

*Alim-ood-deen* (1), by the majority of this Court, that by the provisions of s. 24, Act VI of 1871, the Court is not bound to administer the Muhammadan Law in claims of pre-emption, but on grounds of equity that law has always been held to bind Muhammadans, and has always been administered as between them in claims for pre-emption. Muhammadans therefore, as between themselves, hold property subject to the rules of Muhammadan Law; and it would not be equitable that persons who are not Muhammadans, but who have dealt with Muhammadans, in respect of property, knowing perfectly well the conditions and obligations under which the property is held, should, merely by reason that they are not themselves subject to Muhammadan Law, be permitted to evade those conditions and obligations. I wish to add that although I was a party to *Moti Chand v. Mahomed Hossein Khan* (2), my decision followed the Full Bench ruling in *Chundo v. Ilakem Alim-ood-deen* (1) by which I felt myself bound.

BRODHURST, J., concurred.

PETHERAM, C. J.—My answer to the question referred to the Full Bench is in the affirmative. There appears to be no doubt as to what the rule of Muhammadan Law is. It imposes an obligation upon a Muhammadan owner of property, in the neighbourhood of which other Muhammadans have property, or in respect of which other Muhammadans have a share, to offer it to his neighbours or his partners before he can sell it to a stranger. This is an incident of his property, as the text-books of the Muhammadan Law show, and, for the reasons stated by my brother Oldfield, I think that it is equitable to apply the rule to cases like the present, in which the purchaser is a Hindu.

DUTHOIT, J., concurred.

## CIVIL JURISDICTION.

*Before Mr. Justice Straight and Mr. Justice Brodhurst.*

RAMPHUL (PLAINTIFF) v. DURGA AND OTHERS (DEFENDANTS).\*

*Civil Procedure Code, s. 617—High Court, reference to—“Final” decree or order.*

A Munsif, being of opinion that he had no jurisdiction to entertain a particular suit, made an order returning the plaint for presentation to the proper

\* Reference No. 79 of 1885, under s. 617 of the Civil Procedure Code, by C. Donovan, Esq. Offg. District Judge of Benares, on the 23rd March, 1885.

(1) N. W. P. H. C. Rep., 1871, p. 28. (2) N. W. P. H. C. Rep., 1875, p. 117

1885

RAMPHUL  
v.  
DURGA.

Court. An appeal was preferred under s. 588 of the Civil Procedure Code, to the District Judge, who, entertaining doubts upon the question of jurisdiction, referred the matter to the High Court, under s. 617.

*Held* that, inasmuch as the order of the Munsif was not a final decree in the suit, and any order of the Judge in appeal disposing of the plea of jurisdiction would not amount to a "final" decree within the meaning of s. 617 of the Civil Procedure Code, the High Court had not jurisdiction to entertain the reference.

THE facts of this case are sufficiently stated for the purposes of this report, in the judgment of Straight, J.

The *Senior Government Pleader* (Lala Juala Prasad), for the plaintiff.

Munshi *Kashi Prasad*, for the defendants.

STRAIGHT, J.—This is a reference by the Judge of Benares, made under the following circumstances :—

A suit was instituted in the Court of the Munsif of Benares. It is not necessary to describe in detail the nature of the suit, but it is sufficient to say that it related to immoveable property. Upon the statement of the plaintiff's case, as disclosed in the plaint, the Munsif was of opinion that he had no jurisdiction to entertain the suit, and he made an order returning the plaint for presentation to the proper Court.

Under the Statute, that order of the Munsif was not a decree, but was an order appealable as an order under s. 588, Civil Procedure Code ; and under that section an appeal was preferred to the Judge. The Judge, entertaining doubts upon the question of jurisdiction, has made the reference now before us under s. 617 of the Code.

This Court has jurisdiction to entertain the reference only when there is a suit or appeal before the Court making the reference in which the decree or order by the Court entertaining it is final.

In this case the order of the Munsif was not a final decree in the suit ; nor would any order of the Judge in appeal passed at the present stage, disposing of the plea of jurisdiction, amount to a final decree within the meaning of s. 617, Civil Procedure Code. In other words, there would be no decree. Whether the Judge reversed or upheld the Munsif, a final decree could only be passed

by the Court subsequently disposing of the suit upon the merits, and the decision of such Court would not only be open to appeal to the Judge, but to a second appeal to this Court.

Under these circumstances, I do not think that the case falls within s. 617 of the Code, and the record must be returned to the Judge, and he must dispose of the appeal as to him seems fit. Any costs that may have been incurred by the parties owing to this reference will abide the result of the cause.

BRODHURST, J.—I concur.

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## APPELLATE CIVIL.

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*Before Mr. Justice Straight and Mr. Justice Brodhurst.*

IMDAD ALI KHAN (OPPOSITE PARTY) *v.* THE COLLECTOR OF FARAKH-  
ABAD (APPLICANT)\*.

*Act X of 1870 (Land Acquisition Act), s. 15—Reference by Collector to District Court—Land claimed by Collector on behalf of Government or Municipality.*

The scope and object of the Land Acquisition Act (X of 1870) is to provide a speedy method for deciding the amount of the compensation payable by the Collector, when such amount is disputed, and the person or persons to whom it is payable.

S. 15 of the Land Acquisition Act contemplates a reference when the question of the title to the land arises between the claimants who appear in response to the notice issued under s. 9, and who set up conflicting claims one against another as to the land required, which the District Judge as between such persons can determine.

The Collector has no power to make a reference to the District Judge under s. 15 in cases in which he claims the land in question on behalf of Government or the Municipality, and denies the title of other claimants, and the District Judge has no jurisdiction to entertain or determine such reference.

THE facts of this case are sufficiently stated for the purposes of this report, in the judgment of Straight, J.

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

The *Senior Government Pleader* (*Shri. Juala Prasad*), for the respondent.

STRAIGHT, J.—This is an appeal from a decision of the Judge of Farakhabad, dated the 15th August, 1884, and by way of precau-

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\* First Appeal No. 168 of 1884, from an order of C. J. Daniell, Esq., District Judge of Farakhabad, dated the 23rd August, 1884.

1885

RAMPHUL  
v.  
DURGA.1885  
May 16.