

1920.

*Present : Schneider A.J.*PUSAMA *v.* SENDELIYA *et al.*11—C. R. *Matale*, 13,021.

Action in Village Tribunal for damages, being value of a half share of a crop of a field—Defence of forfeiture of rights by diga marriage—Subsequent action in Court of Requests between same parties for declaration of title—Res judicata—Estoppel—Land over Rs. 20 in value.

The defendants, who were the children of plaintiff's sister (W), sued the plaintiff in the Village Tribunal, claiming damages as the value of the half share of a crop of a field which they claimed by right of inheritance. The plaintiff denied defendants' title, and alleged that W had forfeited her rights to her paternal inheritance by marrying out in *diga*. The Village Tribunal held that W was not married in *diga*, and entered judgment for the defendants. In a subsequent action in the Village Tribunal between the same parties for a similar share of the crop the plaintiff consented to judgment. The plaintiff brought this action in the Court of Requests for declaration of title to the land. The defendants pleaded *res judicata* and estoppel.

Held, that both pleas were bad, as the value of the land was over Rs. 20.

“The Village Tribunal had no jurisdiction to try an issue in regard to the title to the land, nor even to try the issue as to whether W was married in *diga*, because that issue is only incidental to the real issue between the parties as to the title to the land.”

THE facts appear from the judgment.

Bartholomeusz, for defendants, appellants.

Arulanandan, for the plaintiff, respondent.

July 9, 1920. SCHNEIDER A.J.—

In this case the plaintiff sought to vindicate title to the whole of a field called Gedaragawakumbura. He pleaded that it belonged to his father Rankira, who had seven children, including himself.

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One of these children was Watu, a daughter, who, he said, had been given out in *diga*, and had thereby forfeited her rights to his land. Another child of Rankira was Malkenda, who died in 1917 childless. The defendants are the children of the woman Watu. They say that their mother died about six years before the present action, and that plaintiff began to dispute their title only after the death of Malkenda in 1917. It is in evidence that in October, 1917, the defendants brought an action in the Village Tribunal against the plaintiff, claiming damages as the value of their half share of the crop of this field which they alleged plaintiff had wrongfully appropriated. This plaintiff, who was a defendant in that action, denied that the defendants in this action were entitled to any share in that land on the ground that their mother had been given out in *diga*. An issue was framed on that question, and the Village Tribunal gave judgment in favour of the defendants, holding that their mother had not been married out in *diga*. A second action was brought in the Village Tribunal, also by these defendants against the present plaintiff, claiming again a half share of the crop of the field. The plaintiff consented to judgment in favour of the defendants. This was in 1918. The present action was brought by the plaintiff in September, 1918. The defendants pleaded that the judgments in the two Village Tribunal cases were *res judicata*, and barred the plaintiff from denying their title to the field in the present action. They also pleaded that the admission by the plaintiff in the later case in the Village Tribunal estopped him from denying their title in the present case. The learned Commissioner has held against the defendants' contention, both on the question of *res judicata* and of estoppel. He has done so rightly in my opinion. The defendants, who are the appellants, contended on appeal that those two judgments are *res judicata*, and cited as authority the case of *Dingiri Menika v. Punchi Mahatmaya*.¹ I do not think that case is in point. There the decision which was pleaded as *res judicata* was that of a competent Court in regard to a matter which it tried and had jurisdiction to try. In the earlier one of the Village Tribunal cases, which the appellants rely upon to support their contention, the defendant denied the plaintiff's title, and it is in evidence that the value of the land even at that time was over Rs. 300. It is, therefore, clear that the Village Tribunal had no jurisdiction to try an issue in regard to the title to the land, nor even to try the issue as to whether Watu was married in *diga*, because that issue is only incidental to the real issue between the parties as to the title to the land. This case is covered by the decision in *Puncha v. Sethuhamy*.²

[His Lordship then discussed the facts.]

Appeal allowed.

¹ (1910) 13 N. L. R. 59.

² (1916) 19 N. L. R. 217.