

(1912) 01 AHC CK 0015
In the Allahabad High Court

Shankar Lal

APPELLANT

Vs

Mahtab Dei

RESPONDENT

Date of Decision : 20-01-1912

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1

Citation : 14 Ind. Cas. 414

Hon'ble Judges : Griffin, J

Bench : Single Bench

Judgement

Griffin, J.—This was a suit brought by the plaintiff for possession of a house by ejectment of the defendant. Evidence was adduced by both sides. After the time fixed for the production of documents had passed, the plaintiff tendered in evidence a certain document purporting to be a title-deed. The Court refused to admit it in evidence on the ground that it had been produced too late. The suit was dismissed. The plaintiff appealed, one of the grounds taken being that the first Court ought to have admitted in evidence the document. Arguments were heard before the Court below, but before its decision, the plaintiff applied for permission to withdraw the suit under the provisions of Order XXIII, Rule 1 of the Code of Civil Procedure. The Court below granted the application. The Court below was of opinion that the plaintiff ought to have been given an opportunity to withdraw, for even if her document of title were produced in time, her suit might have failed by reason of a formal defect in the frame of the suit inasmuch as the sons of the plaintiff should have been impleaded as per forma defendants, and that some latitude must also have been allowed to the plaintiff who is a purda-nashin -lady. Against the order of the Court below allowing the plaintiff's application to withdraw from the suit, this present application for revision has been filed. The grounds taken are that the order of the lower Court was contrary to law; that the order of the lower Court had seriously prejudiced the applicant, and that the Court below had no jurisdiction at that late stage of the appeal to pass the order complained of. A preliminary objection is raised against the hearing of the application on the ground that no application lay. I do not think

there is any force in this objection. The first and third grounds may be taken together. It is not denied that under certain circumstances a Court of Appeal has power to allow the plaintiff to withdraw. It is contended that in this case the Court below should not have exercised that power. The rulings reported in *Khorda Co. Ltd. v. Durga Charan Chandra* 11 C.L.J. 45 : 5 Ind. Cas. 187; *Mabulla Sardar v. Hemangini Debi* 11 C.L.J. 512 : 6 Ind. Cas. 629 and *Mahipat Shamila v. Nathu Vithoba* 11 Bom. L.R 1103 : 4 Ind. Cas. 252 : 33 B. 722 have been placed before me. In the latter ruling an application for revision was granted on the ground that the Court should not allow a withdrawal after the parties had adduced their evidence--if such withdrawal prejudiced the defendant. In revision, I ought to see whether the order passed by the Court below was advisable for the ends of justice between the parties and not so much whether one party or the other had been prejudiced. The plaintiff's suit has been allowed to be withdrawn and the defendant has been allowed his costs. If the plaintiff institutes a new suit on the same cause of action, the defendant can produce his evidence again in the lower Court. The fact that he produced his witnesses at the first hearing of the case will not impair the value of their evidence. In my opinion, the order passed by the lower Court cannot, under the circumstances of the case, be called an improper order. In exercising its discretion, the Court has allowed the suit to be withdrawn, and the reasons given by the Court below for so exercising its discretion appear to me to be sufficient. I, therefore, dismiss the application with costs.