

(1924) 05 PAT CK 0023
In the Patna High Court

Ashrafilal Mahta and Others

APPELLANT

Vs

Surajmaya Mishrain

RESPONDENT

Date of Decision : 30-05-1924

Acts Referred:

Citation : AIR 1924 Patna 758

Hon'ble Judges : Ross, J; Das, J

Bench : Full Bench

Judgement

Das, J.—This application must succeed. A consent decree was passed in a suit on the 20th of November, 1920. Thereafter the defendant in that suit, the Opposite Party before us, instituted a suit, being suit No. 791 of 1922, against the plaintiff, the Petitioner before us, for setting aside the consent decree on the ground that it was obtained by fraud. That suit succeeded and the Petitioner thereupon asked the court to proceed with suit No. 216 of 1920 on the ground that the consent decree having been set aside he was entitled to proceed with the suit. The learned Munsiff dismissed this application holding that "the plaint is now dead and" that "it cannot be received without any formal judicial order of a competent court to that effect."

2. The learned Vakil appearing on behalf of the Opposite Party has relied upon the decision in Bhimaji Govind v. Rakmabai (1885) 10 Bom. 338. But he has very properly given us a list of cases against him. Of these cases there is one which was decided by the Judicial Committee in 1876, viz., Khajooroonissa v. Rowshan Jehan (1876) 2 Cal. 184. In that case it was held that "the effect of setting aside the compromise was to remit both parties to their original rights." There is a large number of cases on this point but it is unnecessary to refer to them; and, it is sufficient to say, that we are bound by the decision of the Judicial Committee and that there is no justification for the order passed by the court below.

3. The order of the Munsiff is accordingly set aside and he is directed to proceed with the hearing of suit No. 216 of 1920. There will be no order as to costs.

Ross, J.

4. I agree.