

1889
 RAJ SINGH
 v.
 PARMANAND.

EDGE, C. J., and TYRRELL, J.—The only point in this case is whether the decree contemplated by s. 90 of the Transfer of Property Act can be made in the suit in which the decree for sale was passed, or whether a fresh suit must be instituted to obtain such decree. There is nothing in the Act to suggest that a fresh suit is necessary; and there is everything to suggest that it is not. If it were intended that a fresh suit should be brought, that intention would have been given effect to by the introduction of appropriate words into s. 90.

We dismiss the appeal with costs (1).

Appeal dismissed.

1889
 August 14.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

BANWARI LAL (*Plaintiff*) v. SAMMAN LAL (*Defendant*).*

Civil Procedure Code, ss. 562, 564—"Suit."

S. 562 of the Civil Procedure Code authorizes a remand only where the entire suit, and not merely a portion of it, has been disposed of by the Court below upon a preliminary point.

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

Mr. *Amiruddin*, for the appellant.

Mr. *Simeon*, for the respondent.

STRAIGHT, J.—This is an appeal from an order of remand. The suit brought by the plaintiff-respondent was one in which he claimed two reliefs: first, he asked for an injunction to defendant, restraining him from interfering with his, the plaintiff's, erection upon the roof of his own house of certain buildings; secondly, he claimed a right of easement over the roof of the defendant's house in order to give him access to the roof of his own house. The first Court decreed the plaintiff's claim for an injunction, but as to his second head of claim, it said, that upon the face of the plaint, the statement of the easement claimed was so inadequate and unsatisfactory that it was impos-

* First Appeal No. 66 of 1889 from an order of Maulvi Saiyid Muhammad, Subordinate Judge of Saharanpur, dated the 20th April, 1889.

(1) See also *Sonatum Shah v. Ali Newaz Khan*, I. L. R., 16 Calc. 423.

sible for it to enter into the question thereby raised. Accordingly it decreed the plaintiff's claim in part and dismissed it in part. The plaintiff appealed to the Subordinate Judge and the defendant filed an objection as to the order of the first Court in the matter of costs. The learned Subordinate Judge upheld the decision of the first Court in regard to the first head of relief sought by the plaintiff; but he was of opinion as to the first Court's dismissal under the second head, that the reasons given were insufficient and unsatisfactory, and that it ought to have tried the case. Thereupon as regards this second head of claim the Subordinate Judge made an order under s. 562 of the Civil Procedure Code. That order is assailed by Mr. *Amiruddin* for the defendant. His contention is that under the law the Subordinate Judge had no power to make a general order of remand, and that the *suit* had not been disposed of on a preliminary point, but that only a *part* of the suit had been disposed of on a preliminary point, and s. 562 was inapplicable. I think this contention is sound. We are told by s. 564 of the Civil Procedure Code that a case shall not be remanded "for second decision, except as provided in s. 562." We, therefore, have to look to see whether this case does fall within the four corners of that section. We must take the words of the statute as we find them; and the words of that section are these:—"If the Court against whose decree the appeal is made has disposed of the *suit* upon a preliminary point, &c." Now the word used there is in distinct and precise terms the "*suit*;" it does not say any portion of the suit or any part of the relief claimed in the suit, but the word *suit* is used. I take it to mean that where a suit in its entirety has been thrown out by a first Court upon a preliminary point, under these circumstances, and these circumstances only, has the appellate Court power to remand it under s. 562 of the Civil Procedure Code. I hold, therefore, that Mr. *Amiruddin's* objection is a good one and must prevail, and that the order of the learned Subordinate Judge, in so far as it deals with the second head of claim and the question of costs, and directs a remand under s. 562 of the Civil Procedure Code, must be set aside. The consequence of this order will be that the appeal to that extent will be restored to the file of pending appeals in his Court, and he will take up and

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dispose of it from the point where he dealt with the first head of the plaintiff's claim. If it becomes necessary to make a remand under s. 566 of the Civil Procedure Code or to exercise the powers conferred under s. 568, Civil Procedure Code, he will do so. The costs of this appeal will follow the result.

TYRRELL, J.—I quite concur. It seems to me that the law in s. 562 of the Civil Procedure Code assumes that there has been no trial, and that it authorizes a Court of first appeal to proceed with the trial. Now in the case before us, there has been a trial and a decree upon the merits in respect of a portion at least of the case.

Cause remanded.

FULL BENCH.

1889
 November 12.

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

ABDULLA (PLAINTIFF) v. MOHAN GIR AND OTHERS (DEFENDANTS).*

Act XVII of 1886 (Jhānsi and Morar Act)—Legislative power of the Governor-General in Council—Indian Councils Act (24 and 25 Vic., c. 67) s. 22—"Indian territories now under the dominion of Her Majesty"—"Said territories"—28 and 29 Vic., c. 17, preamble—32 and 33 Vic., c. 98, s. 1—Construction of statutes.

Act XVII of 1886 (the Jhānsi and Morar Act) is not *ultra vires* of the Governor-General in Council; and the town and fort of Jhānsi are subject to the jurisdiction of the High Court for the N.-W. Provinces in the same manner as the rest of the Jhānsi district.

The Governor-General in Council has power to make laws and regulations binding on all persons within the Indian territories under the dominion of Her Majesty, no matter when such territories were acquired. His legislative powers are not limited to those territories which, at the date when the Indian Councils Act (24 and 25 Vic., c. 67) received the royal assent (*i.e.*, the 1st August, 1861), were under the dominion of Her Majesty. In the preamble to the 28 and 29 Vic. c. 17, and in s. 1 of the 32 and 33 Vic., c. 98, Parliament has placed this construction upon s. 22 of the Indian Councils Act.

Even if that construction was erroneous, it has been so declared by Parliament as to make its adoption obligatory. Though a mistaken opinion of the Legislature con-

* Second Appeal No. 1052 of 1887 from a decree of G. R. C. Williams, Esq., Deputy Commissioner of Jhānsi, dated the 4th April, 1887, reversing a decree of G. B. Crawley, Esq., Extra Assistant Commissioner of Jhānsi, dated the 5th January, 1887.