

1873

MOONSHEE
MAHOMED
MUNOOR MEA
v.
SREEMUTTY
JYBUNEE.

The Munsif passed a decree in favor of the plaintiff for Rs. 2, and dismissed the claim for the balance.

The plaintiff appealed to the Judge. The appeal was heard by the Subordinate Judge, who confirmed the judgment of the lower Court.

The plaintiff appealed to the High Court,

Baboo *Srinath Banerjee* for the respondents took a preliminary objection to the hearing of the appeal, on the ground that, as the suit was for recovery of rent below Rs. 100, and as it did not involve any question of title, no special appeal lay to the High Court under s. 102, Bengal Act VIII of 1869.

Baboo *Woomes Chunder Banerjee* for the appellant was not called upon.

The judgment of the Court was delivered by

JACKSON, J.—The respondent in this case preferred a preliminary objection that the appeal is taken away by s. 102 of Bengal Act VIII of 1869. That section only relates to suits tried and decided originally or in appeal by the District Judge. The present case has been tried and decided not by the District Judge, but by the Subordinate Judge. The objection taken therefore fails.

Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.

NOBOKISTO KOONDO (PLAINTIFF) v. NAZIR MAHOMED SHEIKH
AND OTHERS (DEFENDANTS).*

1873
Feb'y. 27.

Bengal Act VIII of 1869, s. 102—Appeal to the High Court.

In a suit for arrears of rent below Rs. 100, an appeal lies to the High Court from a decree passed in appeal by an Additional Judge.

This was a suit for recovery of Rs. 71-6, being the arrears of rent for the years 1273 (1866) to 1276 (1869)

The defence was that the rent was at the rate of Rs. 11-6 *per annum*, and that the whole amount had been paid.

The Munsif found that the rent was at the rate of Rs. 14-8 *per annum*; that the defendants had failed to prove their alleged payment; and that there was due from the defendants to the plaintiff the sum of Rs. 71-6. He accordingly passed a decree in favor of the plaintiff.

One of the defendants appealed to the Judge.

The appeal was heard by the Additional Judge of Jessore, who found that the rent was at the rate of Rs. 11-6 *per annum*, but that the alleged payment had not been proved. He accordingly modified the decree of the lower Court.

The plaintiff appealed to the High Court.

Baboo *Mohender Nath Mitter* for the respondents took a preliminary objection to the hearing of the appeal, on the ground that, as the suit was for

* Special Appeal, No. 355 of 1872, from a decree of the Additional Judge of Jessore, dated the 26th September 1871, modifying a decree of the Munsif of that district, dated the 28th November 1870.

recovery of arrears of rent below Rs. 100, and as the appeal had been heard by the Additional Judge, no special appeal lay to the High Court under s. 102, Bengal Act VIII of 1869. An Additional Judge is a District Judge under the Civil Courts' Act (VI of 1871), s. 7, consequently no appeal lies to the High Court.

Baboo *Bunseedhur Sen* for the appellant was not called upon.

The judgment of the Court was delivered by

JACKSON, J.—There was a preliminary objection in this case that no special appeal lay under s. 102 of Bengal Act VIII of 1869. That section only refers to cases tried and decided by a District Judge. This case has been tried and decided by the Additional Judge.

1873

NOBOKI TO
KOONDO
v.
NAZIR
MAHOMED
SHEIKH.

Before Mr. Justice Pontifex.

SHAŻADA MAHOMED SHAHABOODEEN v. DANIEL WEDGEBERRY.

Evidence Act (I of 1872), ss. 74 and 77—Proceedings between the same Parties in another Suit—Public Documents—Plaint—Written Statement—Judgment.

1872.
April 1 & 3,

THIS was a suit arising out of an alleged trespass to a certain drain which was stated by the plaintiff to be his property. The present defendant had, previous to this, instituted a suit in the Munsif's Court of the 24 Pergunnahs against the present plaintiff, on account of an alleged trespass to the same drain, which drain the then plaintiff stated to be his property; the Munsif dismissed the suit on the ground that the plaintiff had not proved his title to the drain in question.

Mr. *Kennedy* and Mr. *Phillips* for the plaintiff.

Mr. *Lowe* and Mr. *Evans* for the defendant.

Mr. *Kennedy* tendered in evidence the judgment of the Munsif, and submitted it would be an estoppel, or at any rate it would be admissible in evidence.

PONTIFEX, J., admitted the judgment, but doubted if it would be an estoppel.

Mr. *Phillips* at a later stage in the suit produced certified copies of the plaint, of the written statement of the defendant, and of the decree, in the suit in the Munsif's Court, and contended that they were public documents and admissible in evidence under ss. 74 and 77 of the Evidence Act.

Mr. *Lowe* objected. The written statement is admissible under no circumstances, and the plaint is a mere copy.

Mr. *Phillips* maintained that the certified copy of the plaint was admissible under s. 77 of the Evidence Act, and that the written statement would show what the issues were between parties, and ought, therefore, to be admitted.

PONTIFEX, J., admitted the plaint, but rejected the written statement.