

Bakhtwar Mal Vs. Abdul Latif

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Court : Allahabad

Decided On : May-14-1907

Reported in : (1907)ILR29All567

Judge : Banerji, J.

Appellant : Bakhtwar Mal

Respondent : Abdul Latif

Judgement :

Banerji, J.

1. The suit out of which this appeal has arisen was brought by the appellant against a Sub-Inspector of Police for recovery of possession of three account books. It has been dismissed on the ground that the notice required by Section 424 of the Code of Civil Procedure was not served on the defendant before institution of the suit. The allegations of the plaintiff are these. The defendant in his capacity as a Sub-Inspector of Police searched the plaintiff's house and carried away several articles including jewellery and these account books; that at the trial of the case he was asked to produce the account books, but he refused to produce them, alleging that he had not taken them. The present suit was therefore brought for recovery of the account books. It is clear on the plaintiff's own allegation that when the defendant searched the plaintiff's house he did so in the capacity of a public servant. In seizing the account books (assuming that he

seized them) he also acted in the same capacity apparently in pursuance of the provisions of Section 165 of the Code of Criminal Procedure. The suit is therefore a suit against a public officer and in respect of an act purporting to have been done by him in his official capacity, and the defendant was entitled to a notice under Section 424 of the Code of Civil Procedure. This case is distinguishable from that of Muhammad Saddiq Ahmad v. Panna Lal (1903) I.L.R., 26 All., 220 to which the learned vakil for the appellant referred. The circumstances of that case are quite different, the defendant having acted in that case, not in his capacity as a public officer, but illegally and in bad faith. The case more in point is that of Jogendra Nath Roy v. Price (1897) I.L.R., 24 Calc., 584, in which it was held that a notice was necessary under similar circumstances. I dismiss the appeal with costs.

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