

Before Sir Francis W. Macleay, K.C.I.E., Chief Justice, and
Mr. Justice Feltcher.

MOZAFFER ALI

v.

HEDAYET HOSAIN.*

1907

May 3.

*Appeal—Account—Endowment—Religious Endowments Act (Act XX of 1863)
s. 18.—Order granting leave to sue —“ Decree”—Civil Procedure Code (Act
XIV of 1882) s. 2.*

No appeal lies from an order made by the District Judge under section 18 of Act XX of 1863 granting leave to bring a suit for the purpose of having the accounts taken of a religious endowment.

Such an order is not a “decree” within the meaning of section 2 of the Code of Civil Procedure.

Kazem Ali v. Azim Ali Khan(1) referred to.

APPEAL by the defendant, Syed Mozaffer Ali.

The respondent, Mirza Hedayet Hosain, presented a petition to the District Judge of Murshidabad under section 18 of Act XX of 1863. It was alleged in the petition that there was an endowment, called Basanta Ali Khan’s estate, governed by Act XX of 1863; that the committee of management of the said endowment consisted of the appellant and two other persons, but that the appellant had usurped the functions of the committee and had taken the entire management of the estate into his own hands. Various acts of neglect, mismanagement and misappropriation were alleged against the appellant, and the petitioner prayed for permission to bring a regular suit for the purpose of having the accounts of the endowment taken, for the removal of the said appellant from the post of member of the committee, and for other reliefs.

The appellant denied the charges made against him, and contended that the leave asked for should not be granted.

* Appeal from Original Decree, No. 137 of 1906, against the decree of W. H. Lee, District Judge of Murshidabad, dated Feb. 10, 1906.

(1) (1891) I. L. R. 18 Calc. 382.

The learned Judge after hearing the objector held that there was a good case for having the matters tried out in Court, and he accordingly granted the permission applied for.

Against this order the defendant preferred an appeal to the High Court.

Babu Baranasibasi Mukherjee, for the respondent, took a preliminary objection that there was no appeal from the order complained of, and cited *Kazem Ali v. Azim Ali Khan*(1).

Mr. Caspersz (*Babu Joy Gopal Ghose* with him), for the appellant. In the case cited, leave was refused, and therefore it is distinguishable from the present case in which leave was granted. The order appealed against must lead to the taking of accounts, and therefore amounts to "an order directing accounts to be taken" within the meaning of section 2 of the Code of Civil Procedure; the order is therefore a "decree."

MACLEAN C.J. The first question we have to decide is whether an appeal lies.

The appeal is against the leave granted by the District Judge of Murshidabad to the plaintiff (the present respondent) to bring a suit for the purpose of having the accounts taken of a certain religious endowment known as Basanta Ali Khan's estate. The Court went into the matter and was satisfied that a *prima facie* case had been made out, and gave the requisite leave, which it is empowered to do under section 18 of Act XX of 1863. The question is whether an appeal lies from that order.

The matter is governed by the section I have already referred to. There is nothing in that section about any appeal; the Act is silent about any appeal. I do not see how there can be any appeal from such an order. It is clearly not a "decree" within the meaning of section 2 of the Code of Civil Procedure, and unless this be so, whence comes any right of appeal? It was held in the case of *Kazem Ali v. Azim Ali Khan*(1) that no appeal lay against an order refusing such leave. The same

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principle applies to the present case. There is no provision for appeal in the Act, and unless the appellant can show that the order is a "decree" within the meaning of section 2 of the Code of Civil Procedure, no appeal lies.

The appeal must, therefore, be dismissed with costs.

FLETCHER J. I agree.

Appeal dismissed.

S. CH. B.