

Sri Bhola Prasad vs Srimati Jagpala And Anr. on 1 September, 1954

Equivalent citations: AIR1955ALL384, AIR 1955 ALLAHABAD 384

ORDER

Randhir Singh, J.

1. This is an application in revision against an order passed by the Munsif, South Lucknow, refusing to stay a suit on an application of the applicant under Section 10, Civil P. C.

2. It appears that the opposite party filed a suit for recovery of rent at a certain rate. The suit was contested on the ground that the rate of rent claimed by the plaintiffs was not the agreed rent. The contention of the defendant was repelled and the suit was decreed. The defendant-applicant then went in revision and that revision is pending before this Court.

In the meantime another suit for the recovery of rent for subsequent years for ejectment of the defendant-applicant was instituted. The defendant-applicant then made an application for the stay of this later suit under Section 10, Civil P. C., but the application was rejected by the learned Munsif on the ground that Section 10 of the Code had no application to the facts of the case. He has now come up in revision,

3. Reliance has been placed on the reported case -- 'Sahdeo Singh v. Mt. Chanun Kuer', AIR 1928 Oudh 355 (A) in which it was held that a revision against an order passed under Section 10, Civil P. C., could be entertained as it should be held to be a 'case decided'. This view was, however, not accepted by this Court in -- 'Madan Mohan v. Kamla Narain Dube', AIR 1934 All 520 (B). The Avadh ruling has been discussed in this reported case and has been dissented from. This decision in AIR 1934 All 520 (B) is based on an earlier Full Bench decision of this Court. The current view, therefore, of this Court is that an order passed under Section 10, Civil P. C., is not a case decided and does not, therefore, attract the provisions of Section 115, Civil P. C. The application cannot, therefore, be entertained.

4. Even on merits, the application has not force. The earlier suit was for recovery of rent for a certain period and the subsequent suit is for recovery of rent for the subsequent years and for ejectment. It has been held in-- 'Gargi Din v. Debi Charan', AIR 1929 All 805 to in a similar case for recovery of rent that the matter la issue in the two suits would not be deemed to be the same and Section 10, Civil P. C., would not be applicable.

5. The application for revision is, therefore, dismissed.