

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Wilkinson.

TIRUPATI AND OTHERS (DEFENDANTS), PETITIONERS,

and

MUTTU (PLAINTIFF), RESPONDENT.*

Civil Procedure Code, ss. 373, 622—Leave given by District Court on appeal to withdraw suit—Material irregularity.

A District Munsif having dismissed a suit, plaintiff appealed to the District Court, and, at the same time, applied to the Court to allow him to withdraw his suit with permission to bring a fresh suit on the same cause of action.

The District Court granted the application without assigning any reasons for its order :

Held, under s. 622 of the Code of Civil Procedure that the District Court had acted with material irregularity.

APPLICATION under s. 622 of the Code of Civil Procedure to set aside an order made by W. F. Grahame, Acting District Judge of Trichinopoly, in appeal suit No. 257 of 1885.

The facts necessary for the purpose of this report appear from the judgment of the Court (Kernan and Wilkinson, JJ.).

Parthasardi Ayyangar for petitioners.

Srinivasa Rau for respondent.

JUDGMENT.—This is an application under s. 622 of the Code of Civil Procedure presented by the respondents in appeal suit No. 257 of 1885 in the Court of the District Judge of Trichinopoly praying the Court to revise the order passed by the District Judge in the said appeal.

That was an appeal against the decree of the additional District Munsif of Trichinopoly in original suit No. 196 of 1885, a suit in which the District Munsif dismissed the plaintiff's suit with costs. The plaintiff appealed, and, at the same time, applied to the District Court by petition to be allowed to withdraw the original suit (No. 196 of 1885) with permission to bring a fresh suit on the same cause of action. The District Judge apparently, without serving notice upon the defendants, passed the following order on the petition—"Permission granted on the same terms as

* Civil Revision Petition 49 of 1887.

in the other appeal, No. 256 of 1885." What order was passed in appeal suit No. 256 of 1885 is not apparent; but in the printed paper the order passed in appeal suit No. 257 of 1885 is as follows:—"Withdrawn with permission to institute a fresh suit on the same cause of action. Each party to bear his own costs." From the wording of this order, which was passed five days before the order above quoted, it would appear that defendants were present.

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v.
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We are of opinion that the District Judge acted with material irregularity in permitting the plaintiff to withdraw his suit after a decree had been passed against him in the Court of first instance, without assigning any reasons for acceding to the plaintiff's application. The decree, passed by the Munsif has not been set aside and is still valid and operative against the plaintiff.

We set aside the order of the District Judge and direct him to hear and dispose of the appeal (257 of 1885). Costs in this Court will follow the result.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

MUHAMMAD MUSALIAR (PETITIONER),

and

KUNJI CHEK MUSALIAR AND OTHERS (DEFENDANTS).*

1887.
October 28.

Criminal Procedure Code, s. 147—Dispute concerning right to officiate in a mosque.

Where a dispute likely to cause a breach of the peace is shewn to exist concerning the right to perform a religious ceremony in a mosque the Magistrate may exercise the powers conferred by s. 147 of the Code of Criminal Procedure.

APPLICATION under s. 439 of the Code of Criminal Procedure to revise the proceedings of F. E. K. Wedderburn in charge of the Joint Magistrate's Office, North Malabar.

The facts are set out in the judgment of the Magistrate which was as follows:—

"In 1880 the kazi of the Quilandi Mapillas died and for the following two years there were two candidates for the post.

* Criminal Revision Case 400 of 1887.