

returned the plaint for presentation to the proper court. It seems to us that the trial court could certainly have returned the plaint to the plaintiff on finding that it had no jurisdiction to try the suit, but did not do so. In the same way the appellate court, we think, could have done what the trial court could have done, and we think under the circumstances that this was the proper procedure for the court to have adopted. Under the circumstances we allow the appeal and direct the learned District Judge to order the plaint to be returned to the plaintiff for presentation to the proper court. The respondents will get their costs of this appeal.

*Appeal allowed.*

*Before Mr. Justice Stuart and Mr. Justice Kanhaiya Lal.*

ARJUN SINGH (DEFENDANT) *v.* MUSAMMAT PARBATI (PLAINTIFF).\*

*Civil Procedure Code (1908), section 144(2)—Suit for damages by a defendant to prior suit—Injury to property by reason of former suit—Costs no adequate compensation.*

1922  
May, 25.

A dispute between the widow of a deceased Hindu and a person who alleged that he was the adopted son of the deceased was referred to arbitration. The arbitrator decided, *inter alia*, that half of the debts owed to the deceased should be assigned to the widow and half to the alleged adopted son. The latter took proceedings to set aside the award, in which he was successful in the first court, but on appeal the High Court restored the award. Meanwhile during the period in which the award, owing to the action taken by the alleged adopted son, remained in abeyance, several of the debts became time-barred. The widow then sued to recover special damages on this account:

*Held* that the damages incurred were of a special nature and could not be compensated by an order for costs alone. The suit was properly brought and was not barred by section 144 of the Code of Civil Procedure. *Quartz Hill Consolidated Gold Mining Co. v. Eyre* (1) referred to. *Mohini Mohan Misser v. Surendra Narayan Singh* (2) not followed.

THE facts of this case are fully stated in the judgment of the Court.

Munshi Narain Prasad Ashthana and Pandit Shambhu Nath Chaube, for the appellant.

Mr. A. P. Dube, for the respondent.

STUART and KANHAIYA LAL, JJ. :—The facts of the suit out of which this appeal arises are these. Ganga Prasad Tiwari died in Mainpuri in 1911. He left a widow Musammat Parbati. Arjun Singh claimed to be his adopted son. Musammat Parbati set up that Arjun Singh was not the

\* Second Appeal No. 135 of 1921, from a decree of Shekhar Nath Banerji, District Judge of Mainpuri, dated the 13th of September, 1920 confirming a decree of Ragnunath Prasad, Subordinate Judge of Mainpuri, dated the 18th of July, 1918.

(1) (1889) L. R., 11 Q. B. D., 674.  
(2) (1914) I. L. R., 42 Calc., 550.

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adopted son of Ganga Prasad. On the 8th of October, 1911 Musammat Parbati and Arjun Singh executed an agreement in writing by which they undertook to refer their disputes to the arbitration of a certain Dambar Lal. Dambar Lal accepted the arbitration and made an award on the 8th of November, 1911 by which he awarded a moiety of the debts due to the deceased to Arjun Singh and the remaining moiety to Musammat Parbati. He awarded Musammat Parbati a life interest in other property. Arjun Singh instituted a suit on the 6th of May, 1912 against Musammat Parbati for a declaration that the award in question was of no effect as against him and that he was the adopted son of Ganga Prasad and the owner of the entire property left by the latter.

The learned Subordinate Judge of Mainpuri decreed the suit in his favour by a judgment of the 31st of March, 1913 and Musammat Parbati appealed to the High Court which, on the 16th of November, 1915 found that the award was a good and binding award and dismissed Arjun Singh's suit.

The present suit has been brought by Musammat Parbati against Arjun Singh for damages sustained by her in consequence of his suit. The lower appellate court has decreed her relief to a certain extent. It has allowed her compensation in respect of the bonds which became time-barred between the 31st of March, 1913 and the 16th of February, 1915 the period during which she was precluded from suing on the bonds owing to the existence against her of the judgment of the Subordinate Judge which was eventually set aside. Arjun Singh appeals to this Court on a prayer that the whole suit of Musammat Parbati should stand dismissed. Musammat Parbati files *cross-objections* requesting that she should be granted relief more than was allowed her by the lower appellate court.

The first plea taken by Arjun Singh is that no such suit as that brought by Musammat Parbati can lie. In support of this plea his learned counsel relies in the main on a decision of a Bench of the Calcutta High Court in *Mohini Mohan Misser v. Surendra Narayan Singh* (1). The facts in that case were that Mohini Misser had sued Surendra Narayan Singh for an injunction restraining the latter from erecting an indigo factory on certain land. A temporary injunction

(1) (1914) I. L. R., 42 Cal., 550.

was given to the plaintiff, and finally a mandatory injunction was given to him by the trial court. That mandatory injunction was set aside by the District Judge but restored by the High Court of Calcutta. Their Lordships of the Privy Council subsequently decided on appeal that the plaintiff was entitled to no relief and dismissed the suit. The defendant then sued the plaintiff for damages in respect of the loss that he had undergone owing to his inability to carry on the indigo business during the period that he was restrained under the orders of the trial court and the High Court. The Bench decided that no such suit for damages could lie. We regret we are unable to accept the view of the law taken by the learned Judges in deciding that case. Great stress was laid by them upon the observations of BOWEN, L. J., in *Quartz Hill Consolidated Gold Mining Co. v. Eyre* (1). We have looked to the decision of the court of appeal in that case for authority, but we do not interpret the authority of that case as it has been interpreted in the Calcutta case to which we have referred. We find it, on the contrary, to support the conclusion that such a suit as this does lie. It was laid down therein that the mere failure of a litigant to establish his claim to a relief in a civil suit does not necessarily—in fact does not usually—give the successful party a cause of action for damages simply by reason of his success. Even if an action has been brought falsely and maliciously and without reasonable or probable cause, it does not follow that the bringing of the action will furnish a cause of action in a subsequent suit to the person who has been used. The first step is to prove special damage, and in the absence of the proof of special damage no action for damages will ordinarily lie. The reasons are shortly that the bringing of an ordinary action does not as a natural or necessary conclusion involve any injury to a man's property, and, further, that the only costs which the law recognizes and for which it will compensate him, are the costs properly incurred in the action itself. For this the successful defendant has already been compensated. Therefore, as stated by BOWEN, L. J., the bringing of such an action even maliciously and without reasonable or probable cause will not ordinarily support a subsequent action for malicious prosecution. But the case is different where the bringing of an

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action does as a necessary consequence involve an injury to property which cannot be compensated by the grant of costs in the action, and in that very case, *Quartz Hill Mining Co. v. Eyre* (1), it was held that an action did lie for falsely, maliciously and without reasonable or probable cause presenting a petition to wind up a trading company.

What are the facts here? Arjun Singh, after agreeing to have the dispute as to the property with Musammat Parbati decided by the award of a competent arbitrator, resiled after the award had been made, and instituted a suit against Musammat Parbati, in consequence of which she was deprived for a certain period of all right to enforce the payment of certain debts due to her deceased husband, with the result that their payment in certain instances became impossible owing to the action of the law of limitation. Here is a special damage following as a direct consequence of the action of Arjun Singh. Could Musammat Parbati have recovered compensation for this damage by the awarding to her of costs in the previous proceeding? We are satisfied that she could have obtained no compensation in this manner. Could she have obtained that compensation under the provisions of section 144 of the Civil Procedure Code? We are of opinion that she could not have obtained compensation under that section, for the payment of damages in respect of the injury which she had suffered was not properly consequential on the reversal of the Subordinate Judge's decree by the High Court. It has to be noted that the Subordinate Judge's decree was merely for a declaration that a certain award was bad in law and that Arjun Singh was the adopted son of Ganga Prasad. The High Court directed that the suit should stand dismissed on the ground that the award was a good award and that the question as to whether Arjun Singh was or was not the adopted son of Ganga Prasad did not require to be decided. As a result of the dismissal of the suit on appeal and the reversal of the decree, the question of the payment of damages to Parbati owing to her incapacity to bring suits from 31st March, 1913 to 16th of February, 1915 certainly did not arise. So the provisions of section 144 (1) have no application. Section 144 (2) reads as follows:—

“ No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).”

(1) (1914) I. L. R., 42 Calc., 550.

We understand this sub-section to mean that where res-titution cannot be obtained by application under sub-section (1), as is the case here, there is no bar to the institution of a suit. We thus find that the relief which has been awarded to Parbati by the lower appellate court could be legally awarded to her in a suit of the nature which she brought, and we find that on the merits she was entitled to that relief. This concludes the appeal.

With regard to the cross-objections we are of opinion that the lower appellate court has rightly decided the matter and that it has given Musammatt Parbati all the relief to which she is entitled and that it is not possible to grant her any more. For the above reasons, we dismiss the appeal and the cross-objections. The appellant will pay his costs of the appeal and those of the respondent. The respondent will pay her own costs of the cross-objections and those of the appellant.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Ryves.*

EMPEROR v. UDAI RAJ SINGH.\*

*Criminal Procedure Code, sections 110 and 437—Security to keep the peace—Further inquiry.*

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May, 19.

It is not intended that section 437 of the Code of Criminal Procedure should be used for the purpose of having a review of proceedings under section 110 of the Code merely because the District Magistrate happens to take a different view of the evidence which was before the trying Magistrate from that which the trying Magistrate himself took.

THIS was an application in revision from an order directing further inquiry into a case under section 110 of the Code of Criminal Procedure. The facts of the case sufficiently appear from the judgment of the Court.

Hafiz *Mushtaq Ahmad*, for the applicant.

The Assistant Government Advocate (Mr. R. *Malcomson*), for the Crown.

RYVES, J.:—In this case proceedings were taken against Uday Raj Singh under section 110 of the Criminal Procedure Code. The matter was inquired into by a Magistrate who heard a large number of witnesses on both sides and in a well considered judgment came to the conclusion

\* Criminal Revision No. 191 of 1922, from an order of A. C. Holmes, District Magistrate of Jaunpur, dated the 7th of April, 1922.