

1916

GULZARI LAL  
v.  
LATIF  
HUSAIN.

judgement. Act II of 1901, section 175, clearly lays down that "no appeal shall lie from any decree or order passed by any court under this Act except as hereinafter provided." Appeals from District Judges' decisions are governed by section 182, which allows only second appeals to this Court from a decree in appeal of a District Judge in accordance with the provisions of Chapter XLII of the Code of Civil Procedure (Act XIV of 1882). In view of the above section and of the provisions of section 193, clause (a) it is quite clear that no appeal lies to this Court from the order of remand passed by the court below. The preliminary objection must, therefore, prevail and the appeal is rejected with costs.

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### FULL BENCH.

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1916

January, 4.

*Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Tudball and  
Mr. Justice Muhammad Raftq.*

#### IN THE MATTER OF A PLEADER. \*

*Act No. XVIII of 1879 (Legal Practitioners Act), section 14—Legal practitioner—Prosecution ordered—Certificate not to be cancelled until result of prosecution is known—Practice.*

Where a District Judge, having the alternative to take action against a pleader practising in his judgeship under section 14 of the Legal Practitioners Act, 1879, or to initiate criminal proceedings against him, takes the latter, he ought to wait until the result of the criminal proceedings is known before refusing to renew the pleader's certificate.

THE District Judge of Meerut having reason to suppose that a pleader practising in his judgeship had committed an offence in connection with two suits, which had come before him in appeal and in which the pleader was plaintiff, ordered the pleader to be prosecuted under section 209 of the Indian Penal Code. In the suits there were second appeals to the High Court, and the criminal proceedings were suspended pending the result of these appeals. Meanwhile the pleader's certificate came before the District Judge for renewal. The District Judge refused to renew the certificate. The pleader thereupon preferred the present application to the High Court.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the applicant.  
*Babu Lalit Mohan Banerji*, for the Crown.

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\* Civil Miscellaneous No. 554 of 1915.

RICHARDS, C. J., and TUDBALL and MUHAMMAD RAFIQ, JJ. :—

This is an application by a pleader whose certificate the learned District Judge of Meerut refused to renew in December last. It appears that the gentleman in question instituted two suits for pre-emption based on Muhammadan law. The court of first instance decided in his favour and granted him a decree. On appeal before the learned District Judge the decision of the Munsif was reversed after the plaintiff (who is the present applicant) had been recalled as a witness and examined. The right of the plaintiff to pre-empt the property, provided he observed the requirements of the Muhammadan law, does not seem to have been disputed. The learned District Judge having dismissed the suits took action under section 476 of the Code of Criminal Procedure, with the result that proceedings have been instituted against the applicant under section 209 of the Indian Penal Code, a section which makes it a criminal offence for a person to make in a court of justice a claim which he knows to be false *with intent to injure or annoy another person*. All this happened in February, 1915. Two appeals against the decision of the learned District Judge in the pre-emption suits are now pending in this Court. Apparently the prosecution under section 209 has been suspended, pending the decision of these appeals. Upon the usual application being made by the pleader for the renewal of his certificate the learned District Judge passed an order in these words "renewal refused." The present application is made to us in consequence. On the 23rd of December, 1915, the learned District Judge reported to this Court that he had refused to renew the certificate thinking that the pleader was not a proper person to whom a renewal should be granted. It seems to us that the action of the learned District Judge has been somewhat inconsistent. All the information as to the character of the pleader which the learned District Judge had before him in December, when he refused to renew his certificate, was before him in February, 1915. Two courses were then open to him: either he might (as he did) direct a prosecution, or he might have proceeded under section 14 of the Legal Practitioner's Act. Having directed a prosecution, it seems to us clear that he ought to have waited until the determination of the criminal prosecution before he took any other step which

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would have the effect of suspending or dismissing the pleader from practice. By his order refusing to renew the certificate the learned District Judge has in effect found the pleader guilty before he has been tried. Notwithstanding the alleged misconduct by the pleader he has been practising from February, 1915, to the end of the year. We think that the pleader should not be suspended under the circumstances of the present case until the result of the criminal prosecution is made known. We accordingly direct the learned District Judge to renew the certificate of the pleader in question. After the criminal trial, if necessary, and in the event of a conviction, the matter can be reported to the High Court for orders.

*Order quashed.*

## APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice  
Muhammad Rafiq.*

NAUBAT RAI AND ANOTHER (DEFENDANTS) v. DHAUNKAL SINGH  
(PLAINTIFF) AND SHEORAJ SINGH AND ANOTHER (DEFENDANTS).\*

*Act No. I of 1877 (Specific Relief Act), section 27—Sale—Suit for specific performance of contract to sell, defendants being vendees under a registered sale-deed — Priority—Act No. XVI of 1908 (Indian Registration Act), section 50.*

The owners of a village which had already been sold at an auction sale in execution of a decree agreed to sell it to the plaintiff, provided that the auction sale should be set aside. The auction sale was set aside; but subsequently the village was sold by means of a registered sale-deed to a third party. *Held*, on suit by the plaintiff for specific performance of the contract to sell to him, that the defendants vendees' registered sale-deed did not take priority over the contract in his favour and that it lay on the defendants to rebut the evidence given by the plaintiff to the effect that the defendants at the time of their purchase were aware of the existence of the contract in favour of the plaintiff.

THE facts of this case were as follows :—

The plaintiff alleged that there was a contract, dated the 24th of December, 1910, between him and the owners of a certain village that the village should be sold to him, if a sale of the same in execution of a decree could be set aside; that the auction sale had been set aside, but that the owners, contrary to the agreement with him, had subsequently, on the 26th of July, 1912, sold the

\* First Appeal No. 411 of 1913, from a decree of Rama Das, first Subordinate Judge of Aligarh, dated the 27th of August, 1913.

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