

1880

SADIK ALI  
KHAN  
v.  
IMDAD ALI  
KHAN.

tion, namely, the settlement of the accounts, and under s. 520 the Court should have remitted the award for the reconsideration of the arbitrator, and, as he had the power to remit it upon such terms as he thought fit, the Subordinate Judge could have allowed one year, if necessary, for the settlement of the accounts. The Subordinate Judge should not have determined the suit upon an incomplete award, and we are compelled to reverse his decree on this account, and also because he has made an order postponing the adjustment of the accounts and thereby made an order contrary to and in excess of the award. For the award, if a good one, does not undertake to settle the accounts, but states generally and vaguely that a new agreement would be made hereafter respecting them. As it becomes necessary to reverse the decree, it would be proper that the case should go back to the lower Court, and the Subordinate Judge will have the opportunity of remitting the award for the adjustment of the accounts, and he can also instruct the arbitrator to carry out the terms of the agreement and to have the lots drawn, either by the parties or for them. When the arbitrator has carried out his instructions, he will again submit his award, and upon it the Subordinate Judge can proceed according to law. We decree the appeal and reverse the decree of the lower Court with costs, remanding the case in order that it may be dealt with in accordance with the instructions contained above.

*Cause remanded.*

1880  
November 25.

*Before Mr. Justice Pearson and Mr. Justice Spinkie.*

RAI CHAND (PLAINTIFF) v. MATHURA PRASAD AND OTHERS (DEFENDANTS).\*

*Adjournment—Non-appearance of plaintiff—Act X of 1877 (Civil Procedure Code), ss. 102, 103, 540—Appeal.*

Nothing remained to be done in a suit except to hear arguments, for which he had been appointed. Neither the plaintiff nor his pleader appeared at the fixed time. The Court consequently dismissed the suit. *Held* that its decree appealable under s. 540 of Act X of 1877, and the lower appellate Court should

\* Second Appeal, No. 641 of 1880, from a decree of C. J. Daniell, Esq., Judge of the District Court, Mirzapur, dated the 25th March, 1880, affirming a decree of Muhammad Ali Khan, Subordinate Judge of Mirzapur, dated the 22nd September, 1879.

have entertained the appeal and disposed of it with reference to the provisions of s. 565, and ss. 102 and 103 were not applicable to the circumstances.

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 RAJ CHAND  
 MATHURA  
 PRASAD.

It appeared from the decision of the Court of first instance in this suit that, on the 22nd September, 1879, at the hearing of the suit, after witnesses had been examined, and before the pleaders for the parties had addressed the Court, the pleaders for the parties requested permission from the Court of first instance to attend another Court. Such permission was granted to them on the understanding that they would return and argue the case when they had finished their business in the other Court. The pleaders for the defendants made their appearance on that day before the hour at which the Court of first instance usually rose, but neither the plaintiff, nor any of his pleaders, notwithstanding the services of such pleaders were no longer required in the other Court, appeared. Under these circumstances, and having regard to the fact that the plaintiff, although he had been summoned to produce certain documents, had neither produced them nor assigned any reason for not producing them, the Court of first instance ordered "that the plaintiff's claim be dismissed with costs." The plaintiff appealed, impugning the statement of the Court of first instance that his pleaders had neglected to attend, and contending that, even if this were so, that Court should not have dismissed the suit, but should have decided it on the merits. The lower appellate Court held that the appeal did not lie, inasmuch as the suit had been dismissed under the provisions of s. 157 and chapter VII of Act X of 1877, and the plaintiff should have applied under s. 103 for an order to set aside the dismissal of his suit, and, if he was not satisfied with the order made on such application, have appealed therefrom under s. 588 (8). The plaintiff appealed to the High Court, contending that the Court of first instance had made a decree dismissing the suit, and such decree was appealable; and that s. 157 of Act X of 1877 did not apply to the suit not having been dismissed thereunder.

Mr. C. Dillon and Lala Lalta Prasad, for the appellant.

The Senior Government Pleader (Lala Juala Prasad),  
 Hanuman Prasad, and Lala Jokhu Lal, for the respondent.

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RAI CHAND  
v.  
MATHURA  
PRASAD.

The judgment of the Court (PEARSON, J., and SPANKIE, J.,) was delivered by

PEARSON, J.—It appears to us that the Subordinate Judge's decree dismissing the plaintiff's suit was appealable to the Zila Judge under s. 540 of the Procedure Code, and that the Zila Judge should have entertained it and disposed of it with reference to the provisions of s. 565 of the Code. Both parties had appeared in the Court of first instance, and their witnesses had been examined in their presence. Nothing remained to be done except to hear arguments. If the plaintiff or his pleaders did not return after having been allowed to leave the Court at the hour appointed for the argument, the Subordinate Judge (if he did not think fit to adjourn the case to another day) might have proceeded to decide the case on the merits. Ss. 102 and 103 of the Code seem to be inapplicable to the circumstances. We remand the case to the lower appellate Court that it may dispose of the appeal according to law. The costs of this appeal will abide and follow the event.

1880  
November 25.

*Before Mr. Justice Pearson and Mr. Justice Oldfield.*

NANHAK JOTI AND ANOTHER (DEFENDANTS) v. JAIMANGAL CHAUBEY,  
AND OTHERS (PLAINTIFFS)\*.

*Joint Hindu Family—Joint Family property—Joint Family debt—Execution of decree against Father—Rights of Sons.*

*R*, a Hindu father, gave certain persons a bond in which he hypothecated the joint undivided property of his family. Such persons obtained a decree against *R* on such bond, in the execution of which "such rights and interests only as *R* had, as a Hindu father, in a joint undivided family" were put up for sale. *Held* that, although *R* might have, as a Hindu father, a power of dealing with the interests of his sons, that circumstance would not make such interests his own, so as to pass them by a sale which affected his own interests only, and the auction-purchasers could be held only to have purchased his interests.

THIS was a suit for possession of a four-anna share of a certain hál. Raj Kumar had executed a bond for Rs. 500 on the 26th ber, 1872, in which, describing himself as the proprietor of four-anna share, he hypothecated it as collateral security for payment of such money. On the 19th February, 1878, the s of such bond sued Raj Kumar thereon, and obtained a

id Appeal, No. 576 of 1880, from a decree of M. Brodhurst, Esq., Judge, dated the 3rd June, 1880, reversing a decree of Babu Ramkali Chaudinade Judge of Benares, dated the 2nd April, 1880.