

Before Mr. Justice Banerji and Mr. Justice Aikman.

JHANDAY LAL (PLAINTIFF) v. SARMAN LAL (DEFENDANT).*

1899
April 5.

Civil Procedure Code, section 588 (24)—Appeal from order made under section 485—Remand—Such order of remand not appealable—Civil Procedure Code, section 562.

Held that no appeal would lie from an order of remand made under section 562 of the Code of Civil Procedure when such order was itself made in an appeal under section 588 from an order under section 485 of the Code. *Mathura Nath Ghose v. Nobin Chandra Kundu Biswas* (1) followed.

THE plaintiff in this case applied for attachment before judgment of certain property of the defendant, namely, a decree obtained by him in another suit. A conditional attachment order was issued on this application, and notice was sent to the defendant to appear within a week and show cause against the attachment or furnish security to the amount of Rs. 1,200. The defendant appeared within a week from the date when notice of the abovementioned order was served on him to show cause, but the Court (Munsif of Agra) held that the time was to be counted from the date of the order, and disallowed the defendant's objections. The defendant appealed, and the lower appellate Court (District Judge of Agra) remanded the case to the Munsif under section 562 of the Code of Civil Procedure, on the ground that the Munsif was wrong in finding the defendant's objections to be barred. Against this order of remand the plaintiff appealed to the High Court.

Babu *Parbati Charan Chatterji*, for the appellant.

Maulvi *Ghulam Mujtaba*, for the respondent.

BANERJI and AIKMAN, JJ.—The preliminary objection raised by Mr. *Ghulam Mujtaba* that no appeal lies, must prevail. An order was made against the respondent for attachment before judgment under section 485 of the Code of Civil Procedure. An appeal was preferred from that order under cl. (24) of section 588 of the Code, and the lower appellate Court made an order of remand under section 562. This order of remand is the subject-

* First Appeal No. 2 of 1899, from an order of W. F. Wells, Esq., District Judge of Agra, dated the 1st December 1898.

(1) (1897) I. L. R., 24 Cal., 774.

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matter of the appeal before us. The last clause of section 588 provides that orders passed in appeal under that section shall be final. The order appealed from is an order passed under section 588, and therefore it is final according to the provision referred to above. It is true that section 588 allows an appeal from an order passed under section 562. But the order of remand from which an appeal is allowable must be an order which was not passed under section 588. The last paragraph of the section must be read as controlling the whole section and as barring a second appeal, where an appellate Court has made an order, whether for dismissing the appeal or decreeing the appeal or remanding the case before it. This view is supported by the ruling of the Calcutta High Court in *Mathura Nath Ghose v. Nobin Chandra Kundu Biswas* (1), with which we entirely agree. We dismiss the appeal with costs.

Appeal dismissed.

1899
 April 6.

Before Mr. Justice Banerji and Mr. Justice Aikman.

ABDULLAH (DEFENDANT) v. AMANAT-ULLAH AND OTHERS (PLAINTIFFS)*
Muhammadan law—Pre-emption—Suit by pre-emptor not entitled to claim the whole of the property sold—Plaintiff not obliged to frame his suit as a suit for the whole.

Held, that where a pre-emptor by reason of the claim of other persons entitled equally with himself to claim pre-emption is only entitled to a certain portion of the property in respect of which he claims pre-emption, and not to the whole of it, he is not bound to frame his suit as a suit for the whole of the property sold, but only for so much as he would be entitled to having regard to the claims of the other pre-emptors. *Amir Hasan v. Rahim Bakhsh* (2), and *Durga Prasad v. Munsif* (3) referred to. *Kashi Nath v. Mukhta Prasad* (4) and *Hulasi v. Sheo Prasad* (5) distinguished.

THE plaintiffs, five in number, claimed to pre-empt five-sixths of certain property which had been sold to the defendant by one Balua. They did not sue for the whole of the property,

* First Appeal No. 7 of 1899, from an order of Babu Jai Lal, Subordinate Judge of Azamgarh, dated the 22nd December 1898.

(1) (1897) I. L. R., 24 Cal., 774. (3) (1897) I. L. R., 19 All., 466.
 (2) (1884) I. L. R., 6 All., 423. (4) (1884) I. L. R., 6 All., 370.
 (5) (1884) I. L. R., 6 All., 455.