

(1910) 04 CAL CK 0028
In the Calcutta High Court

Sri Adwaitanand Tirthoswami

APPELLANT

Vs

Basudeo Nand and Others

RESPONDENT

Date of Decision : 20-04-1910

Acts Referred:

Citation : 6 Ind. Cas. 208

Hon'ble Judges : Sharf-ud-din, J; Brett, J

Bench : Division Bench

Judgement

1. This appeal is against the judgment and decree of the lower appellate Court setting aside the judgment and decree of the Deputy Collector. The grounds on which the lower appellate Court has set aside the judgment and decree of the Court of first instance are purely technical. It appears that the 24th October 1906 was fixed as the date for the hearing of the case and that on that date the Deputy Collector was absent from the headquarters in camp. On the 16th October, the plaintiff-appellant put in an application through his agent praying that the case might be postponed as he had not been able to obtain certain necessary papers. That application was forwarded to the Deputy Collector in camp and was placed before him on the 24th October. On that date, however, the plaintiff and the defendants failed to appear and the Deputy Collector, apparently on the representation of the two mukhtears who were not employed in the case that no one on behalf of the plaintiff was present, struck off the case and dismissed it for default. Almost immediately afterwards, as appears from the order-sheet, the son of the agent of the plaintiff appeared and stated that he had been directed by his father to appear and to ask that order might be passed on the application which had been presented on the 16th October 1906. The Deputy Collector, on receipt of this information, held that his previous order dismissing the suit was the result of misrepresentation and mistake, cancelled his order and postponed the/Case for hearing to another date. The case was afterwards taken up and evidence recorded and the suit was decreed in favour of the plaintiff. From the judgment of the Court of first instance it appears that no objection was taken during the trial to the cancellation of the order of dismissal, which, order

had been passed by mistake on the 24th October. But the learned District Judge has decreed the appeal and set aside the judgment and decree of the Court of first instance on the ground that that Court had no authority after it had once dismissed the suit to revive and hear it.

2. In our opinion the learned District Judge is wrong in the view he has taken. The Deputy Collector's first order appears to have been passed under the influence of misrepresentation and by mistake. It was cancelled on that account by the Deputy Collector almost immediately after it had been passed. In our opinion the Deputy Collector had full power under the law and in the circumstances to cancel the order and to try the suit. The same view has been taken by this Court in the case of Udit Chobey v. Rashika Prosad Upadhyaya 6 C.L.J. 662 : 3 M.L.T. 41.

3. We set aside the judgment and decree of the lower appellate Court and direct that the appeal be sent back to that Court in order that it may be disposed of in accordance with law.

4. We make no order as to costs.

5. The Court-fees paid by the appellant will be refunded to him.