
(1916) 01 CAL CK 0042
In the Calcutta High Court

Manmatha Nath Bose and Others

APPELLANT

Vs

Sreemati Krishna Pramada Dasi

RESPONDENT

Date of Decision : 05-01-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23, Order 6 Rule 17, Order 6 Rule 18, 99

Citation : 32 Ind. Cas. 906

Hon'ble Judges : Imam, J; Herbert Holmwood, J

Bench : Division Bench

Judgement

1. We do not think that this is a case for interference of this Court. The defendants themselves asked for a remand when the plaint was allowed to be amended, and as was pointed out by this Court in the case of Peary Mohan Mukherjee v. Narendra Krishna Mukherjee (1), the Law Reports show many cases in which amendments have been allowed by the Appellate Court and suits have been sent back for re-trial on amendment of the plaint even under the old Code. In the present CPC we may observe, firstly, that Section 564 has been omitted, and whatever might have been the view taken in a recent case, Nabin Chandra Tripathi v. Pran Krishna Dey 20 Ind. CAS. 39:18 C.L.J. 613: 41 C. 108, that opinion is contrary to the case of Zohra Bibi v. Zabeda Khatoon 7 Ind. Cas. 75; 12 C.L.J. 368, and the learned Judges did not act upon their own opinion but treated the mistake of the Subordinate Judge as a mere irregularity u/s 99 of the Code and held that the merits of the case were in no way affected by the remand. But even that case is strictly confined to Order XLI, rule. 23, and we do not agree that there are not and cannot be other provisions for remand under the Code of Civil Procedure; the new Rules 17 and 18, Order VI, admittedly render a remand necessary when the plaint is amended in appeal and the defendant desires to traverse the facts stated in the amendment. That there is power to remand, therefore, in case of amendment of the plaint is perfectly clear and there always has been this power on the authority of the case we have already cited Peary Mohan Mukherjee v. Narendra Krishna Mukerjee 5 C.W.N. 273

and the numerous other cases cited.

2. The defendant's objection to this remand seems to be that it is unnecessary and puts the parties to inconvenience, because he admits the facts which the Subordinate Judge held ought to be added to the plaint by way of amendment. That might very well be so, had it not been that he himself asked for the remand. He cannot be heard in appeal against the decision in his favour. Moreover, the opposite side were perfectly willing to go on with the case before the Subordinate Judge, but having gone to the extent of amending their plaint and putting in fresh proceedings before the Munsif they are not now prepared to support the defendant's request that the Subordinate Judge should decide the matter himself. We do not quite see how this appeal came to be made, but in any case it is incompetent, and must be dismissed with costs.

3. This judgment will also govern Second Appeal No. 1701 of 1914.

4. The question of jurisdiction having been decided in the course of our judgement the Rules (NOS. 845 and 846 of 1914) are discharged.