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Court : Allahabad

Decided On : Jul-02-1917

Reported in : AIR1917All261; 42Ind.Cas.895

Judge : Piggott, J.

Appellant : Gobind Ram

Respondent : Ram Chander

Judgement :

1. This is an application in revision against an order of a Court of Small Causes by which a certain suit brought by the plaintiff was dismissed with costs, upon the single finding that it was barred by the rule of res judicata by reason of the result of a previous suit in which the same parties had been concerned. I have examined the record and I am Satisfied that the plaintiff in the former suit was not litigating under the same title as in the present suit. In the former suit he claimed certain money on the basis of a pro-note executed by one Muhammed Ali Khan in favour of the defendant Ram Chander plus a sale-deed by which Ram Chander had transferred his rights under the pro-note to the present plaintiff. That suit having failed, the plaintiff is now suing upon a covenant of indemnity forming part of the conveyance executed by Ram Chander in his favour, according to which Ram Chander is bound to indemnify; him in the event of any suit brought by him against Muhammad Ali Khan failing. In the alternative, the plaintiff may be regarded as claiming from Ram Chander whatever money the Court may find to have actually

passed from the plaintiff to Ram Chander at the time of the conveyance in favour of the former as money paid on a consideration which has failed. The suit is one to which Ram Chander may have a good defence, but it should be tried to the merits, as it is not barred by the provisions of Section 11 of the Code of Civil Procedure. I set aside the decree of the Court below and remand the case to that Court with directions to restore it to its file of pending cases and dispose of it according to law. Costs here and hither to will abide the event.

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