

Bindesri Prasad and anr. Vs. Sat Narain Prasad and anr.

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SooperKanoon Citation : sooperkanoon.com/458473

Court : Allahabad

Decided On : Mar-07-1927

Reported in : AIR1927All522a; 101Ind.Cas.551

Appellant : Bindesri Prasad and anr.

Respondent : Sat Narain Prasad and anr.

Judgement :

1. This is a plaintiffs' appeal in a suit for money on a security bond. The facts may be briefly stated as follows:

Certain plaintiffs sued certain defendants for cancellation of an alleged Will of an uncle of the plaintiffs, and they obtained a decree. Upon the respondents appealing the plaintiffs asked that security be taken under Order 41, Rule 10 and the present defendants furnished such security. This Court allowed the appeal and dismissed the suit; but subsequently on appeal to the Privy Council the decree of the Subordinate Judge was restored. The plaintiffs in the original suit thereupon sued the sureties in relation to the security bond furnished by them, on the allegation that the original defendants were insolvents. Both Courts have dismissed the suit. We think that there is no doubt that they were right in so doing. Order 41, Rule 10, is expressly concerned with the costs incurred hitherto and in the High Court and has no bearing whatever on costs which may be dependent upon something occurring in the Privy Council. There is nothing exceptional in the terms of the security bond. It is admitted on behalf of the appellants here that the

translation which appears in the judgment of the lower appellate Court is correct, and that begins with the words: 'If the appellant's appeal is dismissed.' There is nothing whatever to show that the sureties had in contemplation at the time they furnished the security bond anything other than what might happen in this Court; and it would not be hard to instance cases in which the sureties might be of a very different frame of mind if they were asked to give security, the liability under which would be dependent not only on the decision of this Court, but on the decision of some still higher Court. We have been referred to the case reported as Raj Raghubar Singh v. Jai Indra Bahadur Singh [1920] 42 All. 158. There is nothing in that case which would make us hesitate as to the opinion at which we have arrived. There the surety bond was given with reference to 'any order' of the Court of the Judicial Commissioner. That clearly contemplated the final orders of the Court of the Judicial Commissioners and it is only in regard to such final order that their security bond was held to be binding. There is no force in the appeal and it is dismissed with costs.