

1892

KEDAR NATH  
v.  
RAM DIAL.

partitioning officer by Act No. XIX of 1873 to frame separate records-of-rights for the separate *maháls*, still, as the object of a perfect partition is to create absolutely separate *maháls* with separate interests, he must of necessity, it appears to us, have power to do all things which are necessary to the creation of separate *maháls* on partition. It is conceivable that one object may occasionally be to exclude from a right of pre-emption in one new *mahál* the shareholders in other new *maháls* into which the original *mahál* might be partitioned. In the result we come to the conclusion, no doubt with some hesitation, that the partitioning officer lawfully framed a new and separate record-of-rights for each *mahál* into which on partition the original *mahál* was divided. Under these circumstances we hold that the *wajib-ul-arz* of 1886 applies and we dismiss this appeal with costs.

*Appeal dismissed.*

1893  
July 4.

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

ANTU SINGH AND OTHERS (PLAINTIFFS) v. MANDIL SINGH AND OTHERS  
(DEFENDANTS).\*

*Practice—Suit for exclusive possession—Decree for joint possession, circumstances under which such decree may be granted.*

Although under certain circumstances in a suit for exclusive possession of immovable property a decree for joint possession may be given, nevertheless such a decree should not be given unless the plaintiff asks for it and the evidence shows that he is entitled to it.

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

Babu *Rajendro Nath Mukerji*, for the appellants.

The respondents were not represented.

EDGE, C. J., and BURKITT, J.—The plaintiffs brought their suit for exclusive possession of a tank. The first Court gave them a decree for exclusive possession. The defendants appealed. The

\* Second appeal No. 310 of 1891, from a decree of J. J. McLean, Esq., District Judge of Azamgarh, dated the 21st January 1891, reversing a decree of Babu Nihala Chandur, Munsif of Azamgarh, dated the 18th June 1890.

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.*

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

1893  
July 6.

*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.

\* 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. B. 8, All., 172.