
(1876) 12 AHC CK 0004

Allahabad High Court

Case No: None

Imam Baksh and Others

APPELLANT

Vs

Ilahi Baksh and Others

RESPONDENT

Date of Decision: Dec. 16, 1876

Citation: (1875) ILR (All) 324

Hon'ble Judges: Robert Stuart, C.J; Pearson, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

1. As to the first plea, it would seem that the reason for which the former suit was withdrawn was that a fresh suit might be brought which should include a portion which had been omitted before of the claim arising out of the cause of action, and the permission to bring the new suit must be reckoned to be permission to supply the former omission. This being so, we are of opinion that the additional portion of the claim in this suit is not barred by Section 7, Act VTII of 1859. A similar view was taken in special appeal case No. 180 of 1870, decided by a Bench of this Court on the 28th April last.*

-----Foot Note-----

* In that case the application for permission to withdraw the former suit was based on the ground that a portion of the claim arising out of the cause of action had by mistake been omitted to be included in the plaint with which that suit had been commenced, and on that ground permission for the withdrawal of the suit and to bring a fresh suit was accorded. Under these circumstances the Court (Pearson and Spankie, JJ.) was of opinion that it would not be fair or reasonable to hold that the aforesaid portion of the claim could not lie entertained in the fresh suit, although it might be true that the defect in the former plaint might have been amended without recourse to the provisions of Section 97 of Act VIII of 1859.