

Beshasher Das and ors. Vs. Abdul Jalil and ors.

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SooperKanoon Citation : sooperkanoon.com/461190

Court : Allahabad

Decided On : Feb-17-1910

Reported in : 5Ind.Cas.556

Judge : George Knox and ;Karamat Husain, JJ.

Appellant : Beshasher Das and ors.

Respondent : Abdul Jalil and ors.

Judgement :

1. This is an application for the revision of an order passed by the Subordinate Judge of Allahabad whereby he granted permission to the Plaintiffs in this case to withdraw from the suit which they had filed with liberty to institute a fresh suit in respect of the subject-matter of the suit. The order of the learned Subordinate Judge is a brief order and in many ways unsatisfactory. There is nothing in the order which shows that the learned Subordinate Judge did grapple with the issue with which he shored have grappled viz. that the suit before him must fail by reason of some formal defect. All that he says is that he had heard much argument addressed to him by the learned Advocate for the defendants about formal defect in the plaint inasmuch as it did not mention the exact date of the mortgage and then proceeds 'I think it is a fit case to grant permission to withdraw the suit and bring a fresh suit.' This leaves it perfectly open as to whether the Court merely entertained an apprehension that the suit might fail by reason of some formal defect and that he refrained from satisfying himself that it must fail for

any particular Cause that might at that time have been before his eyes. Permission to withdraw from, a suit should not be lightly granted. The parties should not be exposed to the penalty of having their cases heard twice merely because the Judge before whom the case has, come for decision is unwilling to decide upon the direct matter at the time before him. In the present case the learned Judge who presided over the Court has left the Court and taken up the position of Subordinate Judge elsewhere otherwise I should have felt that the case was one which should have gone back so that the Judge might put upon record clearly his satisfaction as to what was the formal defect and that the suit must fail by reason of that defect. No good, however, would be gained by following that course in the present case. The order of the learned Subordinate Judge having provided that the opposite party shall have his full costs, I am not under the circumstances inclined to interfere. The application for revision is dismissed. We make no order as to costs.