Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Rajah Row Mahipati Surya and another v. Sri Rajah Row Mahipati Gangadhara Rama, from the High Court of Judicature at Madras; delivered, June 7th, 1883.

Present:

LORD WATSON.
SIR BARNES PEACOCK.
SIR ROBERT COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THIS case arises in this manner: Gangadhara Rama Row, the grandson of Rajah Niladri and son of the elder son of the Rajah, Venkata Surya, sued the two sons of the younger son of Rajah Niladri for the purpose of recovering certain property. The plaint states the cause of action very shortly and clearly, and is to this effect: that the Plaintiff's father and the Defendants' father were brothers; that the Plaintiff's father, who was the elder, succeeded to the zemindari of Pittapuram, belonging to their father, Niladri Row. It avers that "the Defendants' father, in "1845, received from Plaintiff's father the estate "called Kolanka Mutta, and having built a house "in the village of Chendurti, attached to the said "Mutta, has lived there separately." This averment is for the purpose of showing that an adequate provision had been made for the younger branch of the family. The plaint proceeds: "—As the Plaintiff's paternal grandmother, Sri "Raja Row Bhavayzamma Garu, was a member "of the Plaintiff's family, she lived in some "of the houses within the fort of Pittapuram

R 7645. 125.—6/83. Wt. 5011. E. & S. A

" belonging to Plaintiff, and had in her use some " grounds appertaining to that fort; and, while " so, she died on the 11th March 1870. The " Defendants retained the said houses and " grounds in their possession, even after her " death, on the ground of their having occupied " them with her until her death; and although " the Plaintiff demanded them to surrender them " up to the Plaintiff in July 1870, they have not " done so yet." Then it is alleged that the fort is part of the Plaintiff's ancient zemindary.

That is the cause of action; and the material plea, on the part of the Defendants, is to the effect that their paternal grandfather died in 1828, " and from seven or eight years afterwards the " disputed houses and grounds have been in un- " interrupted and undisputed possession and " enjoyment of the Defendants' father and them- " selves. Some of the disputed houses were " built by the Defendants' grandfather and some " by their father, and not by Plaintiff or his " father. As the Plaintiff's father and Plaintiff " have all along been maliciously disposed " towards the Defendants' father and Defendants, " the Defendants' father's and Defendants' pos- " session and enjoyment have been adverse to " Plaintiff's title, and therefore his claim is " barred by the Statute of Limitation." They also plead *res judicata*.

Upon the suit coming before the Court of First Instance, the Judge dismissed it solely on the ground of *res judicata;* at the same time, he gave his views with regard to other parts of the case. It would appear that the Defendants scarcely made a serious attempt to establish their plea of adverse posession, but relied upon another state of facts which had not been set up in their pleadings; namely, that in the year 1844 or 1845 a grant of the premises had been made by the elder brother to the

younger, their father; and this case the Judge finds to be entirely false. His finding on the subject of adverse possession is not quite clear, but seems to be in effect that the Defendants' father and his sister, together with themselves, had always lived with their grandmother. Upon appeal to the High Court of Madras, this judgment was affirmed on the ground that the suit was rightly dismissed on the plea of *res judicata*. On appeal to this Board, the judgment of the High Court of Madras was reversed. The view of their Lordships may be shortly stated thus: A previous action, in 1862, had been brought by the Plaintiff's father against the widow Bhavayaguru and her son and daughter, in which three causes of action were alleged. The first related to a certain piece of land which has nothing to do with the present case, and the complaint was that the widow had affected to alienate that land and dispose of it absolutely to her son and daughter. The second was a similar complaint with regard to another piece of land, having nothing to do with the present premises. The third related to the present premises, but the view their Lordships took of that case was that the Plaintiff did not claim those premises as against the son and daughter, but that the effect of his plaint was simply to complain of the widow having committed waste with regard to those premises. Therefore the question was not between the same parties, and was not *res judicata*; and thereupon the case was remanded to the High Court of Madras to find upon the issues which had remained undisposed of.

Upon the suit being remanded the Defendants set up a third case, viz., that the property was Stridhanam of the grandmother, and that they insisted upon, to the exclusion of the other points, without adducing any fresh evidence

upon the subject. The learned Judges of the High Court found against that contention, and their Lordships think rightly, for there was no evidence to support it. They also found against the former contention, namely, that there had been an adverse possession. Under these circumstances the defence of the Defendants was not made out, and the High Court were manifestly right in giving a judgment for the Plaintiff, there being no dispute that the property in question was originally part of the zemindary.

Under these circumstances their Lordships will humbly advise Her Majesty that the judgment be affirmed, and that this Appeal be dismissed; the Appellants must pay the costs of this Appeal, and of the former appeal.