

Allahabad High Court

Nannhu And Ors. vs Roshan Singh on 20 April, 1923

Equivalent citations: 74 Ind Cas 112

Author: Daniels

Bench: Daniels

JUDGMENT Daniels, J.

1. This is an application for revision of an order of the learned Munsif of Shikohabad granting permission to withdraw a suit under Order XXIII, Rule 1, with permission to file a fresh suit. The application for withdrawal was made after a considerable amount of evidence had been recorded on both sides. The reasons given for the application were two (1) The non-joinder of a person who is alleged by the defendants to be a co-sharer in the holding in dispute to be a necessary party (2) The fact that a Patwari whom the plaintiff wished to produce as rebutting witness had been won over by the other side.

2. For these reasons the plaintiff alleged that the suit was liable to fail and he asked for permission to withdraw it as stated above.

3. The second reason was admittedly not a proper reason for allowing withdrawal of the suit. The learned Munsif, however, has not acted on this reason; he has acted on the first reason, saying that in his opinion mis-joinder of parties was a formal defect coming within Order XXIII, Rule 1 and that as the defendants had themselves alleged Murlidhar, the person in question, to be a necessary party they were not in a position to dispute the point. On the merits I consider that the order passed by the learned Munsif was an unfortunate order. The formal defect of non-joinder of Murlidhar might easily have been cured by impleading him which could have been done at any time before the case was decided. It is probable, therefore, that the real reason for the application was the one of which the Munsif takes no notice in his order. The question which arises in this case and which has been argued before me is whether, under these circumstances, any revision lies. There is ample authority for the proposition that this Court has power to revise such orders where the lower Court has not exercised a judicial discretion in passing them. There is equally strong authority including the cases of Ratan Lal v. Muhammad Hamidullah Khan (i) and Jhunku Lal v. Bisheshar Das (2) for the proposition that where the lower Court has applied its mind to the question whether sufficient cause under Order XXIII, Rule 1 is established, no revision lies whether its actual decision is right or wrong. It is clear that the present case comes within the latter principle. The Court's decision may have been wrong, in my opinion it was, but the learned Munsif undoubtedly did apply his mind to the question whether there was a formal defect by reason of which the suit was liable to fail and came to the conclusion that there was not, therefore, hold that no revision lies and I dismiss the present application. Under the circumstances, I make no order as to costs.