

*Before Mr. Justice Straight and Mr. Justice Dutoit.*RAJINDRA KISHORE SINGH (DEFENDANT) v. RADHA PRASAD SINGH
(PLAINTIFF).**Amendment of plaint—Appeal—Act X of 1877 (Civil Procedure Code), ss. 53, 588 (b)*

The plaintiff in a suit applied for the amendment of the plaint. The defendant objected to the amendment, and a day was fixed by the Court for the "admission or rejection of the petition of amendment and the determination of the defendant's objections thereto." The Court, after hearing the parties, made an order allowing the "petition of amendment" and rejecting the defendant's objections. The defendant appealed from such order to the High Court. *Held* that, inasmuch as orders amending plaints then and there are not made appealable by Act X of 1877, and it was into this category, if into any at all, that such order must fall, such order was not appealable.

THE plaintiff in this suit originally claimed 2,537 bighas 6 biswas of land situated in a village called Chandpur Dyara, of which he specified the boundaries. After the first hearing of the suit it appeared that 3,461 bighas 19 biswas of land were comprised within such boundaries. The plaintiff thereupon preferred a petition to the Court of first instance, praying that the extra 924 bighas 13 biswas of land might be considered to be included in his claim, and the plaint be amended accordingly. The defendant objected to the amendment of the plaint as prayed by the defendant; and a day was fixed by the Court for the "admission or rejection of the petition of amendment, and the determination of the defendant's objections thereto." After hearing the parties, the Court decided that the "petition of amendment" should be allowed, rejecting the defendant's objections.

The defendant appealed to the High Court against the order of the Court of first instance, contending that the plaint had been improperly amended, inasmuch as a plaint could not properly be amended after the first hearing of the suit, and as the amendment was not one which could be made under s. 53 of Act X of 1877, and as the plaintiff's cause of action in respect of the extra land he claimed did not arise until after the institution of the suit.

Mr. Colvin, the Junior Government Pleader (Babu Dwarika Nath Bannarji), and Munshi Sukh Ram, for the appellant.

* First Appeal, No. 45 of 1880, from an order of Maulvi Abdul Ma'id Khan, Subordinate Judge of Ghazipur, dated the 26th February, 1880.

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for re-trial." On appeal to the High Court from such additional order, *hæc* that the appeal would not lie, as it was in reality one from an order passed in appeal from an order returning a plaint, which under the last clause of s. 588 of Act X of 1877 was final, and not an appeal from an order remanding a case under s. 562, the character of the original order of the appellate Court not being altered by the passing of the additional order.

In this case the Court of first instance (Munsif) made an order returning the plaint to be presented to the proper Court, on the ground that its jurisdiction did not extend to the value of the subject-matter in dispute. The plaintiffs appealed from this order to the District Court, which, by an order dated the 6th November, 1880, "decreed the appeal," holding that the Munsif was competent to try the suit. By a subsequent order, dated the 7th February, 1881, which the District Court observed it had accidentally omitted to make, the District Court directed that the "case would be returned for re-trial." The defendant appealed to the High Court from the District Court's order dated the 7th February, 1881, contending that the suit was not cognizable in the Munsif's Court.

Munshi *Sukh Ram*, for the appellant.

Munshi *Kashi Prasad*, for the respondents.

The judgment of the Court (STRAIGHT, J., and TYRRELL, J.) was delivered by

STRAIGHT, J.—A preliminary objection is taken by the pleader for the respondents that this appeal cannot be entertained, it being in reality from an order of the Judge passed in appeal under s. 588 of the Civil Procedure Code from an order of the Munsif under cl. (a), s. 57 of the same Code. By the last paragraph of s. 588, orders passed in appeal under that section are declared to be final. The contention is a valid one and must prevail. The addendum of the Judge to his original order, "that the case will be returned for re-trial," does not alter the character of that order, so as to bring it within s. 562 of the Code. The present appeal is therefore not properly from an order remanding a case that has been dismissed by the first Court on a preliminary point for re-trial, but from an order passed in appeal from an order returning a plaint, which is not appealable. The appeal must therefore be dismissed which costs.

Appeal dismissed.