
(2006) 10 ADJ 270 : AIR 2007 All 112

Allahabad High Court

Case No: None

Jai Prakash

APPELLANT

Vs

Rajendra Prasad and
Others

RESPONDENT

Date of Decision: Nov. 1, 2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 23 Rule 3

Citation: (2006) 10 ADJ 270 : AIR 2007 All 112

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Tarun Agarwala, J.

Hoard Sri. ML K. Gupta, the learned Counsel for the petitioner.

2. This writ petition is being disposed of at the admission stage itself without issuing notice to the defendants-respondents.

3. The petitioner is the plaintiff and had instituted a suit against the defendant for a permanent prohibitory injunction restraining them from

transferring the property in question, The plaintiff alleged that he is owner of the property in question on the basis of inheritance. During the

pendency of the suit, the plaintiff came to know about the existence of the sale deed which is alleged to have been issued by his father, in his

favour, and, therefore he moved an application for the withdrawal of the suit with a liberty to file a fresh suit bringing this fact about the execution of

the sale deed in the subsequent suit. This application was partly allowed by the trial Court. The trial Court permitted the petitioner to withdraw the

suit but did not grant liberty to file a fresh suit. The plaintiff filed a Misc. Appeal which was also rejected as not maintainable. Consequently, the

writ petition.

4. The application for the withdrawal of the suit was filed under Order XXIII, Rule 3 of the CPC which reads as under:

3. Compromise of suit.- Where It Is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement

or compromise, (in writing and signed by the parties) or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-

matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance

therewith (so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement compromise or satisfaction is the same as

the subject-matter of the suit):

(Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide

the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit

to grant such adjournment.)

5. The trial Court has partly allowed the application for the withdrawal of the suit but did not grant any liberty to the petitioner to file a fresh suit on

the ground that there was no formal defect in the suit filed by the plaintiff.

6. In the opinion of the Court, the order of the trial Court is erroneous and is liable to be set aside. The trial Court has only considered the Cluse

(a) of Sub-clause (3) of Order XXIII of the CPC and has not considered Cluse (b). The plaintiff had given the reasons for the withdrawal of the

suit and on that basis, sought a liberty to file a fresh suit. The ground raised by petitioner has not been considered by the trial Court under Sub-

clause (b) of Clause 3 of order XXIII.

7. Further in the opinion of the Court, the trial Court could not split the prayer of the defendant in two parts. The relief claimed by the plaintiff was

a composite relief, namely, withdrawal of the suit with a liberty to file a fresh suit. This relief cannot be split up by the trial Court in two parts. The

application has to be allowed in toto or has to be rejected in toto. The Court has no Jurisdiction to split up the relief in two parts unless the plaintiff

gives his consent to that effect.

8. In Balbir Singh Vs. Smt. Sulochana Devi, this Court held that the Court could have accepted the application under Order XXIII, Rule 3 or

rejected it in toto but could not split up the prayer to grant one relief and refuse the order relief.

9. In view of the aforesaid, the impugned orders cannot be sustained and are quashed. The writ petition is allowed. The trial Court is directed to

reconsider the application afresh after hearing the parties in the light of the observations made above.

10. In the event, the defendants are aggrieved by this order, it is open to the defendants to move a recall application within four weeks from the

date of the presentation of a certified copy of his order before the Court below.