

the learned Commissioner took a correct view of the section and the question propounded for our opinion must on the facts stated be answered in the negative.

MACPHERSON, J.—I agree.

APPELLATE CIVIL.

Before Das and Ross, J.J.

KHUDI RAI

v.

LALO RAI.*

1925.

AMBIKA
PRASAD
SINGH

v.
THE COMMIS-
SIONER
FOR INCOME-
TAX, BIHAR
AND ORISSA.

1925.

June, 12.

Code of Civil Procedure, 1908 (Act V of 1908), Order XXIII, rule 1—Application for permission to withdraw from suit with liberty to bring a fresh suit—Order permitting withdrawal, effect of.

Where an application is made by a plaintiff to withdraw a suit with liberty to bring a fresh suit on the same cause of action and an order is passed giving permission to withdraw the suit although nothing is said in the order as to the plaintiff's right to institute a fresh suit, the order should be read along with the petition and construed as granting permission to institute a fresh suit.

Golam Mahomed v. Shubendra Pada Banerjee(¹) and *Keegangote Narayan Tantri v. Nagappa*(²), followed.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Das, J.

S. K. Mitter, for the appellant.

G. S. Prasad, for the respondents.

* Appeal from Appellate Decree no. 1266 of 1922, from a decision of H. Foster, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 26th July, 1922, reversing a decision of B. Jogindra Nath Sarkar, Deputy Collector of Ranchi, dated the 28th June, 1921.

(1) (1908) I. L. R. 35 Cal. 990.

(2) (1918) 34 Mad. L. J. 515; 44 Ind. Cas. 889, F. B.

1925.

KHUNDI RAI
v.
LALO RAI.

DAS, J.—I am unable to agree with the view taken by the learned Judicial Commissioner. The plaintiff instituted a suit for arrears of rent and the defence which found favour with the learned Judicial Commissioner was that the suit was barred inasmuch as the plaintiffs instituted a previous suit in respect of the same cause of action but withdrew it. It appears that in the previous suit the plaintiffs presented a petition for liberty to withdraw from the suit with permission to bring a fresh suit. The Court, however, gave the plaintiffs permission to withdraw from the suit but did not in terms give them liberty to bring a fresh suit. The learned Judicial Commissioner takes the view that the order operated as a refusal of the permission. With this view I am unable to agree. There is a decision of the Calcutta High Court which is to the effect that where an application is made by a plaintiff to withdraw from a suit with liberty to bring a fresh suit on which an order is passed giving the permission to withdraw from the suit although nothing is said in the order as to the plaintiff's liberty to institute a fresh suit on the same cause of action that order ought to be read along with the petition and construed as granting permission to file a fresh suit. [See *Golam Mahamed v. Shibendra Pada Banerjee* (1).] This view was accepted by the Madras High Court in *Keegangote Narayana Tantri v. Nagappa* (2).

It appears that there were other points which were not dealt with by the learned Judge. It is true that the learned Judge says that this was the only point pressed before him but the learned Vakil for the respondent says that it was unnecessary to press other points because the learned Judicial Commissioner accepted the contention that the suit was barred.

(1) (1908) I. L. R. 35 Cal. 290.

(2) (1918) 34 Mad. L. J. 515; 44 Ind. Cas. 889, F. B.

I would allow the appeal; set aside the judgment and the decree passed by the learned Judicial Commissioner and remand the case to him to be disposed of according to law. The appellant is entitled to the costs of this appeal. Costs incurred in the Court below will be costs of the appeal which will be determined by the learned Judicial Commissioner.

Ross, J.—I agree.

Appeal allowed.

1925.

 KHUNDI RAI
 v.
 LALO RAI.
 DAS, J.

REVISIONAL CRIMINAL.

Before Mullick and Macpherson, J.J.

SIBAN RAI

v.

BHAGWAT DASS.*

1925.

 June, 12.

Code of Criminal Procedure, 1898 (Act V of 1898), section 433—Acquittal, power in revision to interfere with—locus standi of private prosecutor.

Per *Mullick, J.*—(i) The power of interference in revision with acquittal should be most sparingly exercised and, only in exceptional cases where either there has been a denial of the right of fair trial or it is urgently demanded in the interests of public justice.

Faujdar Thakur v. Kashi Chaudhuri(1), *Gulli Bhagat v. Narain Singh*(2) and *A. T. Sankaralinga Mudaliar v. Narayana Mudaliar*(3), approved.

Shaikh Bagu v. Raika Singh (4), *Harai Chandra Nana v. Osman Ali*(5) and *Nabin Chandra Chakrabarty v. Rajendra Nath Banerjee*(6), referred to.

* Criminal Revision no. 104 of 1925, from an order of F. C. King, Esq., I.C.S., District Magistrate of Darbhanga, dated the 6th January, 1925, setting aside the order of B. Mahadeo Prasad Singh, Sub-Deputy Magistrate of Samagtiipur, dated the 17th November, 1924.

(1) (1915) I. L. R. 42 Cal. 612. (2) (1923) I. L. R. 2 Pat. 708.

(3) (1922) 68 Ind. Cas. 615, F. B. (4) (1913-14) 18 Cal. W. N. 1244.

(5) (1918) 27 Cal. L. J. 226. (6) (1917) 39 Ind. Cas. 487.