

APPELLATE CIVIL.

Before Jenkins C.J., and Holmwood J.

HANSMAN JHA

v.

BAHUJI JHA.*

1915

Aug. 2.

Valuation of Suit—Investigation as to amount or value of subject matter of suit—Competence of Court of first instance to remit investigation of dispute to some other officer—Civil Procedure Code (Act V of 1908), O. XLV, r. 5—Practice.

Rule 5, Order XLV of the Code of Civil Procedure does not empower the Court of first instance, to remit the investigation as to amount or value of subject matter of suit to some other officer ; it must be carried out by that Court.

APPLICATION for leave to appeal to Privy Council by Hansman Jha and another, the defendants.

This was an appeal against the decision of Chitty and Teunon JJ. in A. O. D. No. 42 of 1911, dated 22nd July 1913, affirming the decision after remand of the Additional Subordinate Judge of Darbhanga, dated 22nd December 1910. The value of the land in dispute was stated in the plaint to be Rs. 5,125, a sum of Rs. 560 being claimed as mesne profits up to the date of institution of the suit, no tentative value being given for future mesne profits. But shortly after the filing of the above appeal in the High Court the plaintiff put in a claim for mesne profits and costs aggregating about Rs. 14,000, the mesne profits being over Rs. 10,000. The defendant, appellant to England, thereupon contended that the subject matter of the suit

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in the Court of first instance as well as in the Court of Appeal was more than Rs. 10,000 regarding the amount of mesne profits to be taken into account. The dispute having been sent down to the Court for investigation was remitted to another officer. On receipt of this report, certain objections were taken in the High Court.

Dr. Dwarka Nath Mitra and Babu Rishindra Nath Sarcar, for the petitioner.

Mr. B. Chakravarti and Babu Chandra Shekhar Bannerji, for the opposite party.

JENKINS C.J. AND HOLMWOOD J. In this case a reference has been made to the Court of first instance under rule 5, Order XLV of the Code of Civil Procedure for the purpose of settling a dispute as to the amount or value of the subject matter of the suit in the Court of first instance. The Subordinate Judge has sent back his report but he has not proceeded as the rule requires. The rule does not empower the Court of first instance to remit the investigation to some other officer, it must be carried out by that Court.

The result in this case has been very unsatisfactory because the Subordinate Judge purports to have acted on an admission, the precise character of which we do not know except that it seems to be an admission made for the purpose of meeting the difficulty as to the value of the appeal and no more.

The case must go back to the Subordinate Judge in order that he may himself make the enquiry as is required by rule 5, Order XLV and submit his report on the evidence produced before him.

G. S.

Case remanded.