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ANTU SINGH v. MANDIL SINGH.

District Judge found that the plaintiffs were not entitled to exclusive possession and dismissed their suit. The plaintiffs now appeal on the ground that the District Judge should have given them a decree for joint possession. The District Judge was not asked to find whether or not the plaintiffs were entitled to joint possession, nor did the plaintiffs ask him to give them a decree for joint possession. The cases in which, in a suit for exclusive possession, it has been held that a decree for joint possession might have been or ought to have been given do not apply to the present case, in which the Judge was not asked to find whether the plaintiffs were entitled to joint possession, and in which the plaintiffs did not ask him for a decree for joint possession. Further, it was not shown here, as we infer from the District Judge's judgment, that the plaintiffs were entitled to a decree for joint possession even if they had asked for it.

We dismiss this appeal, but without costs, as no one appears for the respondents.

Appeal dismissed.

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

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July 6.

GAURI SHANKAR (DEFENDANT) *v.* KARIMA BIBI AND OTHERS (PLAINTIFFS).*

Civil Procedure Code, s. 562—Appeal from order of remand—Effect of findings of facts and findings of law.

On an appeal from an order of remand under s. 562 of the Code of Civil Procedure the High Court is bound to accept the findings of fact of the Court which made the remand, that Court being a Court of first appeal, provided that there is evidence to support them; but where the High Court has decided a question of law in an appeal from an order under s. 562 of the Code, that decision of the question of law will be final for all purposes in the suit and in any appeal which may subsequently be made to the High Court. *Deo Kishen* v. *Bansi* (1) referred to.

THE facts of the case sufficiently appear from the judgment of the Court.

Mr. *Amir-ud-din*, for the appellant.

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* Second appeal No. 407 of 1891, from a decree of H. F. D. Pennington, Esq., District Judge of Gházipur, dated the 4th March 1891, reversing a decree of Pandit Bansidhar, Subordinate Judge of Gházipur, dated the 30th July 1890.

(1) I. L. R. 8, All., 172.

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GAURI SHANKAR v. KARIMA BIBI.

Mr. *A. H. S. Reid*, for the respondents.

EDGE, C. J., and BURKITT, J.—This is a second appeal. The Subordinate Judge of Ghâzipur dismissed the suit, holding that ss. 13 and 43 of the Code of Civil Procedure applied. On appeal the District Judge, also applying ss. 13 and 43 of the Code, dismissed the appeal. There was an appeal to this Court, and this Court, rightly or wrongly, held that ss. 13 and 43 did not apply to the case and made an order of remand under s. 562 of the Code of Civil Procedure. Under that order of remand the appeal below was re-heard and a decree passed. This second appeal is from that decree. For the defendant, appellant, it is contended that ss. 13 and 43 of the Code of Civil Procedure apply, and it is further contended that the order of this Court remanding the case under s. 562 does not conclude the defendant from showing that ss. 13 and 43 do apply. In support of that contention the case of *Deo Kishen* v. *Bansi* (1) has been relied upon. As we understand that case, it was there held that some observations in an appeal from an order under s. 562 of the Code of Civil Procedure were merely *obiter*. The observations related not to conclusions of law but to findings of fact. We think that looked at from that point of view that case was rightly decided. On an appeal from an order under s. 562 of the Code of Civil Procedure this Court must accept the findings of fact of the Court which made the order, that Court being a Court of first appeal; and as it is bound to accept those findings of fact as correct, if there is evidence to support them, it follows that any affirmance by this Court of such findings of fact would be merely *obiter*. It is otherwise with regard to conclusions of law. Where this Court has decided a question of law on an appeal from an order under s. 562 that decision of the question of law would be final for all purposes in the suit and in any appeal which might come up to this Court subsequently in the suit. Those grounds of appeal which depend on the application of ss. 13 and 43 of the Code of Civil Procedure fail. The only other point is as to whether it was incumbent on the pre-emptor to observe the rules of

(1) I. L. R. 8, All., 172.

the Muhammadan law of pre-emption. Pre-emption in this case arose not by reason of the Muhammadan law, but by reason of the custom or contract embodied in the *wajib-ul-arz*, and consequently the *wajib-ul-arz* is to be looked at and not the Muhammadan law on the point. We dismiss the appeal with costs.

Appeal dismissed.