1918. *Present:* Bertram A.C.J. and De Sampayo J.

NEELAKUTTY *v.* ALVAR *et al.*

57—D. C. Jaffna, 11,929.

Partition action—Decree entered by Court of Requests—Land over Rs. 300 in value—Is decree binding on persons not parties to the action?—Jurisdiction—Judgment in rem.

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 who was not a party to the action.

THE plaintiff brought this action to set aside a final partition decree obtained by the defendants with respect to a land in the Court of Requests of Point Pedro, in case No. 15,448, or to recover, in the alternative, damages consequent on the passing of the decree. He pleaded that the decree was obtained by fraud and without notice, and that the Court of Requests of Point Pedro had no jurisdiction to enter the said decree, as the said piece of land was worth in the year 1913, when the decree was passed, more than Rs. 300.

The action was heard on the following preliminary issues:—

(1) What was the value of the land in suit at the date of the institution of Court of Requests, Point Pedro, No. 15,448?

(2) If at such time the value of the land was over Rs. 300, is it open to this Court to treat the decree in the Court of Requests case as not binding on this plaintiff?

(3) Under the alleged circumstances, had this Court jurisdiction to declare the decree in the Court of Requests case as inoperative?

(4) Is it open to this Court to declare the decree in the Court of Requests case null and void?

The learned District Judge found that the land was worth over Rs. 1,000, and answered the other issues of law in the affirmative.

Balasingham, for defendants, appellants.—A final decree in a partition action is conclusive and cannot be questioned, in spite of the provisions of section 44 of the Evidence Ordinance. Unless an objection as to jurisdiction is taken in time it is deemed to be waived. The plaintiff in this case is deemed to have been a party to the partition action, as the whole world is party to such an action. If the Court had tried an issue as to the value of the land raised by one of the parties, and had wrongly come to the conclusion that the value was under Rs. 300, would it be open to the same person, or any other

party, or even a person who was not a party, to go behind that adjudication in an action in the District Court? Although the issue was not raised, it is deemed to have been raised and decided. Every objection that may be taken is deemed to have been taken in a partition case. No issue need be raised, as the case cannot be decided on the agreement of parties, or only on such issues as the parties may choose to place before the Court. The Court of Requests certainly had jurisdiction to decide the issue as to value. It is " competent " to a Court to come to a wrong conclusion as to a right conclusion.

The words " a court of competent jurisdiction " in section 2 of the Ordinance mean competent to deal with partition cases. A Police Court or Supreme Court which has no original jurisdiction, or a Court of Admiralty or a Village Tribunal, is not a competent court, because they have no jurisdiction to try partition cases. But where the objection to jurisdiction is one of value, or residence of parties, or locality, the Court has a right to try the issue raised, and if it holds that the objection is unsound it may proceed to decree partition. Otherwise, even if the value is found by the District Court to be Re. 1 over Rs. 300, the adjudication of the Court of Requests may be ignored. Will partition decrees have any conclusive effect if we can raise all these points after final decree?

Counsel cited *Caspersz on Estoppel, 466, 636, 732; 6 Weerakoon 32; 4 C. W. R. 406; 12 Bom. 155; 7 All. 243; 7 W. R. 490.*

Samarawickreme (with him *Arulanandan*), for the plaintiff, respondent.—Under section 44 of the Evidence Ordinance it is open to a party to show that a judgment was delivered by a Court not competent to deliver it. The section makes no exception in favour of partition decrees.

Section 2 of the Partition Ordinance provides that the action has to be instituted in a court of competent jurisdiction. It is only when the Court has jurisdiction that the decree will have the conclusive effect given to the decreee by section 9.

It was held in *Puncha v. Sethuhamy*[1] that the fact that a land was valued at Rs. 15 by a Village Tribunal was not conclusive as to the value when a case was instituted for the same land in the Court of Requests.

Neither acquiescence or express consent of parties can confer jurisdiction upon a Court. See *9 Halsbury 13.*

Balasingham, in reply.

Cur. adv. vult.

July 10, 1918. BERTRAM A.C.J.—

The question for decision in this case is whether a partition decree made by a Court of Requests with reference to immovable property admittedly exceeding Rs. 300 in value is binding on a person

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

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claiming an interest in the property who was not a party to the action. 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* [1]). The jurisdiction of a Court may be limited, either in respect of area, or in resptct 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.

By section 44 of the Evidence Ordinance, No. 14 of 1895, it is expressly provided that any party to a suit or other proceeding may show that any judgment, order, or decree, which is relevant under the preceding sections, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it. It was contended, however, by Mr. Balasingham, who put the whole argument in this important matter fully before us, that the principle above enunciated in its application to the present case is qualified by section 9 of the Partition Ordinance, No. 10 of 1863. Section 44 of the Evidence Ordinance declares that a decree may be challenged, not only on the ground of the incompetence of the Court, but also on the ground of fraud or collusion. It is, nevertheless, expressly held by this Court that the effect of section 9 of the Partition Ordinance precludes any person from impeaching a decree of a Court in a partition action, even on the ground that it was obtained by fraud or collusion. It is argued, therefore, that a decree in such an action, by virtue of section 9, should be considered conclusive. even where it is challenged on the ground of the incompetency of the Court.

By the express words of the section, however, the conclusive effect of partition decrees is limited to decrees "given as hereinbefore provided," and one of the previous provisions of the Ordinance, namely, section 2, directs that the initial application to the Court in partition proceedings shall be made "to any Court of competent jurisdiction." The effect of the words "given as hereinbefore provided" has been considered by this Court in a recent case, *Jayawardene v. Weerasekera*,[2] and it was there laid down that the expression "given as hereinbefore provided" referred only to such essential steps as might be considered imperative, and not to such provisions of the Ordinance as were of a directory nature only. I think it is impossible, however, to treat the reference to the competency of the Court in section 2 as otherwise than imperative and essential.

[1] *(1827) 3 Russell 413.*

[2] *(1917) 4 C. W. R. 406.*

The effect of a partition decree under our Ordinance is much the same as a judgment *in rem*. I am much struck by the fact that in all references to judgments *in rem*, whether contained in statutory enactments, or in text books, or in decided cases, the principle that the Court must be a Court of competent jurisdiction is always insisted upon (see the Evidence Ordinance, 1895, section 41; *Ameer Ali and Woodroffe on Evidence, page 275;* and *Castrique v. Imrie* [1]). The phraseology of our Ordinance is thus entirely in accordance with that which is customary with regard to judgments of this character. The phrase " a court of competent jurisdiction " is in fact one of the keynotes of the Ordinance.

Mr. Balasingham, putting the same argument in another way, contended that " all the world are parties to a partition suit, " and that, therefore, a stranger to the suit was in the same position as a party, and was estopped from disputing the judgment. With regard to " all the world being parties to a partition suit," Lord Mansfield used a similar phrase with regard to Admiralty actions: " All the world are parties to a sentence of a Court of Admiralty " (*Hughes v. Cornelius* [2]). This merely means that all persons, whether parties to the suit or not, are bound by the decree. But it must be a decree of a competent Court. Moreover, there is no distinction for this purpose between a party to the 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* [3]). It is as open to any party to this very action to impeach the validity of this judgment as it is to the plaintiff himself.

The case of *Perera v. Babanis*, [4] in which this Court declined to allow a party to a partition action in a Court of Requests, after preliminary decree to impeach the jurisdiction of the Court, on the ground that the property to be partitioned was over Rs. 300 in value, must be regarded merely as an assertion of the principle that a Court cannot vacate its own judgment after it has been passed and entered.

The situation disclosed by this case is one which has probably not generally been realized. It means, in fact, that a partition decree made by a Court of Requests is liable to be impeached and invalidated at any time by proof that at the date of the decree the property was more than Rs. 300 in value. This is hardly in accordance with the policy of the Ordinance, and the point is one which may well receive the attention of the Legislature.

In my opinion the judgment of the District Judge is right, and the appeal should be dismissed, with costs.

[1] *(1869) L. R. 4 Eng. & Ir. App. 414.*
[2] *2 S. L. C. 805.*
[3] *(1899) I. L. R. 27 Cal. 11.*
[4] *(1911) 6 Weer. 32.*

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DE SAMPAYO J.—

I am of the same opinion. Mr. Balasingham in his argument referred to certain inconveniences which would arise from any decision that a partition decree would be a nullity for want of jurisdiction in the Court. The question of value might have been raised in the partition case itself and decided against the objector, and it was asked whether it was right for another Court to decide this question of fact in a different sense and go behind the decree. Again, the difference in value as found in the subsequent action might be slight, and was it tolerable that a party should be able to upset on such a ground an otherwise conclusive decree? These are undoubtedly practical considerations which present some difficulty. But 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 effect might be as between the parties to it, could bind a stranger, such as the plaintiff in this action is.

Appeal dismissed.