

(1923) 06 AHC CK 0009
In the Allahabad High Court

Dewari Gajraj Singh

APPELLANT

Vs

Sri Thakurji Maharaj Radha Rawanji

RESPONDENT

Date of Decision : 25-06-1923

Acts Referred:

Citation : (1923) 06 AHC CK 0009

Final Decision : Dismissed

Judgement

Ryves, J.—This appeal raises a somewhat interesting point of law. In 1919 Buddhu brought a suit in the Court of the Munsif of Phaphund, in the Mainpuri District, against the present appellant in which he stated that the property in suit belonged to an idol, Sri Thakurji Maharaj Radha Ramanji, and that he was manager on behalf of the said Thakurji and he sued for possession. Various defences were raised to that suit and it was dismissed by the Munsif in a very short judgment. He held that as the property belonged to the idol the plaintiff could not maintain the suit. Then, on the 3rd issue, namely, whether a shedari in dispute belongs to the temple or to the defendant he found as follows: "The allegation that the shedari in dispute belongs to the temple is unsubstantiated. The plaintiff could produce one witness and himself and he refrained from giving any evidence at all. The issue is decided in the negative. And the order as that the suit be dismissed with costs. The plaintiff appealed to the District Judge of Mainpuri and long with the appeal presented an application praying that, for reason of the formal defect in the pleadings the plaintiff be allowed to withdraw the suit and bring a fresh suit. The order of the District Judge on the appeal ran as follows: Ordered that the appeal be allowed and the decree of the Court below be set aside and plaintiff be permitted to withdraw the suit, with permission to file a fresh suit." Thereafter the present suit was filed. Sri Thakurji Maharaj Radha Ramanji was described as the plaintiff suing through Buddhu Singh, manager. The suit was against the same defendant and for the very same reliefs as had been sought in the previous suit. Both Courts have decreed the suit. In second appeal it is urged that the District Judge of Mainpuri had no jurisdiction at all in appeal to pass order under O. XXIII, Rule 1 of the CPC or, alternatively, that

he had no jurisdiction under the circumstances to pass, the orders-which he did, and that, therefore, his order can be treated as a nullity and disregarded and the original decision of the Munsif in the former case operates as res judicata in this case. That an Appellate Court has power to pass orders under Order XXIII. Rule 1, has been decided by a Bench of this Court which is binding on me in Afzal Begam v. Akbari Khanam 28 Ind. Cas. 857 : 37 A. 326 : 13 A.L.J. 444. Two cases have been cited by the learned Counsel for the appellant to the effect that an order of withdrawal unless it complies strictly with the provision of Order XXIII, Rule 1 is void and can be treated as a nullity. They are Rami Singh v. Janak Singh 56 Ind. Cas. 697 : 1 P.L.T. 300 : (1920) Pat. 232 : 2 U.P.L.R. (Pat.) 121 and Kali Prasanna Sil v. Panchanan Nandi 33 Ind. Cas. 670 : 44 C. 367 : 20 C.W.N. 1000 : 23 C.L.J. 489. These two cases are exactly similar but they need not be further considered because the former case, which was a Patna case, was expressly overruled in Raj Kumar Mahton Vs. Ram Khelawan Singh, and the latter in Hridyanath Roy v. Ram Chandra Barua Sarma 58 Ind. Cas. 806 : 48 C. 138 : 24 C.W.N. 723 : 31 C.L.J. 482 . It seems to me that in this case the Judge had jurisdiction to pass the order which he did which was one allowing the appeal. The order allowing the appeal rendered the order of the Munsif dismissing the suit as wholly inoperative and, therefore, that decision cannot be considered for any purpose. It is dead and gone. The plaintiff had been given leave to bring a fresh suit. This is not perhaps quite accurate because the suit is the same. The only difference is that the mistake made in the former suit, in it was a mistake, was that Buddhu called himself the plaintiff and sued on behalf of the idol claiming though not for himself but for the idol, was corrected, and the suit was brought strictly in conformity with the law as laid down by this Court, namely, that a suit shall be brought in the name of the idol through its manager. In my opinion the order of the District Judge having set aside the decision of the Munsif, that cannot operate as res judicata. I think the cases of Abdul Rahman v. Lal Behari A.W.N. (1885) 151 and Chhajju v. Khyali Ram 14 Ind. Cas. 175 : 9 A.L.J. 378 are in point. I, therefore, dismiss this appeal with costs including in this Court fees on the higher scale.