

APPELLATE CIVIL.

Before Mr. Justice Sharfuddin and Mr. Justice Coxe.

JADAB GOBINDA SINGH

v.

ANATH BANDHU SAHA.*

1907
May 17

*Remand—Parties, addition of—Civil Procedure Code (Act XIV of 1882) s. 564—
Order of remand by Appellate Court directing addition of party, whether legal.*

An order of remand under section 564 of the Civil Procedure Code (Act XIV of 1882) by the Appellate Court, directing addition of parties, is an order upon a preliminary point, and, as such, is not illegal.

Habib Bakhsh v. Baldeo Prasad (1) followed.

SECOND APPEAL by the defendants, Jadab Gobinda Singh and another.

This appeal arose out of an action brought by the plaintiff to recover arrears of rent due from the defendants. It appeared that the plaintiff was the four annas shareholder of a certain property, and the remaining twelve annas share was owned by the defendants. In the year 1891 there was a partition of the said property, and by that, *sahams* Nos. 8 and 9 were allotted to the plaintiff, who took possession of these *sahams* in the year 1306. Subsequently, the present action was brought by the plaintiff for apportionment of the rent. The plaintiff did not make all the co-sharers and some of the tenants, who had interest in the holding, parties to the suit. The Court of first instance passed a modified decree. On appeal, the learned District Judge remitted the case to the Munsif, with a direction to make those persons parties to the suit and to take certain other action.

* Appeals from Appellate Orders, Nos. 318 and 324 of 1907, against the orders of S. N. Huda, District Judge of Fubna and Bogra, dated April 23, 1907, reversing the orders of Kamala Nath Das, Munsif of Pabna, dated Sept. 17, 1906.

(1) (1901) I. L. R. 28 All. 187.

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Against this decision two of the defendants appealed to the High Court.

Babu Hara Chunder Chuckerbutty, for the appellants.

Babu Braja Lal Chuckerbutty, for the respondent.

SHARFUDDIN AND COXE JJ. The defendants in this case were originally tenants jointly under the plaintiff and his co-sharers. The plaintiff and his co-sharers partitioned their property, and the result was that some portions of the holdings of the various tenants fell into the plaintiff's share and others into the shares of his co-sharers. The plaintiff accordingly sued for apportionment of the rent. The Munsif gave him a modified decree. But on appeal to the District Judge, he noted that it was admitted on behalf of the plaintiff that all the co-sharer proprietors, and also some other persons who were interested in the land, had not been made parties. He, therefore, remitted the suits to the Munsif, with a direction to make these persons parties and to take certain other action.

Two of the defendants have appealed to this Court, and it is argued on their behalf that this order of remand was illegal under section 564 of the old Code. It may be conceded that the Munsif did not dispose of the suit upon a preliminary point, for this question, whether all the co-proprietors had been made parties, does not appear to have been raised before him. But the order of the District Judge directing the addition of parties is an order upon a point which is necessarily preliminary to the proper decision and trial of the suit.

As against the added parties, the proceedings begin only on the service of summons, and they are, we think, entitled to have their case investigated and decided by the Munsif. We think, therefore, that the order of the District Judge is not illegal, and in this view we are supported by the decision in the case of *Habib Bakhsh v. Baldeo Prasad* (1).

The appeals are accordingly dismissed with costs.

Appeals dismissed.

S. C. G.