

Before Mr. Justice Mahmood.*

1887
 Ju'y 12.

MUHAMMAD ABDUL HAI AND ANOTHER (PLAINTIFFS) v. SHEO BISHAL
 BAI (DEFENDANT).*

*Practice—Remand by lower appellate Court under Civil Procedure Code, s. 566—
 No objections filed by plaintiffs under s. 567—Objections raised for the first time
 in second appeal by plaintiffs—Such objections not entertainable.*

Objections which might have been, but were not, made under s. 567 of the Civil Procedure Code in a lower appellate Court to the findings on remand of the Court of first instance cannot be raised for the first time as grounds of second appeal from the lower appellate Court's decree.

The facts of this case are sufficiently stated in the judgment of Mahmood, J.

Shah Asad Ali, for the appellants.

Lala Juala Prasad, for the respondent.

MAHMOOD, J.—This was an action for recovery of rent, and was dealt with by the Court of first instance in a judgment dated the 16th February, 1885, the effect of which was to decree the claim in part. From that decree the plaintiffs appealed to the lower appellate Court, and that Court, by an order dated the 4th September, 1885, remanded the case under s. 566 for findings on no less than nine issues. The Court of first instance, in an elaborate order of the 8th January, 1886, recorded findings upon these issues, and re-submitted these to the lower appellate Court. To these findings no objection was taken by the present plaintiffs-appellants, but the defendant-respondent before me took objections, and the learned Judge of the lower appellate Court, in dealing with them, disallowed them for the reasons stated in his judgment, and upholding the findings of the Court of first instance, dismissed the appeal on the 29th May, 1886.

This appeal has been preferred, not by the defendants, whose objections to the findings of the first Court were disallowed by the Judge of the lower appellate Court, but by the plaintiffs, who never took any objections at all to the findings of the first Court upon remand. The grounds now urged are such as might have been taken as objections, under s. 567 of the Code, to the findings of the

* Second Appeal, No. 1691, from a decree of G. J. Nicholls, Esq., District Judge of Gházipur, dated the 4th September, 1885, confirming a decree of J. B. Gill, Esq., Assistant Collector of Gházipur, dated the 16th February, 1885.

Court of first instance upon remand. These objections never having been urged before the lower appellate Court, that Court has naturally not dealt with these points, taking it for granted that the present plaintiffs-appellants had no objections to urge.

Under these circumstances I do not think that, hearing this appeal as a second appeal, I can for the first time allow those objections to be taken here as grounds of second appeal.

The appeal is dismissed with costs.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

LACHMAN DAS (PLAINTIFF), v. CHATER AND ANOTHER (DEFENDANTS).*

Administration-bond—Breach of condition—Compensation—Act X of 1865 (Succession Act), ss. 256, 257—Act IX. of 1872 (Contract Act), s. 74, exception.

An administration-bond executed by an administrator in accordance with s. 256 of the Succession Act is not an instrument of the kind referred to in the exception to s. 74 of the Contract Act, so as to make the obligor liable, upon breach of the condition thereof, to pay the whole amount mentioned therein; and an assignee of the bond under s. 257 of the Succession Act cannot recover more damage than he proves to have resulted to himself or to those interested in the bond.

Held therefore, where neither the assignee of such a bond nor any one else had suffered any damage by reason of the breach of a condition requiring the obligor to file an inventory of the estate within a specified period, that the assignee was not entitled to recover from the obligor any compensation in respect of such breach.

THE facts of this case were as follows:—On the 23rd January, 1883, one Marcar Chater took out letters of administration to the estate of one J. R. Shircore, and on the same date executed an administration-bond in favour of the District Judge of Agra, in accordance with the provisions of s. 256 of the Succession Act (X of 1865). One John Owen joined in the execution of the bond as surety. The amount of the bond was Rs. 7,000; and the executants made themselves jointly and severally liable to the District Judge of Agra for the time being, engaging for the due collection and administration of the estate according to law, and to make a true inventory of the estate and to exhibit the same in the District Court on or before the 22nd January, 1884.

* First Appeal, No. 106 of 1886, from a decree of Babu Promoda Charan Banerji, Subordinate Judge of Agra, dated the 17th March, 1886.

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