

1906.

MABTAND
v.
VINAYAK.

whether or not that condition also had been fulfilled. It had to determine, in other words, whether or not the judgment-debtor was a person earning his livelihood wholly or principally by agriculture. This the Court did, and finding that he was, it was again compelled to send the decree for execution to the Collector. I think, therefore, that this appeal fails, and that the decree of the Court below must be confirmed with costs.

Decree confirmed.

R. R.

FULL BENCH.

APPELLATE CIVIL.

*Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, Mr. Justice Aston,
Mr. Justice Beaman and Mr. Justice Heaton.*

1906.

August 3.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL, APPLICANT, v.
BHAGIRATHIBAI (ORIGINAL PLAINTIFF), OPPOONENT.*

Civil Procedure Code (Act XIV of 1882), sections 411 and 412—Plaintiff permitted to sue as a pauper—Compromise—Withdrawal by plaintiff without permission—Success—Failure.

If a plaintiff, who has been permitted to sue as a pauper, withdraw from the suit without permission under section 373 of the Civil Procedure Code (Act XIV of 1882) as the result of a compromise by which he obtained a substantial part of the relief claimed, he does not succeed in the suit within the meaning of section 411 but he fails in the suit within the meaning of section 412 of the Civil Procedure Code.

APPLICATION under section 622 of the Civil Procedure Code (Act XIV of 1882) against an order passed by G. R. Gokhale, Joint First Class Subordinate Judge of Sholapur, in Civil Suit No. 555 of 1904.

The plaintiff Bhagirathibai was permitted to file a suit *in forma pauperis* against her deceased husband's relations for the recovery of her maintenance and for residence. During the progress of the suit an award was made between the parties

* Civil Application No. 456 of 1905.

out of Court and the plaintiff intimated the fact of the award to the Court and applied under section 373 of the Civil Procedure Code (Act XIV of 1882), for the withdrawal of the suit without permission to bring a fresh one. The Subordinate Judge, thereupon, made the following order:—

The plaintiff says that as an award has been privately made between her and the defendants providing for her maintenance, she does not wish to proceed with this suit, *i.e.*, withdraws it under section 373 of the Civil Procedure Code. I therefore make no order as to the Court-fee to be paid by the plaintiff (I. L. R. 15 Bom. 77 and 18 Bom. 464). The ruling in *The Secretary of State v. Narayan* (I. L. R. 29 Bom. 102) does not apply to the present case. I therefore order that this suit be struck off the file. Each party to bear his own costs.

The Secretary of State for India in Council applied to the High Court under its extraordinary jurisdiction to set aside the said order, urging *inter alia* that on a proper construction of sections 411 and 412 of the Civil Procedure Code, Government was entitled to Court-fees in every suit which was brought to a termination without reference to the mode in which it might have been disposed of, that it was wrong to hold that the success or failure mentioned in the said sections meant an *adjudicated* success or *adjudicated* failure—a qualification not contemplated by the Legislature, that when the plaintiff withdrew without permission to bring a fresh suit, she obviously failed in the suit within the meaning of section 412 of the Civil Procedure Code, and that the plaintiff having succeeded in getting some relief from the defendants in respect of her claim she should be deemed to have succeeded in the suit to that extent within the meaning of section 411. A *rule nisi* was issued calling on the plaintiff to show cause why the order of the Subordinate Judge in relation to the Court-fees should not be set aside.

The case was originally heard by the First Division Bench (Jenkins, C. J., and Batty, J.) on the 8th March 1906 when the following order of reference to a Full Bench was made:—

Having regard to the decisions of this Court in *The Collector of Kanara v. Krishnappa Hedge*, I. L. R. 15 Bombay 77, and *Bai Chandaba v. Kaver Saheb Bapu Saheb*, I. L. R. 18 Bombay 464, on the one hand, and *Secretary of State v. Narayan Balkrishna*, I. L. R. 29 Bombay 102, on the other, the Court refers

1906.

SECRETARY
OF STATE
v.
BHAGIRATHI-
BAI.

1906.

SECRETARY
OF STATE
v.
BHAGIRATHI-
BAI.

to the Full Bench the question whether on the withdrawal of a suit without permission under section 373 of the Code of Civil Procedure the plaintiff succeeds in the suit within the meaning of section 411 or fails in the suit within the meaning of section 412 of the Code of Civil Procedure.

The reference was argued before the Full Bench composed of Jenkins, C. J., Aston, Beaman and Heaton, JJ.

Lowndes (Acting Advocate General with *M. B. Chaudal*, Government Pleader) appeared for the applicant (the Secretary of State for India in Council):—The wording of the reference does not cover the real question. Under the compromise the plaintiff got the relief sued for. (The question amended.)

The ruling in *The Collector of Kanara v. Krishnappa Hedge* ⁽¹⁾ and *Bai Chandaba v. Kuver Saheb Bapu Saheb* ⁽²⁾ have given rise to the reference. The facts of the first case were exactly similar to the facts of the present case. In the second case the compromise was arrived at pending appeal in the High Court.

The scheme of sections 411 and 412 of the Civil Procedure Code helps persons who are not in a position to pay the Court-fees to institute a suit. Such persons are allowed to launch a suit without any payment and the Court-fees are recovered from them afterwards. The sections merely remove the bar of plaintiff's poverty in getting an adjudication of his rights. It is not that a pauper is a special favourite in any way. The sections provide that inability to pay the Court-fees shall not stand in the way of any *bona fide* claim. When the suit has come to an end, then in all cases the Court-fees are to be paid. If the plaintiff gets a decree then the Court-fee is a charge on the decree. If the plaintiff fails, still he is not absolved from the payment of Court-fees. Section 411 relates to plaintiff's success in the suit and section 412 relates to his failure in the suit. The aforesaid two rulings lay down that success and failure mean *adjudicated* success and *adjudicated* failure. We contend that the governing words in the section are "in the suit." If the plaintiff gets relief in some way or other, then it is a case of success, though technically it may be failure in suit.

(1) (1890) 15 Bom. 77.

(2) (1898) 18 Bom. 464.

[JENKINS, C. J.:—Suppose that the plaintiff had sued for possession of land and then by a compromise he got something else than land, then would that be a case of success in the suit?]

We submit that it would be a case of success. Though the plaintiff did not get the particular relief claimed, still he got relief in some other form.

[JENKINS, C. J.:—But when a suit is withdrawn there is no decree.]

Then it would be a case of failure in the suit. The ruling in *Secretary of State v. Narayan Balkrishna* ⁽¹⁾ supports our argument and we rely upon it.

G. S. Mulgaumkar appeared for the opponent (plaintiff):—Section 373 of the Civil Procedure Code which permits withdrawal of suit must be read by itself. In order to take action under section 412 it would not be necessary to resort to section 373. The question is whether the order complained against can be treated as one under section 373.

[JENKINS, C. J.:—There was withdrawal of suit and also there was an order as to costs.]

We submit that the order cannot come under the second part of the section. The parties came to an amicable settlement and intimated to the Court that they did not want to proceed with the suit.

[JENKINS, C. J.:—And then the Court struck off the suit and passed an order as to costs. Can it be said that when a suit is dismissed, the plaintiff has succeeded?]

Section 412 should be read with section 411 and when so read failure means *adjudicated* failure. A partial success or failure out of Court is not within the meaning of those sections.

JENKINS, C. J.:—The question submitted to this Full Bench as amended runs as follows:

Whether, if a plaintiff withdraw from a suit without permission under section 373 of the Code of Civil Procedure

1906:

SECRETARY
OF STATE
v.
BHAGIRATHI-
BAL.

(1) (1904) 29 Bom. 102.

1906.

SECRETARY
OF STATE
v.BHAGIRATHI-
BAI.

as the result of a compromise by which he obtained a substantial part of the relief claimed, he succeeds in the suit within the meaning of section 411, or fails in the suit within the meaning of section 412 of the Code of Civil Procedure ?

The decisions of this Court in *The Collector of Kanara v. Krishnappa Hedge* ⁽¹⁾ and in *Bai Chandaba v. Kuver Saheb Bapu Saheb* ⁽²⁾ necessitated this reference.

Section 411 provides that "If the plaintiff succeeds in the suit, the Court shall calculate the amount of Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit....."

Section 412, on the other hand, provides that "If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under section 97 or 98, the Court shall order the plaintiff, or any person made, under section 32, co-plaintiff to the suit, to pay the Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper....."

It is, we think, clear that the words "in the suit" were purposely inserted in both these sections, and that they were so inserted to limit the success or failure there specified to the success or failure in the suit as distinct from success or failure outside the suit.

If a plaintiff withdraws from a suit, then under section 373 he shall be liable for such costs as the Court may award, and shall be precluded from bringing the suit on the same matter or in respect of the same matter.

It cannot be said, that where a plaintiff withdraws from a suit without obtaining any advantage by way of compromise outside the suit, that he has succeeded in the suit.

Nor do we think that it is a proper construction of section 411 to say that a plaintiff succeeds *in the suit* where the withdrawal has been in consequence of an advantage gained by him outside the suit. The inconvenience of holding otherwise is obvious.

(1) (1890) 15 Bom. 77.

(2) (1893) 18 Bom. 464.

Thus if a plaintiff brought a suit for possession of land and then withdrew the suit as the result of a compromise whereby he received a sum of money, and he were to be regarded as having succeeded in the suit, no order under section 411 would lead to any practical result. But if the plaintiff, in the circumstances with which we are concerned in this case, has not succeeded in the suit, has she failed in the suit? I think she has. It may be that she has obtained a substantial advantage; but it has not been in the suit. The only order in the suit has been that which is equivalent to a dismissal of the suit.

We hold that the plaintiff has failed in the suit, notwithstanding that there has been a compromise under which she has derived a benefit, and, in our opinion, in answer to the reference we should say that the plaintiff, in the circumstances, has failed in the suit within the meaning of section 412 of the Code of Civil Procedure. The case will be sent back to the Division Bench with that answer.

Order accordingly.

G. B. R.

FULL BENCH.

APPELLATE CIVIL.

*Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, Mr. Justice Aston,
Mr. Justice Beaman and Mr. Justice Heaton.*

KRISHNABAI, WIDOW OF HARBHAT (ORIGINAL PLAINTIFF), APPELLANT,
v. HARI GOVIND AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1906.
September 12.

*Civil Procedure Code (Act XIV of 1882), section 375—Consent decree—
Status of landlord and tenant—Forfeiture clause—Suit to enforce forfeiture—
Relief against forfeiture.*

When a plaintiff is seeking to enforce by original suit a right to forfeiture contained in a consent decree (passed under section 375 of the Civil Procedure

* Second appeal No. 571 of 1905.