

*Present: Schneider and Garvin JJ.*

1923.

BANDA v. NACCIRE et al.

304—D. C. Kurunegala, 8,686.

*Res adjudicata—Civil Procedure Code, s. 207—Action for declaration of title and damages till restoration to possession—Of consent decree for plaintiff, but without damages—Lease by plaintiff after decree—Plaintiff restored to possession about ten months after decree—Action by lessee for damages for unlawful possession.*

In action No. 7,671, N sued defendants for declaration of title to a land, and also for damages till she was restored to possession. Of consent decree was entered on June 28, 1920, declaring her entitled to life interest. It was also decreed that there should be no damages. On October 29, 1920, N executed a lease of the land for four years from that date. On July 25, 1921, N obtained possession through the Fiscal. The lessee sued the defendants for damages, alleging that they were in unlawful possession of the land from the date of lease till July 25, 1921.

*Held*, that the lessee was barred by the decree in No. 7,671 from claiming damages in the present action.

**P**LAINTEIFF, averring that he had taken a lease No. 363 dated November 29, 1920, from one Iso Naccire, who had been declared entitled to the possession of a half share of the lands described in the schedule to the plaint by a decree entered in D. C., Kurunegala, case No. 7,671, sued defendants for the recovery of Rs. 360, which he alleged were the damages sustained by him for his dispossession of the said premises since the date of the lease for about ten months.

1923.  
*Banda v.*  
*Naccire*

Defendants denied the alleged dispossession, and pleaded that the action No. 7,671 by the said Iso Naccire, in which she claimed damages up to the date of cession of possession, was settled and a decree of consent entered, giving her a life interest in half the premises claimed, and that in consequence of such compromise plaintiff was precluded from claiming the damages, if any, for the period up to the cession of possession.

The parties proceeded to trial on the following issues :—

- (1) Is plaintiff precluded from maintaining this action by reason of the decree in 7,671 of this Court ?
- (2) If not, has defendant wrongfully taken possession of the half share belonging to the plaintiff ?
- (3) Damages.

The District Judge (W. L. Murphy, Esq.) by his judgment decided all issues in plaintiff's favour, and gave judgment for plaintiff as prayed for, with damages, for ten months as claimed.

The defendants appealed.

*Croos-Da Brera*, for defendants, appellants.—The plaintiff's lessor instituted an action *rei vindicatio* regarding the land leased and claimed mesne profits. The action was settled, and the defendants were declared the owners, subject to the life interest of the lessor. No order was made as regards mesne profits. The lessor claimed future mesne profits, and sections 196 and 207 of the Civil Procedure Code prevent him from claiming them again. The order in the previous case operates as *res judicata*. The plaintiff cannot be in a better position than his lessor. Counsel cited *Kiri Banda v. Slema Lebbe*.<sup>1</sup>

*Soertsz* (with him *Weerasinghe*), for plaintiff, respondent.—The case of *Kiri Banda v. Slema Lebbe* (*supra*) was decided on evidence. In this case the judgment is based on a settlement. It was understood that no damages or mesne profits should be claimed. The plaintiff claimed possession of the land as lessee. Defendants should account for the mesne profits after they refused to give possession. It was understood that the defendants should give possession soon after judgment. They delayed to give possession. They should not be allowed to benefit by their default.

January 31, 1923. SCHNEIDER J.—

One Iso Naccire sued the defendants in this action for a declaration of title to the land which is in claim in this action, and also for damages sustained up to date of action, and further damages till she was restored to the possession of the land. Her claim was

<sup>1</sup> (1908) 11 N. L. R. 348.

resisted, and of consent decree was entered declaring her entitled to a life interest over a certain share of the land. It was also decreed that there should be no costs and no damages. This was on June 28, 1920. On October 29, 1920, she executed a lease for four years from the date of the lease in favour of the plaintiff granting him possession of the share which she was decreed entitled to. On July 25, 1921, she appears to have applied for a writ, and obtained possession through the Fiscal on that date. In this action the plaintiff sued to recover damages from the defendants upon the allegation that the defendants were in the forcible and unlawful possession of the land which had been leased to him. In their answer the defendants pleaded the decree in action No. 7,671 as *res adjudicata* in bar of the plaintiff's claim. The learned District Judge held against the defendants' contention in regard to this question of *res adjudicata*. He held in favour of the plaintiff upon the facts, and gave judgment in favour of the plaintiff as prayed for, with damages. The defendants have appealed. The only point for our decision is whether the action No. 7,671 is *res adjudicata*. In support of the contention of the defendants, Mr. Croos-Da Brera cited to us the case of *Kiri Banda v. Selema Lebbe (supra)*, in which this Court pointed out the effect of section 207 of the Civil Procedure Code as operative to bar the maintenance of an action in circumstances identically the same as in this case. I would follow that decision, and hold that the provisions of section 207 of the Civil Procedure Code would have operated to bar an action if it had been brought by Iso Naccire. The plaintiff, who is her lessee, is in no better position than herself. His claim to possession is that derived from Iso Naccire. That being so, I would dismiss the plaintiff's action, with costs. The defendants are entitled to the costs of this appeal.

GARVIN J.—I agree.

*Set aside.*

1923.

SCHNEIDER  
J.

*Banda v.  
Naccire*