

1919

MADHO
PRASAD
v.
MOTI CHAND.

able to try difficult and complicated cases with ability. As this application for some reason or another is opposed, and strongly opposed, by the plaintiff, I do not think it is a case in which, so far as has been at present shown to me, I should interfere and transfer. The application is dismissed with costs. The costs to the plaintiffs in this Court will be taxed at Rs. 100, (Rupees one hundred). The stay order is discharged.

Application dismissed.

APPELLATE CIVIL.

1919
January, 30.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Chawan Banerji.

BADR-UN-NISSA BIBI AND OTHERS (JUDGMENT-DEBTORS) v. SHANKAR LAL (DECREE-HOLDER)*.

Act No. XII of 1887 (Bengal, Agra and Assam Civil Courts Act), section 21—Civil Procedure Code (1908), order XXXIV, rule 6—Decree over in a mortgage suit—Appeal—Forum of appeal to be decided by valuation of suit.

Held that an appeal lay to the District Judge and not to the High Court from a decree under order XXXIV, rule 6, of the Code of Civil Procedure, notwithstanding that the decree was for a sum exceeding Rs. 5,000, if the value of the original mortgage suit was less than Rs. 5,000.

THE facts of this case were as follows :—

There was a suit for sale on a mortgage, valued at under Rs. 5,000. In that suit a decree was passed in favour of the plaintiff, which was made absolute in due course, and eventually the mortgaged property was sold. The sale proceeds were, however, insufficient to satisfy the decree, and accordingly the decree-holder applied for a personal decree against the judgment-debtor under order XXXIV, rule 6, of the Code of Civil Procedure, this application was granted and a decree was made, but it was for a sum exceeding Rs. 5,000. The judgment-debtors appealed against this decree to the High Court, and at the hearing the decree-holder took a preliminary objection to the effect that the appeal lay according to the valuation of the suit, and therefore, would not lie to the High Court but to the District Judge.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellants.

* First Appeal No. 154 of 1917, from a decree of Kunwar Sen, Subordinate Judge of Allahabad, dated the 12th of December, 1916.

Mr. B. E. O'Connor, Pandit Baldeo Ram Dave and Munshi Damodar Das, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—A preliminary objection is taken to the hearing of this appeal. The original suit was a suit on foot of a mortgage and the value of the suit was a sum below Rs. 5,000. The usual mortgage decree was made, and the decree was afterwards made absolute, and eventually, it appears, the mortgaged property was sold, but proved insufficient to discharge the amount. Thereupon an application was made under order XXXIV, rule 6, corresponding with section 90 of the Transfer of Property Act, (since repealed) for a personal decree, which was granted by the Subordinate Judge. It is against the decree of Subordinate Judge so made that the present appeal is filed. The preliminary objection is that the appeal should have been presented to the District Judge and not to the High Court. Section 21 of Act XII of 1887, (Civil Courts Act) provides that an appeal should lie from a decree of the Subordinate Judge to the District Judge where the value of the original suit was under Rs. 5,000. The appellant seems to have thought that because a fresh decree was granted under order XXXIV, rule 6, and the amount of that decree exceeded Rs. 5,000, this Court was the proper court to which to present the appeal. We think this view was erroneous. We accordingly allow the preliminary objection and direct that the memorandum of appeal be returned to the appellant for presentation in the proper court. The respondents must have their costs of this appeal. The memorandum of appeal may be returned as soon as possible.

Memorandum of appeal returned.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

RAM LAL (PLAINTIFF) v. TAMKIN BANO AND OTHERS (DEFENDANTS)*
Act No. XVI of 1908 (Indian Registration Act), section 28—Place of registration
—Security bond—Bond fraudulently registered in a district where none of the property in respect of which it might have been operative was situated.

In a bond hypothecating, as security for the due fulfilment of the terms of a mortgage, certain immovable property, a small piece of land was inserted

* First Appeal No. 67 of 1917, from a decree of Khirod Gopal Banerji, Subordinate Judge of Budaun, dated the 20th of July, 1916

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