

Devi Chand Vs. Pirbhu Lal

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SooperKanoon Citation : sooperkanoon.com/463563

Court : Allahabad

Decided On : May-09-1927

Reported in : AIR1927All628

Appellant : Devi Chand

Respondent : Pirbhu Lal

Judgement :

1. This seems to be a case of misfortune, as far as we can tell, and the result of the proceedings is to inflict hardship upon the plaintiff. But we cannot help that, if the law is clear, and it certainly seems as though the plaintiff's advisers had made a serious mistake and caused this loss, if it is one. The plaintiff claims against the defendant something like Rs. 3,000, the price of some cotton yarn, There is no doubt that in a previous suit against the same defendant for rendition of account and for dissolution of partnership, the claim included the said amount on account of some cotton yarn. The plaintiff says so in his plaint in this suit. It appears from the judgment of the first Court in this suit that, in the previous suit, the final appellate Court held that relief could not be given in respect of the claim for the cotton yarn. It is found by the lower appellate Court that on the 5th July the plaintiff applied to withdraw that suit, and on the 11th July he was allowed to withdraw it on paying costs, without any permission being given him to bring a fresh suit for the cotton yarn. The objection is now raised that the plaintiff is precluded by Order 23, Rule 1, Sub-section (3) of the Code from bringing this suit. The first Court held that the cause of action was different. The rule in question says nothing about cause of

action. The lower appellate Court takes a different view and says that 'subject-matter' in the rule does not mean the actual claim, but the capacity in which it is claimed, which is very much like the view of the first Court. We do not think that either of these considerations have anything to do with it. The rule runs as follows:

Where the plaintiff withdraws from a suit or abandons part of a claim, without the permission referred to in Sub-rule (2) he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

2. Now the plain meaning of that rule is that he is either precluded from bringing the whole suit again, or from bringing a fresh suit for any part of the claim he abandoned. This suit is admittedly brought for a part of the claim in the first suit. The withdrawal of the first suit was admittedly the abandonment of this part of the claim because the Courts said that they had no power to deal with it in that suit. The result is that the plaintiff is precluded from suing for it in a second suit, unless he has obtained the permission mentioned. We think, therefore that the claim is barred by Order 23, Rule 1(3). If it were necessary to decide it we should also find great difficulty in getting over Section 14, Limitation Act. Admittedly the present suit is brought against the defendant personally not as a member of the partnership. Admittedly the first suit included the claim for cotton yarn as part of the accounts which were presented against the defendant in the partnership. Therefore it seems to us difficult to say, and in this respect we agree with the lower appellate Court, that the plaintiff had been prosecuting with due diligence another civil proceeding which was founded upon the same cause of action. We must, therefore, dismiss this appeal with costs.