had no cause of action against him, in other words that he had never denied the plaintiff's right, notwithstanding the fact that in his answer he had said the plaintiff was not entitled to the office of chief incumbent. The decree in the case binds the second defendant. It is clear that respondent, on the question as to whether the plaintiff had any cause of action against him, cannot now deny the plaintiff's right, for the denial of plaintiff's right is a cause of action which he should have remembered when the issues were framed. The second defendant's action in this matter appears to be a contemptuous evasion of the order of the Court, and in order to make it clear beyond any possibility of evasion, that the decree does bind the second defendant, I would act under section 753 of the Civil Procedure Code, and set aside the decree in the case in revision, and give judgment for plaintiff against second defendant in the action. I would allow all costs of appeal and in the Court below to plaintiff.

SCHNEIDER J.—I agree.

Appeal allowed.