

(1919) 04 PAT CK 0016
In the Patna High Court
Case No : Civil Revision No. 79 of 1919

Maharaja Kesho Prasad Singh

APPELLANT

Vs

Babu Shiva Saran Lal

RESPONDENT

Date of Decision : 07-04-1919

Acts Referred:

Citation : (1919) 04 PAT CK 0016

Final Decision : Dismissed

Judgement

B.K. Mullick, J.—This matter arises out of a suit brought by Babu Shiva Saran Lal against the Maharaja of Dumraon for arrears of pension for the period August 1912 to August 1918. The plaintiff alleges that the pension is due upon an Ekrarnama executed in his favour by the late Maharani of Dumraon.

2. It appears that another suit claiming pension for an earlier period was decided in the trial Court against the plaintiff but was decreed in his favour on appeal in the High Court. In this suit the present Maharaja of Dumraon repudiated his liability to pay the pension on various grounds. But it was held in the High Court that the liability existed and could be enforced against the property of the Maharani which was in the hands of the Maharaja. Against the judgment and decree of the High Court an appeal is now pending before their Lordships of the Privy Council.

3. In the present suit it does not appear that any issues have been framed, but an application was made before the trial Court asking that the provisions of section 10 of the CPC of 1908 should be put in force and that the Court should not proceed with the trial of the suit till the judgment of their Lordships of the Privy Council is delivered in the appeal pending before them.

4. The Subordinate Judge dismissed the application before him on two, grounds. The first ground was that the application was premature inasmuch as it could not be said that the trial could commence before any issues were framed and that the proper stage for making an application u/s 10, Civil Procedure Code, was

after the defendants had disclosed their defence and issues had been framed for trial.

5. The second and more important ground upon which the learned Subordinate Judge proceeded was that section 10 was not applicable, as the claim in the present case related to a period subsequent to the claim in the former case, and the learned Subordinate Judge relied upon the case of *Bepin Behary Mozumdar and Others Vs. Jogendra Chandra Ghosh and Another*, . In my opinion the decision of the learned Subordinate Judge was correct.

6. It is conceded by the learned Counsel who appears on behalf of the petitioner that under the provisions of the Code of 1882 unless the same relief had been claimed in the present suit, the Court could not have refused to try it, but he contends that the law has been changed. In this connection it is not necessary to consider the effect of all the changes in section 10 as compared with the corresponding section in the Code of 1882; for our purpose it will be sufficient to consider only the effect of the omission of the words "for the same relief" in the present Code.

7. In the case of *Balkishan v. Kishan Lal* 11 A. 148 : A.W.N. (1889) 42 : 13 Ind. Jur. 309 : 6 Ind. Dec. (N.S.) 523 the decision turned upon the words "for the same relief" and the Court was obliged to hold that unless the reliefs were the same, it could not refuse to try the suit even though the matter in issue might be directly and substantially the same. *Balkishan's* case 11 A. 148 : A.W.N. (1889) 42 : 13 Ind. Jur. 309 : 6 Ind. Dec. (N.S.) 523 was one relating to *Malikana* for a period subsequent to that covered by a previous suit which was under appeal and it is contended before us that the present Code has expressly omitted the words "for the same relief" in order to overrule the view previously held and to enable the Court to stay the trial of a subsequent suit if the right or title to relief is under adjudication in a previously instituted suit. In my opinion, the omission of the words "for the same relief" does not necessarily indicate that this was the intention of the Legislature, What the section does intend is that if all the matters in dispute are substantially the same, then the fact that the relief claimed in the subsequent suit is not identical with the relief claimed in the previous suit shall not operate to enable the parties to continue the litigation. This was the view taken by their Lordships of the Calcutta High Court in *Bepin Behary Mozumdar and Others Vs. Jogendra Chandra Ghosh and Another*, above cited. That was a case for rent for a period subsequent to the period which was the subject-matter of a previous suit under appeal. Their Lordships of the Calcutta Court held that although the question of title was raised in both suits and decided in the first suit, it was not sufficient to attract the operation of section 10. In order to attract the operation of section 10 it was necessary that every matter in dispute should be directly and substantially in issue in the two suits. It is true that in the concluding portion of the judgment there is a passage relating to the decision of an issue which was left open in the suit. But that passage, in my opinion, does not affect the main ground on which the learned Judges declined to apply section

10.

8. The learned author Mr. Mulla in the last edition of his work on the CPC does give an illustration in the notes which would seem to assist the learned Counsel for the petitioner. But in my opinion it is not supported by any Judicial authority, and is inconsistent with the judgment of their Lordships of the Calcutta High Court.

9. In my opinion the learned Subordinate Judge was right in dismissing the application before him.

10. In the view we take it is not necessary to express any opinion on his first ground but if it were necessary to decide the point, my inclination would be to agree with the Subordinate Judge.

11. The application is dismissed with costs. Hearing fee three gold mohurs.

Jwala Prasad, J.

12. I agree to the order proposed.