

(1877) 07 AHC CK 0004

Allahabad High Court

Case No: None

Dular Chand

APPELLANT

Vs

Balram Dass and
Others

RESPONDENT

Date of Decision: July 16, 1877

Citation: (1875) ILR (All) 453

Hon'ble Judges: Turner, J; Pearson, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. The appellant was badly advised by his pleaders in the Court below to file his plaint in his sole name and not also in the name of the other partners in the firm, for he had no sole cause of action against the respondents. When the objection was taken by the respondents in the Court below, the Court should either have made the other partners parties, or, on this ground, have dismissed the suit. Even when the defect was pointed out, the appellant, instead of praying the Court to amend the plaint, put in a petition on behalf of the other partners intimating their willingness that the suit should proceed in the sole name of the appellant. The Judge was in error in holding that a defect of which the respondents complained and which, if it affected any party to the suit, affected them could be thus cured.

2. The appellant's pleaders in this Court at once recognised the position in which their client was placed, and have preferred a petition praying that the other partners may now be made parties. Although in some instances parties have been added by this Court in the stage of appeal, yet, seeing that the appellant elected to go to trial and the case was decided in the Court below without amendment of the proceedings, we are of opinion that in this instance we ought to refuse the application and allow the objection.

3. We shall therefore dismiss the appeal, affirming the decree of the Court below, not on the grounds on which that decree was passed, but on the preliminary ground that all the necessary parties were not joined as plaintiff's, and that the appellant has shown no sole cause of action. The appellant and his partners may of course bring a fresh suit.