

ALLAHABAD HIGH COURT

Kedar Nath

Vs.

Chandra Kiran

Civil Misc. Appln. No.(nil) of 1961, in Second Appeal No. 1757 of 1960

(N.U. Beg, J.)

30.08.1961

ORDER

N.U. Beg, J.

1. This is an application under Order 23 Rule 1, sub-rule (1), C.P.C. given by the plaintiffs appellants in Second Appeal No.1757 of 1959 for permission to withdraw the suit filed by them against the defendants-respondents. It is argued on behalf of the applicants that they have an absolute right to withdraw the suit at any stage they like under Order 23, Rule 1 sub-rule (1) C.P.C. On the other hand, on behalf of the opposite parties it is argued that the plaintiffs have no such right at any rate, at this stage. The lower court has given a finding of fact in favour of the defendants-respondents after an elaborate discussion of the evidence produced in the case. This finding is final and binding in second appeal. By allowing permission to withdraw the suit the Court will be depriving the defendants of the benefit of the finding of the lower court in their favour. The case has crossed the stage of suit and is now at the stage of second appeal. The defendants-respondents have incurred heavy expenses in fighting out this case. It would not be in the interests of justice to deprive them of the benefit of the plea of res judicata by allowing the plaintiffs appellants to withdraw the suit at this stage.

2. Having considered the matter, I am of opinion that Order 23, Rule 1, sub-rule (1) does not give an absolute right to the plaintiffs appellants to withdraw the suit at this stage. The matter lies within the discretion of the Court. The case has now reached the stage of second appeal, and unless the plaintiffs are able to make out some good ground for giving them permission to withdraw, the said permission should not be accorded. No such ground is given by the plaintiffs in their application. In fact the ground put forward on their behalf before me is that the findings given by the lower court against the plaintiffs-appellants in the present case may operate as res judicata in a second suit filed by them. I am of opinion that this is the very ground for not granting them the permission asked for. I, accordingly dismiss this application.

Application dismissed.

