

Tulshi Ram Vs. Daya Ram

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Court : Allahabad

Decided On : Apr-30-1925

Reported in : AIR1925All604

Appellant : Tulshi Ram

Respondent : Daya Ram

Judgement :

Daniels, J.

1. This is an appeal against an order of remand under the following circumstances. In the course of the plaintiff's evidence, the plaintiff agreed that if the defendant would take an oath holding one of his sons in his lap with : his hand placed on the son's head, he would accept it. The defendant agreed to do this, and a date, was fixed for the required oath to be taken and for no other purpose. We may point out that the oath in question was one which it was not permissible to the Court to allow to be administered in view of Section 8 of the Oaths Act of 1873 as it was an oath affecting a 'third person. The Court, therefore, acted wrongly in fixing a date for the oath to be taken. On the date so fixed, the defendant asserted that he was unable to produce his son as the plaintiff had persuaded his wife not to allow her son to come. This allegation, so far as it concerned the plaintiff, may have been, and very likely was, false. However that may be, it was impossible for the oath to be taken on that date. The learned Munsif applied the provisions of Order 17, Rule 3, Civil

Procedure Code aid without giving the parties an opportunity of producing any further evidence proceeded to decide the case on the materials on the record. The learned Judge holds, and we agree with him, that this is not the correct course to take, and that Order 17, Rule 3 has no application to these circumstances. The proper course was to direct the suit to proceed and to be decided on the merits after allowing the parties an opportunity to produce all the evidence they wished to produce. We accordingly dismiss the appeal with costs.

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