

*Privy Council Appeals Nos. 47 & 48 of 1943*

Rao Sobhagsingh - - - - - *Appellant*

*v.*

Rao Ranjitsingh - - - - - *Respondent*

**Same**

*v.*

**Same**

*(Consolidated Appeals)*

FROM

**THE HIGH COURT OF JUDICATURE AT NAGPUR .**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 29TH MAY, 1945

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*Present at the Hearing :*

LORD THANKERTON

SIR MADHAVAN NAIR

SIR JOHN BEAUMONT

[*Delivered by* LORD THANKERTON]

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These are consolidated appeals from a judgment and two decrees of the Court of the Additional Judicial Commissioner, Central Provinces, dated the 31st August, 1935, which set aside the judgment and two orders of the District Judge, Nimar, dated the 2nd January, 1931, and restored the judgment and two decrees of the Subordinate Judge, Khandwa, dated the 25th June, 1930. The respondent, who is plaintiff in both suits, did not appear in these appeals. The appellant was defendant in both suits, in which the plaintiff claims a half share in the income of the offerings made by pilgrims to the idol of Shree Onkarji at the time of certain annual fairs at Mandhata.

The first suit, No. 32 of 1924, relates to the Kartiki fair of 1920, and the second suit, No. 45 of 1925, relates to the Kartiki and Sheoratri fairs of 1923 and Baishakhi fair of 1924. The plaintiff claims in both suits a half share of the income from the entire offerings; the defendant contends in both suits that he is entitled to a half share in the income of one portion only of the offerings, namely, the Shamlat khut or joint account. By the judgment under appeal the Additional Judicial Commissioner has held that the defendant is excluded from maintaining that defence as the matter is *res judicata*, and their Lordships may say at once that they are of opinion that the decision of the Additional Judicial Commissioner is correct, though they will state the reasons somewhat differently. In this view, any consideration of the merits of the defence cannot arise.

There were two previous suits between the same parties which are relevant to the question of *res judicata*. The first of these was No. 46 of 1913, afterwards renumbered No. 9 of 1917, in which the present plaintiff's father was plaintiff and claimed half of the income from offerings of 91 fairs.

from Samvat 1940, that is 1883 A.D., to the Baisakhi fair of Samvat 1970, that is 1913 A.D. The plaintiff only had lists of the income of forty-three of the 91 fairs, which he filed. Their Lordships find it unnecessary to go through the proceedings in detail, as the present appellant's counsel admitted that the present defence was not stated, and, in the opinion of their Lordships it is clear that the case proceeded on the footing that the plaintiff was entitled to one-half of the whole income subject to the question of certain deductions to be made before division, which were the subject of dispute, and which are not now material. In his judgment dated the 15th May, 1918, the Subordinate Judge held that the burden of proving the income lay on the plaintiff, that Article 62 of the Limitation Schedule applied, and that the plaintiff could only claim for the period within three years previous to the suit, and was entitled to get his share of the offerings received on or after the 25th October, 1910, which involved the income of nine fairs, but that the income of only four of these had been proved, and that it was absorbed by a prior deduction, thus leaving no balance due to the plaintiff. This means that the plaintiff's title to one-half of the whole income, after the proper deductions had been made, was judicially upheld, and the present defence of the defendant was a matter which might and ought to have been made ground of defence in the previous suit, and is therefore to be deemed to have been a matter directly and substantially in issue in such suit, within the meaning of Explanation IV to section 11 of the Civil Procedure Code. The learned District Judge declined to come to that conclusion, on the ground that an examination of the lists filed in respect of 43 fairs showed that the income recorded was confined to Shamlati or joint account. He therefore concluded that the claim as well as the judgment was concerned only with such income, and it was therefore unnecessary for the defendant to state his present defence. Their Lordships are unable to agree with this view, for, in their opinion, the plaintiff clearly claimed his share of the whole income, the lists filed being incomplete, and it was only because he failed to prove more than the income of four fairs that he failed to prove a balance due to him. On appeal, the Additional Judicial Commissioner held that the decision of the District Judge on *res judicata* was incorrect, and that at any rate in one of the former suits the plaintiff clearly claimed a half of the whole income, and the question whether he was entitled to a half share of the income was put in issue and decided. The learned Judge referred specially to the plaint in the second suit No. 64 of 1918, and to the judgment in that suit. This second suit was instituted by the present plaintiff's father on the 20th September, 1918, against the present defendant in respect of four fairs in 1913 and 1914, which had been omitted in the previous suit, but which had been the subject of a private arrangement for calculating and keeping the income of these four fairs pending the decision of the previous suit. This suit was raised under reference to the decision in the previous suit. The Subordinate Judge gave judgment on the 30th September, 1919, the suit being decreed in terms of the compromise arrived at between the parties. There is no mention in the pleadings of the defence now stated by the defendant. In their Lordships' view, the question of the plaintiff's title having become *res judicata* in the previous suit, this second suit was a corollary thereto for the recovery of sums not claimed in the previous suit, and the decision of the Additional Judicial Commissioner would have been more correctly based on the previous suit.

Accordingly their Lordships are of opinion that the decision of the Additional Judicial Commissioner that the defendant's present defence was excluded by *res judicata* was correct, and they will humbly advise His Majesty that the consolidated appeals should be dismissed.



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In the Privy Council

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RAO SOBHAGSINGH

*v.*

RAO RANJITSINGH

SAME

*v.*

SAME

*(Consolidated Appeals)*

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DELIVERED BY LORD THANKERTON

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