

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Piggott.

KISHAN LAL (PLAINTIFF) v. SULTAN SINGH (DEFENDANT).*

1915
July, 2.

Civil Procedure Code (1908), order XI, rule 21—Procedure—Plaintiff under suspicion of suppressing documents relating to the matter at issue—Dismissal of suit.

Where a plaintiff had given the court strong grounds for believing that he was keeping out of the way documents which would throw light on the subject matter of the suit, but there had been no order made for discovery or inspection of documents, it was *held* that the court was not justified in dismissing the suit, purporting to act under order XI, rule 21, of the Code of Civil Procedure.

IN this case the suit of the plaintiff was thrown out as the first court was strongly of opinion that he had in his possession certain documents which would throw light on the matter in dispute. A visit was paid to his house, but nothing bearing on the case was found there. The other side had obtained no order for discovery, but the court dismissed the suit, purporting to act under order XI, rule 21, of the Code of Civil Procedure. The lower appellate court confirmed the decree. The plaintiff appealed.

Dr. *Surendra Nath Sen*, for the appellant.

The respondent was not represented.

RICHARDS, C. J., and PIGGOTT, J. :—This appeal arises out of a suit brought to recover money alleged to be due on foot of four different mortgages. In the court of first instance the learned Munsif was strongly of opinion that the plaintiff had in his possession or power certain documents which would throw light on the matter in dispute. With the consent of the plaintiff a visit was paid to the latter's house, and a number of books were found, but most of them likely to have a bearing on the case were not there.

After examining the plaintiff, the court dismissed the suit, purporting to do so under the provisions of order XI, rule 21. The lower appellate court confirmed the decree of the court of first instance. On the real merits of the case we do not feel much sympathy with the plaintiff. There is strong ground for suspecting that he was keeping back books and documents which he ought to have produced. The question, however, which we have to decide is whether the court was entitled under the

* Second Appeal No. 974 of 1914, from a decree of F. S. Tabor, Additional Judge of Farrukhabad, dated the 3rd of April, 1914, confirming a decree of Piari Lal, Munsif of Kanauj, at Sarai Miran, dated the 30th of January, 1913.

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circumstances to dismiss the suit in the way it did. Order XI, rule 21, is as follows :—“ Where any party fails to comply with any order to answer interrogatories, or for discovery, or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution.” The rule concludes :—“ and the party interrogating, or seeking discovery, or inspection may apply to the court for an order to that effect and an order may be made accordingly.” If we look to the earlier rules of the same order it is quite clear that the learned Munsif and the lower appellate court misapplied the rule. If a party wishes to get what is called “ discovery of documents ” from the other side, he makes an application under rule 12 asking the court to order the other side to make discovery on oath of the documents which are or which have been in his possession or power relating to the matters in question. If the court thinks fit, it makes an order for discovery. The party upon whom this order of discovery is made is bound to comply with the order. The penalty for not complying with the order is that which is specified in order XI, rule 21. Just in the same way after a party has admitted the possession of a document, the court can make an order for inspection, and if the court’s order is disobeyed, the party complaining of the disobedience can apply for the enforcement of the order according to the provisions of order XI, rule 21. In the present case there was no order for discovery or inspection. We may point out to the court below that if it was of opinion that the party was keeping back documents, the court was entitled to draw adverse inferences against the party withholding or keeping back documents. In our opinion the court was not entitled to dismiss the suit under the provisions of order XI, rule 21. We accordingly allow the appeal, set aside the decree of both the courts below, and remand the case to the court of first instance through the lower appellate court, with directions to restore the case under its original number in the file and to proceed to hear and to determine the same according to law. As we think that the appeals were entirely due to the conduct of the plaintiff we make no order as to costs.

Appeal allowed and cause remanded.