

(1912) 05 CAL CK 0044
In the Calcutta High Court

Hira Lal Bhattacharyya and Others

APPELLANT

Vs

Joggeswar Bhattacharyya and Others

RESPONDENT

Date of Decision : 06-05-1912

Acts Referred:

Citation : 16 Ind. Cas. 733

Hon'ble Judges : Beachcroft, J; Ashutosh Mookerjee, J

Bench : Division Bench

Judgement

1. The plaintiffs-respondents Commenced this suit for recovery of possession of a small, parcel of land. The defendants denied their title and resisted their claim. On the 11th May 1910, the plaintiffs made an application in which they stated that they were prepared to abide by the special oath of the third defendant if the latter agreed to take such an oath. This offer was accepted on behalf of all the defendants and such of them as were present in Court further stated that if the third defendant could not be produced in Court two days later, they would abandon their defence. On the 13th May, the third defendant appeared in Court and offered to take the special oath. The plaintiffs, how-ever, applied for leave to withdraw from the suit with liberty to bring a fresh suit upon the same cause of action. This application was granted, notwithstanding the protest of the defendants. An application was subsequently made to this Court to discharge the order as improperly made and on the 6th January 1911, the order was cancelled by this Court. After the record had been received back in the Court of first instance on the 21st February 1911, the third defendant again offered to take the special oath. The plaintiffs, however, objected on two grounds, namely, first, that their application of the 13th May 1910 for leave to withdraw from the suit was equivalent to a withdrawal of the application of the 11th May 1910 by which they had offered to be bound by the special oath of the third defendant, and secondly, that in any event, they were entitled to withdraw from the application at that stage. The Court of first instance overruled these contentions. The result was that the third defendant took the special oath and the Court thereupon dismissed the suit. Upon appeal, the Subordinate Judge has held that the

plaintiffs were at liberty to resile from the position they had taken up on the 11th May and were not bound by the special oath taken by the third defendant. In this view, he has set aside the decree of the Court below and remanded the case to that Court for trial upon the evidence.

2. On behalf of the appellants, this order has been assailed as improperly made and it has been argued that the plaintiffs were not competent to withdraw from the offer made on the 11th May 1910 and accepted by the third defendant. In our opinion, there is no room for controversy that this contention is well founded. As has been repeatedly ruled, it is not open to parties, except for some good reason, to resile from an agreement to be bound by an oath, of either party, if there has been a complete proposal and acceptance. *Thoyi Ammal v. Subbaroya Mudali* 22 M. 234; *Umayammai v. Muthiah Nadar* 17 M.L.J. 99 : *Velayuda Goundan v. Narayanasami Goundan* 17 M.L.J. 536; *Ram Narain Singh v. Babu Singh* 18 A. 46 : A.W.N.(1895) 158; *Chiddu v. Kunwar Sen* A.W.N.(1906) 280 : 3 A.L.J. 564 : 29 A. 49 and *Abaji v. Bala* 22 B. 281. There is not the faintest shadow of a suggestion that in this case there was any good reason for the plaintiffs to withdraw from the offer to be bound by the special oath of the third defendant. Their conduct in substance has been deliberately obstructive, and they have successfully taken every step in their power to trifle with the Court and to prolong this litigation. But the learned Vakil for the respondent has suggested upon the authority of the decisions in the cases of *Mahabir Prasad Misr v. Mahadeo Dat Misr* 13 A. 386 : A.W.W.(1891) 143 and *Muhammad Zahur v. Chedalal* 14 A. 141 : A.W.N.(1892) 3 that even if it be held that the plaintiffs are bound by the special oath taken by the third defendant, yet the Court must consider whether the evidence completely disposes of the questions in controversy between the parties. It is not clear from the record that this view was put forward at any stage of the litigation. At the same time, we are of opinion that this is a matter which requires consideration. by the Court before the suit is dismissed *Thoyi Ammal v. Subbaroya Mudali* 22 M. 234.

3. The result is that this appeal is allowed, the order of the Subordinate Judge discharged, and the case remitted to the Court of first instance in order that that Court may proceed to determine the rights of the parties on the footing that the plaintiffs are bound by the special oath taken by the third defendant. In view of the conduct of the plaintiffs-respondents, we direct them to pay the defendants-appellants Rs. 170 as costs of this appeal.