

Before Mr. Justice Aikman and Mr. Justice Karamat Husein.
 GULZARI MAL AND ANOTHER (DEFENDANTS) v. KABIR-UN-NISSA
 (PLAINTIFF).*

1908
 March 3.

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

Hold 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 been decided in compliance with the order of remand and no appeal is preferred from the decree in the suit. *Salig Ram v. Brij Bilas* (1) and *Madhu Sudan Sen v. Kamini Kanta Sen* (2) followed.

THIS was an appeal from an order of remand. The order appealed against was passed on the 12th of November 1906. Under that order the case went to the Court of first instance, and was by that Court decreed in favour of the plaintiff respondent on the 28th of January 1907. The present appeal, though it bears an endorsement of the stamp reporter, dated the 19th of January 1907, was not presented until the 29th January 1907, one day after the decree in plaintiff's favour had been passed. The appellants filed no appeal from the decree which had been passed against them. At the hearing a preliminary objection was raised on behalf of the respondent that no appeal lay, in as much as it had not been filed until after the suit had been re-heard in pursuance of the order under appeal, and this objection was supported by the two rulings referred to in the judgment of the Court.

Mr. C. Ross Alston and Munshi Gokul Prasad, for the appellants.

Maulvi Ghulam Mujtaba, for the respondent.

AIKMAN and KARAMAT HUSEIN, JJ.—This is an appeal from an order of remand. A preliminary objection to the hearing of this appeal is raised by the learned vakil for the respondent. It appears that the order of remand now appealed against was passed on the 12th of November 1906. Under that order the case went to the Court of first instance, and was by that Court decreed in favour of the plaintiff respondent on the 28th of January 1907. The present appeal, though it bears an endorsement of the stamp reporter, dated the 19th of January 1907,

* First Appeal No. 5 of 1907, from an order of Maula Bakhsh, Subordinate Judge of Moradabad, dated the 12th of November 1906.

(1) (1907) L. L. R., 29 All., 659. (2) (1905) I. L. R., 32 Calc., 1023.

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was not presented until the 29th January 1907, one day after the decree in plaintiff's favour had been passed.

The appellants filed no appeal from the decree which had been passed against them. In support of his objection the learned vakil for the respondent relies on a decision of the Calcutta High Court in *Madhu Sudan Sen v. Kumini Kanta Sen* (1), and on a decision of this Court in *Salig Ram v. Brij Bilas*, (2). These decisions support the preliminary objection taken. Were the matter *res integra* there might be something to be said in appellants' behalf; but we are bound by the decision of this Court. When the case went back to the Court of first instance, it was heard in the presence of the defendants, who, we are told, adduced evidence. We consider that the defendants, if they intended to appeal from the order of remand, might well have asked the Court of first instance to defer hearing the case until their appeal against the order of remand had been disposed of; but they did not do so. We are bound by the decision in the case of *Salig Ram v. Brij Bilas*, mentioned above. We, therefore, sustain the preliminary objection and dismiss the appeal with costs.

Appeal dismissed.

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March 5.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

TUHI RAM (PLAINTIFF) v. IZZAT ALI AND OTHERS (DEFENDANTS)*

Execution of decree—Sale of ancestral property—Civil Procedure Code, section 320—Rules framed by Local Government—Application under Rule 17 (XIIIA).

One of several co-owners of ancestral property which had been sold by the Collector under the Rules † framed by the Local Government under section 320 of the Code of Civil Procedure applied under Rule 17 (XII) to have the sale set aside upon the ground of material irregularities in the conduct of the sale causing substantial loss. Another of such co-owners, whilst the first application was pending, applied under Rule 17 (XIIIA) to have the sale set aside, making at the same time the necessary payments into Court required by the Rule.

† The rules referred to are as follows :—

17 (XII). The decree-holder, or any person whose immovable property has been sold under these rules, may apply to the Collector to set aside the sale

* First Appeal No. 99 of 1906 from a decree of H. David, Subordinate Judge of Meerut, dated the 17th of February 1906.

(1) (1905) I. L. R., 32 Calc., 1023. (2) (1907) I. L. R., 29 All., 659.