

1902

December 10.

Before Mr. Justice Burkitt and Mr. Justice Aikman.

BADAM (DEFENDANT) v. NATHU SINGH (PLAINTIFF).*

Civil Procedure Code, sections 157 and 158—Non-appearance of plaintiff on adjourned date—Dismissal of suit for default—Remand for decision on the merits.

On a date to which the hearing had been adjourned the plaintiff in a suit pending in the Court of a Munsif failed to appear when the case was called on, and the Munsif, acting apparently under section 102 read with section 157 of the Code of Civil Procedure, dismissed the suit "for default of prosecution." *Held*, that the appellate Court was right in remanding the suit to be disposed of under section 158 of the Code.

In this case the plaintiff in a suit pending in the Court of the first Additional Munsif of Meerut, produced his documentary evidence on the 17th of May, 1900, and examined one witness on the 23rd of November, 1900. He then got a commission issued to the amin to prepare a certain map in connection with the case, and the 18th of January, 1901, was fixed for the hearing of the case. Upon that date no appearance was made on behalf of the plaintiff. The Munsif thereupon passed the following order:—"It is nearly 1 o'clock, and neither the plaintiff nor his pleader is present. The Court is unable to wait any longer. Babu Raghubir Saran, plaintiff's pleader, is absent, as the chaprasi informs the Court, and Beni Prasad, mukhtar, has not yet done anything, though ordered by the Court to do so long ago. It is accordingly ordered that the plaintiff's suit be dismissed for default of prosecution by him, and that the defendants get their costs from the plaintiff."

Against this order the plaintiff appealed to the Additional District Judge of Meerut, who was of opinion that the lower Court should have proceeded to decide the suit under section 158 of the Code of Civil Procedure, and therefore remanded the suit for trial on the merits. Against this order of remand the defendants appealed to the High Court.

Babu Sital Prasad Ghosh, for the appellant.

Munshi Govind Prasad, for the respondent.

AIKMAN, J. (BURKITT, J., concurring).—In our opinion this appeal must fail. The only plea urged before us is that no appeal lay to the lower appellate Court. It appears that the

* First Appeal No. 90 of 1902 from an order of Rai Kishan Lal, Additional District Judge of Meerut, dated the 23rd June 1902.

plaintiff respondent instituted the suit on the 18th of April, 1900. Issues were framed on the 4th of June, 1900. The plaintiff put in all the evidence, oral and documentary, that he wished to adduce. The hearing of the case was adjourned to the 18th of January, 1901. On that date neither the plaintiff nor his pleader being in attendance, the Additional Munsif passed an order dismissing the suit "for default of prosecution," as he called it. On appeal the learned Additional District Judge pointed out that the lower Court ought to have proceeded to decide the suit under section 158 of the Code of Civil Procedure, and ought not to have dismissed it for default. It was, of course, open to the Munsif, if he considered the evidence which the plaintiff had produced insufficient, to pass a decree dismissing the suit on that ground. In that case it would have been a decree dismissing the suit on the merits, and therefore a decree from which an appeal would lie. We consider the lower appellate Court was right in remanding the case to the Court of first instance for trial on the merits. We dismiss the appeal. The plaintiff respondent will have his costs of this appeal in any event.

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Appeal dismissed.

Before Mr. Justice Knox and Mr. Justice Blair.

LACHMI NARAIN AND ANOTHER (PLAINTIFFS) v. FATEH BAHADUR
 SINGH AND ANOTHER (DEFENDANTS).*

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Act No. XVII of 1876 (Oudh Land Revenue Act), Chapter VIII—Court of Wards—Disqualified proprietor—Nature of disqualification imposed by proceedings taken under Chapter VIII—Domicile.

Where a person who had been made a "disqualified proprietor" in Oudh under the provisions of Chapter VIII of Act No. XVII of 1876, attempted to sell a small portion of his property situated in the North-Western Provinces, which property had not been entered in any list of the property of the disqualified proprietor taken under the management of the Court of Wards, and had apparently escaped the notice of the Court of Wards, it was held that the disqualification imposed as a consequence of proceedings legally taken under Chapter VIII of the Oudh Land Revenue Act, 1876, was a personal

* Second Appeal No. 972 of 1899, from a decree of Babu Nilmadhab Rai, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge of Cawnpore, dated the 10th September, 1899, confirming a decree of Pandit Kanhaiya Lal, M.A., LL.B., Munsif of Cawnpore, dated the 24th December, 1899.