

record, as was apparently the case in *Daia Chand v. Sarfraz* (1). Or the document may be out of the jurisdiction and control of the Court.

We think that the words in question in s. 19 ought not to be read as excluding secondary evidence of the contents of an acknowledgment which has been lost or destroyed, and that, therefore, the view taken by the lower Appellate Court is right. The appeal will be dismissed with costs.

K. M. C.

Appeal dismissed.

Before Mr. Justice Field and Mr. Justice O'Kinealy.

MOSHINGAN (ONE OF THE DEFENDANTS) v. MOZARI SAJAD (PLAINTIFF)*

Appeal—Valuation of suit—Costs—Return of plaint—Jurisdiction—Code of Civil Procedure, ss. 15 and 57.

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On the hearing of a suit in the Court of first instance, the Court came to the conclusion that the value of the property in dispute placed the claim beyond the jurisdiction of the Court; the suit was therefore dismissed with costs. On appeal this decision was reversed with costs, on the ground that the plaint ought to have been returned to the plaintiff for presentation in the proper Court. The defendant appealed to the High Court.

Held, that the defendant ought to have been allowed his costs in both Courts, and that he was entitled to an appeal on that ground.

THIS was a suit for the recovery of land. The first issue was "whether the present suit is cognizable by this Court with reference to the value of the property in dispute or not?" The Court of first instance took evidence on this point, and found that the value of the property in dispute was over Rs. 1,200; and that consequently he had no jurisdiction to entertain the suit. He thereupon dismissed the suit with costs, holding, on the authority of *Jagjivan Javherdas Seth v. Magdum Ali* (2), that he was precluded from returning the plaint for presentation to the proper Court after the Court-fee stamp was punched. On appeal, the Subordinate Judge held that the Munsiff's finding as to the valuation of

* Appeal from Order No. 21 of 1885, against the order of Baboo Mathura Nath Gupta, Subordinate Judge of Patna, dated 22nd October 1884, reversing the order of Moulvie Amir Ali, Munsiff of Behar, dated the 21st of January 1884.

(1) I. L. R., 1 All., 117.

(2) I. L. R., 7 Bom., 487.

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the suit was correct, but he decreed the appeal with costs, and ordered the plaint to be returned for presentation to the proper Court, on the authority of *Bhadeswar Chowdhry v. Gaurikant Nath* (1).

The defendant appealed to the High Court on the following grounds:—(1) that the lower Appellate Court has erred in law in returning the plaint after the evidence was taken; (2) that the decision of the lower Appellate Court is opposed to the provisions of s. 57 of the Civil Procedure Code; (3) that the lower Appellate Court has erred in awarding costs against your petitioners; your petitioners were entitled to their costs in both Courts."

Mr. *Twidale* for the appellant.

The judgment of the Court (FIELD and O'KINEALY, JJ.) was delivered by

FIELD, J.—We think that according to the principle laid down in *Balkissen Dass v. Lutchmeeput Singh* (2), there is an appeal here on the subject of costs. The defendant contended in both the Courts below that the Court in which the plaint was filed had no jurisdiction. In that contention he was successful; and we think, therefore, that he ought not to be made to pay the plaintiff's costs; on the contrary he ought to have his own costs in both the lower Courts. We, therefore, direct that he do get such costs. We feel bound to say that this is a matter which ought to have been set right by the Subordinate Judge without compelling the defendant to appeal to this Court. The appeal is decreed with costs.

The order so far as it directs the plaint to be returned will remain unaffected by our decree. Although there is an appeal on this point, it is not pressed, as the plaint has been returned and the suit is proceeding in another Court.

P. O'K.

Appeal allowed.

(1) I. L. R., 8 Cal., 884.

(2) I. L. R., 8 Cal., 91.