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Bhawani Prasad Vs. Ram Prasad

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Court : Allahabad

Decided On : Nov-04-1936

Reported in : AIR1937All227

Appellant : Bhawani Prasad

Respondent : Ram Prasad

Judgement :
ORDER

Bennet, J.

1. This is a civil revision by a plaintiff whose suit for contribution has been dismissed by the Small Cause Court. One Bhagwan Prasad brought a Suit No. 53 of 1933 against the present plaintiff and defendant Bhawani Prasad and Earn Prasad and got a decree for costs against each. In execution of that decree Bhawani Prasad had to pay the total amount of costs and he now sued the defendant Earn Prasad for a half-share. The Court below has gone into the question of equities and has held that there was a deed of relinquishment by Bhagwati Prasad in favour of Bhawani Prasad and Earn Prasad and Bhagwati Prasad gave notices to Bhawani Prasad and Earn Prasad calling upon them to have the deed of relinquishment avoided as ineffectual and fictitious. In reply to the notice Earn Prasad frankly admitted Bhagwati Prasad's rights in the property and expressed his willingness to deliver up the deed of relinquishment, but

Bhawani Prasad denied the right of Bhagwati Prasad, and accordingly Bhagwati Prasad had to file his Suit No. 53 of 1933. In that suit Earn Prasad filed a written statement admitting the rights of Bhagwati Prasad. Bhawani Prasad eon-tested the suit and after a contest the suit was decreed. The Court below therefore held that the costs in that suit were incurred solely by the action of Bhawani Prasad and therefore that Bhawani Prasad had no right in equity to call on the defendant Earn Prasad for payment of a share of the costs.

2. In revision the ground is put forward that the Court below had no jurisdiction to go behind the decree in the original Suit No. 53 of 1933 and no other point is put forward. Now on this point of law the opposite party has referred to a ruling of this Court reported in Nand Lal Singh v. Madho Singh A.I.R. 1918 All. 328. That was a case in which a suit had been brought against the plaintiff Nand Lal and a defendant Ram Lal, and Nand Lal defended the suit and alleged that Earn Lai had instigated the plaintiff to sue. Ram Lal did not defend the suit. The suit was partly decreed and the plaintiffs in that suit brought an appeal and obtained a decree in appeal against Nand Lal and Ram Lal. The costs in question appear from the ruling to be the costs in the appellate Court, which was the High Court, and it is obvious that it was only due to the action of Nand Lal that the plaintiffs in that suit had to appeal. The High Court held that under those circumstances Nand Lal had no right to sue for contribution although he had paid the whole of the costs which had been jointly decreed against him and Earn Lai in the High Court. The case is in some way parallel to the present case and it is a clear authority for the proposition that a person in the position of the plaintiff who brings a suit for contribution of costs can have the defence set up against him that in equity he is not entitled to a decree for a proportionate share of the costs although he has paid the whole costs. Accordingly I consider that no error of law has been shown in the judgment of the Court below as the Court below has followed a reported ruling of this Court. Under these circumstances the civil revision is dismissed with costs.

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