

Samaddi Sheikh Vs. Fulbash Bewa and anr.

Samaddi Sheikh Vs. Fulbash Bewa and anr.

SooperKanoon Citation : sooperkanoon.com/862913

Court : Kolkata

Decided On : Jan-12-1922

Reported in : AIR1923Cal269,65Ind.Cas.704

Judge : N.R. Chatterjea and ;Newbould, JJ.

Appellant : Samaddi Sheikh

Respondent : Fulbash Bewa and anr.

Judgement :

1. The suit out of which this appeal arises has been dismissed by the Courts below, on the ground that the leave granted to the plaintiff in a previous suit to institute a fresh suit was improper.

2. The Courts below proceeded upon the view taken in the case of Kali Prasanna Sil v. Panchanan Nandi Chowdhury 33 Ind. Cas. 670 : 23 C.L.J. 489 : 20 C.W.N. 1000 : 44 C. 367, the same case in 20 Calcutta Weekly Notes, 1000. But that case has been overruled by the Full Bench in Hridyanath Roy v. Ram Chandra Barua Sarma 58 Ind. Cas. 806 : 24 C.W.N. 723 : 31 C.L.T. 482 : 48 C. 133 (F.B.) where it was laid down that the Court trying the subsequent suit it not competent to enter into the question whether the Court which granted the plaintiff permission to withdraw the first suit with liberty to bring a fresh suit had properly made such order.

3. It is contended by the learned Pleader for the respondents that the plaintiff was allowed to withdraw the appeal and not the suit. But the order clearly states that it gave him liberty to bring a fresh suit and awarded the defendant costs of both Courts. Taking the order as a whole there is no doubt that the suit was allowed to be withdrawn and with liberty to bring a fresh suit.

4. The orders of the Courts below must accordingly be set aside and the case sent back to the Court of first instance for trial on the merits.

5. Costs to abide the result.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com