

(1906) 08 BOM CK 0012

In the Bombay High Court

Case No : Civil Application No. 456 of 1905

The Secretary of State for India

APPELLANT

Vs

Bhagirathibai

RESPONDENT

Date of Decision : 03-08-1906

Acts Referred:

Citation : (1906) 8 BOMLR 689

Hon'ble Judges : K.C.I.E., C.J.;Lawrence Jenkins, J;Aston, J

Bench : Full Bench

Judgement

Lawrence Jenkins, K.C.I.E., C.J.—The question submitted to this Full Bench as amended runs as follows :-

Whether, if a plaintiff withdraw from a suit without permission u/s 373 of the CPC as the result of a compromise by which he obtained a substantial part of the relief claimed, he succeeds in the suit within the meaning of Section 411, or fails in the suit within the meaning of Section 412 of the CPC ?

2. The decisions of this Court in *The Collector of Kanara v. Krishnappa Hedge* ILR (1890) 15 Bom. 77 and in *Bai Chandaba v. Kuver Saheb Bapu Saheb* ILR (1893) 18 Bom. 464 necessitated this reference.

3. Section 411 provides that "If the plaintiff succeeds in the suit, the Court shall calculate the amount of Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject matter of the suit...."

4. Section 412, on the other hand, provides that "If the plaintiff fails in the suit, or if he is disappointed, or if the suit is dismissed u/s 97 or 98, the Court shall order the plaintiff, or any person made, u/s 32, co-plaintiff to the suit, to pay the Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper...."

5. It is, we think, clear that the words "in the suit" were purposely inserted in

both these sections, and that they were so inserted" to limit the success or failure there specified to the success or failure in the suit as distinct from success or failure outside the suit.

6. If a plaintiff withdraws from a suit, then u/s 373 he shall be liable for such costs as the Court may award, and shall be precluded from bringing the suit on the same matter or in respect of the same matter.

7. It cannot be said, that where a plaintiff withdraws from a suit without obtaining any advantage by way of compromise outside the suit, that he has succeeded in the suit.

8. Nor do we think that it is a proper construction of Section 411 to say that a plaintiff succeeds in the suit where the withdraw at has been in consequence of an advantage gained by him outside the suit. The inconvenience of holding otherwise is obvious.

9. Thus if a plaintiff brought a suit for possession: of land and then withdrew the suit as the result of a compromise whereby he received a sum of money, and he were to be regarded as having been succeeded in the suit, no order u/s 411 would lead to any practical result. But if the plaintiff, in the circumstances with which we are concerned in this case, has not succeeded in the suit, has she failed in the suit? I think she has. It may be that she has obtained a substantial advantage; but it has not been in the suit. The only order in the suit has been that which is equivalent to a dismissal of the suit.

10. We hold that the plaintiff has failed in the suit, notwithstanding that there has been a compromise under which she has derived a benefit, and, in our opinion, in answer to the reference we should say that the plaintiff, in the circumstances, has failed in the suit within the meaning of Section 412 of the Code of Civil Procedure. The case will be sent back to the Division Bench with that answer.