

*Before Mr. Justice Mahmood.*

SABRI (PLAINTIFF) v. GANESHI (DEFENDANT)\*

1891  
June 20.

*Civil Procedure Code, s. 566—Remand—Court to which remand is made not competent to delegate its functions in respect of such remand.*

When a case is remanded under s. 566 of the Code of Civil Procedure to the lower appellate Court for findings on certain issues, it is not competent to that Court to delegate the decision of those issues to a Court subordinate thereto.

The facts of this case are as follows :—

One Hira Lal died in 1881 leaving surviving him a widow, Musammat Darbo, two daughters, Musammat Sabri and Musammat Ganeshi, and a daughter-in-law, Musammat Kuar, widow of a deceased son. On his death his widow, Musammat Darbo, got possession of his property and her name was entered against it on the Revenue records. Musammat Darbo died in 1885, and Musammat Kuar was then put into possession of the property. Musammat Kuar sold the property on the 23rd December 1887 to one Rukha. Thereupon Musammat Sabri sued her and her vendee to set aside the sale of the 23rd December 1887, and to get possession of the property. In this suit she succeeded, and obtained possession. On the 10th January 1889 Musammat Ganeshi brought this present suit against Musammat Sabri, claiming exclusive possession of the property in question on the ground that she was indigent and unprovided for, while her sister, the defendant, Musammat Sabri, was in good circumstances. The Court of first instance and the lower appellate Court both agreed in holding that the plaintiff was entitled to succeed. The defendant then appealed to the High Court. The appeal came before Mahmood, J., who, on the 25th February 1891, remanded issues as to the respective means of the plaintiff and the defendant for determination by the lower appellate Court. The subsequent facts sufficiently appear from the judgment of Mahmood, J.

Mr. *W. M. Colvin* and Pandit *M. ti Lal*, for the appellant.

Mr. *Amir-ul-din* and Munshi *Sukh Ram*, for the respondent.

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\*Second Appeal No. 1092 of 1889 from a decree of Bābu Mata Prasad, Subordinate Judge of Saharanpur, dated the 28th June 1889, confirming a decree of Maulvi Iziat Rai, Munsif of Saharanpur, dated the 4th March 1889.

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MAHMOOD, J.—For the reasons stated in my order of the 25th February 1891, this case was remanded under s. 566 of the Code of Civil Procedure to the lower appellate Court for clear findings upon certain issues therein mentioned.

The learned Subordinate Judge of Saháranpur, as the Judge of lower appellate Court, by his *rubkar* of the 13th March 1891 delegated the trial of the remanded issues to the Munsif of Muzaffarnagar with the consent of both the parties.

The Munsif accordingly tried the issues and recorded findings in his proceedings, dated the 28th March 1891. Upon the issues he came to the following conclusions :—

“Both the sisters are, in my view of the evidence, possessed of scanty subsistence, both are unprovided for, and both indigent.”

These findings of the Munsif appear to have been sent back to the Subordinate Judge, who, on the 9th April 1891, fixed the 13th of that month to hear parties on such findings.

Accordingly on the 13th April 1891 the findings of the Munsif coming on for decision before the Subordinate Judge, that officer contented himself by simply expressing the view that he concurred in the opinion of the Munsif as to the findings recorded in the proceeding, dated the 28th March 1891, and referred to above.

The findings of the Munsif were thus adopted by the Subordinate Judge, and it appears that the pleaders for neither party raised any objection to such a course.

Thereupon the Subordinate Judge, accepting the findings of the Munsif, has returned those findings to this Court, as if they were the findings of his Court, as the Court of First Appeal, to which the case had been remanded for determination of certain points of fact under s. 566 of the Code of Civil Procedure.

I am of opinion that the procedure of the learned Subordinate Judge was entirely erroneous, that the order of this Court of the 25th February 1891, directed as it was to the lower appellate Court, was to be carried out by that Court, and that the learned Subordi-

nate Judge in delegating his functions to the Munsif by his order, dated the 13th March 1891, acted *ultra vires* and without jurisdiction.

I am further of opinion that the findings of the Munsif recorded in his proceeding, dated the 28th March 1891, did not satisfy the requirement of this Court's order of remand, dated the 25th February 1891.

As has already been observed, the Subordinate Judge acted without jurisdiction and the whole proceeding is illegal and *ultra vires*.

Under these circumstances, following the uniform practice and rulings of this Court, I am constrained to hold that there are no findings such as would satisfy the remand order of the 25th February 1891, and it is my duty to remand the case again to the learned Subordinate Judge for clear findings upon issues mentioned in my order of the 25th February 1891, with reference to the observations I have made.

I order accordingly. Upon receipt of the findings ten days will be allowed to the parties for objections.

*Cause remanded.*

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## APPELLATE CRIMINAL.

*Before Mr. Justice Straight.*

QUEEN-EMPRESS *v.* HUGHES.

*Jury, misdirection of—What amounts to misdirection—Act XLV of 1860, ss. 361, 366.*

In a trial with a jury under s. 366 of the Indian Penal Code the Judge on the question of intent charged the jury in the following words:—"It remains only to consider the question of intent. The charge was that the girl was kidnapped in order that she might be forced or seduced to illicit intercourse. As to this, it is sufficient to say that no other inference is possible under the circumstances. When a man carries off a young girl at night from her father's house the presumption is that he did so with the intent indicated above. It would be open to him, if he had admitted the kidnapping, to prove that he had some other object, but no other object is apparent on the face of the facts."

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