

Pohkar Vs. Ram Lal

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SooperKanoon Citation : sooperkanoon.com/463640

Court : Allahabad

Decided On : Aug-13-1919

Reported in : 52Ind.Cas.640

Judge : Rafique and ;Wallach, JJ.

Appellant : Pohkar

Respondent : Ram Lal

Judgement :

1. This is an application in revision from an order of an Assistant Collector rejecting the application of the applicant for restitution. It appears that a suit was brought against the applicant for recovery of profits. The learned Assistant Collector, in whose Court the suit was filed, decreed the claim of the opposite party for about Rs. 700. On appeal the decree in favour of the plaintiff was increased by a few hundred rupees on account of interest. In second appeal to this Court the decree was reduced to about Rs. 200. In the meantime the opposite party had executed the decree of the first Appellate Court. After the decision of the case in this Court, the applicant before us presented a petition to the Assistant Collector for restitution, namely, for the recovery of the difference between the decree of the first Appellate Court and the decree of this Court. The Assistant Collector rejected the application and directed the applicant to file a regular suit. There can be no doubt that the order of the Assistant Collector is erroneous and must have been passed under a misapprehension. No remedy is open by way of a

regular suit to the applicant to recover the balance of the money that was realised by the opposite party in execution of the decree of the first Appellate Court. A preliminary objection is taken on behalf of the opposite party to the application in revision to this Court on the ground that no revision lies. This objection is supported by authority and we need only mention one case, vide *Damber Singh v. Sri Kishun Das* 2 Ind. Cas. 377 : 6 A.L.J. 552 : 31 A. 445. On behalf of the applicant great stress is laid on the fact that if the present application is rejected, he, the applicant, has no remedy anywhere. We think that the application for restitution made by the applicant, though rejected by the learned Assistant Collector, does not prevent him, the applicant, from making another application before the Revenue Court. We have no doubt that if the matter is properly put before the learned Assistant Collector he will take action upon it. In any case the present application is not maintainable. We, therefore, dismiss it but in the circumstances of the case make no order as to costs.