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Faqir Ullah Vs. Hikmat Ullah

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Court : Allahabad

Decided On : May-14-1925

Reported in : AIR1925All569

Appellant : Faqir Ullah

Respondent : Hikmat Ullah

Judgement :

Daniels, J.

1. This is a revision against an order of the learned Subordinate Judge of Moradabad dismissing the plaintiff's suit on appeal. The grounds of revision are these. The suit was originally instituted before a Munsif having Small Cause Court powers. This Munsif ceased to have jurisdiction, and the case was taken up in the ordinary way by his successor who had no Small Cause Court powers. The evidence had been recorded by the first Munsif. The case was decided in favour of the plaintiff by the second Munsif. On appeal the learned Subordinate Judge, to whom the appeal was made over, took a different view and dismissed the suit. The plaintiff's first contention is that the suit continued to be a Small Cause Court suit, and therefore, no appeal lay to the District Judge. This contention is contrary to Section 35 of the Provincial Small Cause Courts Act, and the fact that a case which is decided under that section by an officer not having Small Cause Court powers must be treated as a regular suit in which an appeal lies, is supported by a

long string of authorities, e.g., Sarju Prasad v. Mahadeo Pande (1915) 37 All. 450, Lachman Das v. Ahmad Hasan (1917) 39 All. 357 and Zamir-ul-Hasan Khan v. Imdad Ali Khan A.I.R. 1922 All. 161.

2. The applicant's second contention is that the Munsif who decided the case should have re-heard the evidence and recorded it in full as in a regular suit. Even if the Munsif should have done this, his omission to do so is merely an irregularity in procedure to which Section 99 of the Civil Procedure Code applies, and which cannot be made a ground for setting aside the decree unless it has affected the decision on the merits. In this case we find on examining the record that the learned Munsif who heard the evidence recorded unusually short notes. That the shortness of the notes did nod prejudice his successor against the plaintiff is evident from the fact that the case was actually decided in his favour. In appeal before the learned Subordinate Judge the applicant took no objection to the form in which the evidence had been recorded. He had of course taken none before the trial Court. We further find that the decision turned on a question of limitation, which depended on whether the true date of the pro-note was 1920 or 1921. It is quite obvious that the date originally written was 1920 and has been altered into 1921. The point on which the Courts differed was whether that alteration was made immediately, at the time when it was first written, or was made subsequently in order to bring the case within limitation. We find, therefore, that the error in procedure if there was any, has not in any way affected the result of the case.

3. The revision accordingly fails, and we dismiss it with costs.

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