

The case must therefore go back to the first Court for the trial of the remaining issues.

The costs will follow the result.

Appeal allowed.

1885

 HUMMUTJAN
 BIBI
 v.
 PADMA
 LOCHUN DAS.

Before Mr. Justice Field and Mr. Justice O'Kinealy.

GOPAL SINGH (PLAINTIFF) v. JHAKRI RAI AND OTHERS (DEFENDANTS).^{*}
Civil Procedure Code (Act XIV of 1882), s. 568—Additional evidence in first Court of Appeal—Procedure in second Court of Appeal.

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 August 7.

The provision in s. 568 of Act XIV of 1882 as to an Appellate Court recording its reasons for admitting additional evidence, is directory merely and not imperative.

Where the first Court of Appeal has admitted additional evidence, the hearing in the second Court of Appeal will not be treated as a first appeal, so as to allow the pleaders to go into the facts.

THIS suit was for the recovery of arrears of rent. The facts of the case are not essential for the purposes of this report.

• The Subordinate Judge of Mozufferpore gave judgment for the plaintiff. The defendants appealed to the District Judge of Mozufferpore, who reversed the Subordinate Judge's decree. The material part of the District Judge's judgment is as follows: "The lower Court has found in favour of the plaintiff, simply on the basis of *jamabundi* papers put in by plaintiff, and sworn to by a *putwari*, who appears to know very little about them, and by his *naiab* who appears to know more. In my opinion evidence of this sort, which can be manufactured to order, is worth next to nothing, except under special circumstances, none of which appear here. I have admitted further evidence. This evidence seems to me absolutely to annihilate the evidence of the plaintiff, I, therefore, reverse the judgment of the lower Court."

Against this judgment the plaintiff appealed to the High Court.

• Baboo Hem Ghunder Banerji and Baboo Umakati Mukerji for the appellants.

* Appeal from Appellate Decree No. 1800 of 1884, against the decree of A. C. Brett, Esq., Judge of Tirhoot, dated the 7th of August 1884, modifying the decree of Baboo Ram Pershad, Rai Bahadur, First Subordinate Judge of Tirhoot, dated the 20th of September 1883.

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Baboo *Amarendranath Chatterji* for the respondent.

GOPAL
SINGH
v.
JHAKRI BAI.

The arguments sufficiently appear in the judgment of the Court (*FIELD* and *O'KINEALY, JJ.*) which was delivered by

FIELD, J.—Two points are raised in this second appeal. First, it is said, that the Judge in the Court below has received additional evidence without recording his reasons for so doing as required by s. 568 of the Code of Civil Procedure; and that, therefore, this evidence was improperly received, and ought to be treated as if it were not on the record. We think that the provision of s. 568 as to an Appellate Court recording its reasons for admitting additional evidence is mandatory or directory merely, and not imperative; and we think that the fact that the Judge in the Court below did not comply with this provision (with which most certainly he ought to have complied), does not, however, render the evidence irrelevant.

The second point pressed upon us is that, inasmuch as the Judge in the Court below received additional evidence, this appeal ought to be treated as a first appeal, and the learned vakil ought to be at liberty to go into the facts; and in support of this argument a decision of the Madras High Court (1) is relied upon. As at present advised we are not prepared to concur in this contention.

The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Field and Mr. Justice O'Kinealy.

1885
August 10.

DHARM SINGH AND OTHERS (DEFENDANTS) v. HUR PERSHAD SINGH AND OTHERS (PLAINTIFFS).*

Possession—Limitation Act (XV of 1877), Arts. 143, 144—Conflicting evidence of possession—Presumption of Title.

Where two adverse parties are each trying to make out a possession of twelve years, and the evidence is conflicting and not conclusive on either side, held, that the presumption that possession goes with the title must prevail.

* Appeal from Appellate Decree No 2048 of 1884, against the decree of H. W. Gordon, Esq., Judge of Sarun, dated the 12th of July 1884, affirming the decree of Baboo Kali Prasuana Mukherji, First Subordinate Judge of Sarun, dated the 9th of March 1883.

(1) See *Hinde v. Brayon*, I. L. R., 7 Mad., 52.