

(1919) 06 AHC CK 0011

Allahabad High Court

Case No: None

Jamna Pershad

APPELLANT

Vs

Ram Dulare Lal and Kamta
Pershad

RESPONDENT

Date of Decision: June 19, 1919

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 47

Citation: AIR 1919 All 377 : 52 Ind. Cas. 187

Hon'ble Judges: Walsh, J; Ryves, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Ryves, J.

In this appeal one technical point of some difficulty has been pressed. Ram Dulare Lal filed a suit in 1914 against Kamta Prasad and his minor son Jamna Prasad to recover a sum of money in the Court of the Munsif. During the pendency of the suit Ram Dulare Lal had petitioned that Jamna Prasad, the minor, should be exempted from the array of defendants. This was done. The suit was decreed against Kamta Prasad alone but it was staled in the decree that Jamna Prasad was exempted, the actual words being "bari kiya gaya", and he was to bear his own costs. In execution of that decree an objection was raised on behalf of Jamna Prasad to the effect that the property which had been attached as belonging to Kamta Prasad in fact belonged to him, and the execution Court upheld his objection because it appeared that the property stood recorded in the name of Jamna Prasad. Hence this suit for a declaration that the property was in fact the property of Kamta Prasad. It has been decreed in both Courts. The technical objection raised is that, inasmuch as Jamna Prasad was a party to the original suit, the objection raised by him being a party to the decree was final by reason of Section 47 of the CPC and it is not, open, therefore, to the plaintiff to bring the suit. It seems to me, personally a little difficult to hold

that, although Jamna" Prasad had been expressly excluded from that suit by Ram Dulare Lal, he still must be held to be a party to that suit and, therefore, a party to the decree. However, there is authority in *Data Din v. Nanku* 47 Ind. Cas. 864 : 16 A.L.J. 752 which though the facts are different, nevertheless points in this direction. On the other hand, there is a Full Bench ruling in *Vaddadi Sannamma v. Koduganti Radhabhayi* 43 Ind. Cas. 935 : 41 M. 418 : 22 M.L.T. 532 : 34 M.L.J. 17 : (1918) M.W.N. 23 : 7 L.W. 237pc which certainly does fully support the contention of the appellant. It seems to me, however, that in this case the findings of fact render the application of Section 47 of the Code inapplicable. In effect this suit is to get a declaration that the property has been entered in the name of Jamna Prasad as the outcome of a family conspiracy and the finding is that this is so. Under these circumstances, it seems to us on the facts as found that the suit was rightly decreed and the appeal must fail with costs including, in this Court, fees on the higher scale.

Walsh, J.

2. I agree.

3. We dismiss this appeal with costs including in this Court fees on the higher scale.