
(1930) 05 PAT CK 0014
In the Patna High Court

Dhori Ahir and Others

APPELLANT

Vs

Parmeshor Missir and Others

RESPONDENT

Date of Decision : 06-05-1930

Acts Referred:

Bengal Tenancy Act, 1885 — Section 37

Citation : AIR 1930 Patna 406

Hon'ble Judges : James, J;Chatterji, J

Bench : Full Bench

Judgement

James, J.—This appeal arises out of a suit for enhancement of rent, which was decreed by the Munsif of the First Court, Sasaram, whose decision was reversed on appeal by the District Judge of Shababad.

2. Early in 1927 the plaintiff instituted a suit for enhancement of the rent pf this holding or a part of it, which he wished for with draw on 16th August 2927. The order of the Munsif was that the suit might be withdrawn, with permission to bring a fresh suit, if the defendant's costs were paid within 14 days, but that if the Costs should not be paid within that time the suit should stand dismissed. The costs were not paid with the result that the suit stood dismissed on 30th August 1927. In the meantime the suit with which we are now here concerned had been instituted on 25th August. The learned District Judge held that the order of the Munsif amounted to a dismissal of the suit on the merits and that Section 37, Ben. Ten. Act, applied to bar the institution of another suit for enhancement within 15 years.

4. Mr. Laehminarain Sinha on behalf of the appellant argues that the dismissal In August 1927 was not in any sense a dismissal on the merits. It is argued on behalf of the respondent that whether the dismissal was OD the merits or not the provisions of Order 23, Rule 1 should be applied to bar a -second suit based on the same cause of action. I do not consider that this is a case to which the provisions of Order 23 Rule 1 should be held to apply. These provisions would have applied to the suit if the costs had been paid in time;, but the order of the

Court was not that the suit should be dismissed on the merits if the costs were not paid in time but merely that the suit should be dismissed; and the suit was accordingly dismissed for default.

5. The learned District Judge indeed suggests that the suit was dismissed on the merits; but it does not appear to us possible to hold that the suit was dismissed otherwise than for default. There would be no meaning in the expression "on the merits" if a suit dismissed in this way, manifestly for default, were to be regarded as a suit dismissed on the merits, I would accordingly allow this appeal, set aside; the order of the lower appellate Court: and restore the order of the Munsif of Sasaram. The plaintiff will be entitled to his costs throughout.

Chatterji, J.

I agree.