

Before Sir George Knox, Acting Chief Justice, and Mr. Justice Richards.

SALIG RAM (DEFENDANT) v. BRIJ BILAS (PLAINTIFF).*

Civil Procedure Code, section 562—Remand—Appeal from order of remand after decision of the suit in accordance therewith.

Held that no appeal will lie from an order of remand passed under section 562 of the Code of Civil Procedure if such appeal is filed after the suit has in compliance with the order of remand been decided and no appeal is preferred from the decree in the suit. *Madhu Sudan Sen v. Kamini Kanta Sen* (1) followed. *Bameswar Singh v. Sheodin Singh* (2) distinguished.

IN this case the plaintiff brought a suit for pre-emption, which was dismissed on the 8th of June 1906 by the Court of first instance. The plaintiff appealed, and on the 10th of September 1906 the suit was remanded. On the 9th of November 1906 the first Court on remand decreed the suit. The defendant did not appeal against the decree in the suit, but on the 1st of December 1906, that is to say, after the order of remand had been complied with and the suit reheard, appealed against the order of remand only. On this appeal a preliminary objection was taken to the effect that no appeal would lie under the circumstances against the order of remand.

Munshi *Gulzari Lal*, for the appellant.

Babu *Jogindro Nath Chaudhri* and Lala *Kedar Nath*, for the respondent.

KNOX, ACTING C. J., and RICHARDS, J.—This is an appeal from an order of remand. The suit was a suit for pre-emption and on the 8th of June 1906 the Court of first instance dismissed the suit. The plaintiff appealed, and on the 10th of September 1906 the suit was remanded. On the 9th of November 1906 the Court of first instance on remand decreed the suit. The present appeal is not taken against the decree that was made on the 9th of November 1906. It is an appeal filed against the order of remand, and the appeal was not filed until after the decree of the 9th November 1906 was actually made. The appeal was filed on the 1st December 1906. The appellant appeared on the hearing of the suit on remand. A preliminary objection is now raised by Mr. *Kedar Nath* on behalf of the respondent that the present appeal cannot be sustained under the circumstances mentioned. He has cited the

* First Appeal No. 124 of 1906, from an order of C. D. Steel, Esq., District Judge of Shahjahanpur, dated the 10th of September 1906.

(1) (1905) 9 C. W. N., 895.

(2) (1889) I. L. R., 12 All., 510.

1907

SALIG RAM
v.
BRIJ BILAS.

case of *Madhu Sudan Sen v. Kamini Kanta Sen* (1). In this case under circumstances which cannot be distinguished from the case before us, a similar preliminary objection was taken and allowed by the Court. Mr. *Gulzari Lal* on the other side cites the Full Bench Ruling of *Rameswar Singh v. Sheodin Singh* (2). In that case there had been an order of remand; the suit had been reheard by the Court of first instance who had made a decree. There was a second appeal to the lower appellate Court, which confirmed the decree of the Court of first instance, and then there was an appeal against the second decree of the lower appellate Court. The Court there allowed the appellants to question the order of remand, but the appeal in that case was an appeal from a final decree and not an appeal from an order of remand. The case, therefore, is quite different from the present and does not apply. If we are now to hear this appeal, the decree that was made on the 9th November 1906 would still remain. Having allowed that decree to be made, the proper course was to appeal against that decree and at the hearing of the appeal to take such exception to the order of remand as the law permits, as was done in the Full Bench case to which we just now referred. We allow the preliminary objection, and in consequence we dismiss the appeal with costs.

Appeal dismissed.

1907
July 6.

Before Mr. Justice Dillon and Mr. Justice Griffin.
ALI SHER KHAN (DEFENDANT) v. AHMAD ULLAH KHAN
AND OTHERS (PLAINTIFFS).*

Civil Procedure Code, section 566—Remand—Return to remand to be made by the Court originally seized of the case—Jurisdiction.

Held that when issues are remitted for trial under section 566 of the Code of Civil Procedure such issues are triable only by the Court which was originally seized of the case. The principle of *Sabri v. Ganeshi* (1) followed.

THIS was a suit for profits brought by the plaintiffs respondents, who were co-sharers, against the defendant appellant, who was the lambardar, for the years 1309 and 1310 Fasli. They

* Second Appeal No. 984 of 1905 from a decree of G. C. Badhwar, Esq., Additional District Judge of Saharanpur, dated the 21st of August 1905, modifying a decree of Munshi Maksud Ali Khan, Assistant Collector, 1st Class, of Muzaffarnagar, dated the 18th of July 1904.

(1) (1905) 9 C. W. N. 895. (2) (1889) I. L. R., 12 All., 510.
(1) (1891) I. L. R., 14 All., 23.