

(1887) 11 AHC CK 0004

Allahabad High Court

Case No: None

Jamna Prasad and Others

APPELLANT

Vs

Lachman Prasad

RESPONDENT

Date of Decision: Nov. 4, 1887**Citation:** (1888) ILR (All) 162**Hon'ble Judges:** John Edge, J; Brodhurst, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

John Edge, Kt., C.J.

In this case the defendant appealed and the plaintiffs filed objections. The case came on for hearing first before my brother Mahmood and Mr. Justice Oldfield by whom an order of remand was passed with regard to the issue arising on the objections. On the return of the remand the case came on before my brother Brodhurst and Mr. Justice Oldfield on the 11th January last. On that occasion they expressed an opinion as to the merits of the appeal. They did not give judgment on the appeal, but merely stated that the appellant would be entitled to succeed, giving certain reasons for that view. It appears to me that the appeal can have hardly been argued out before those Judges on the 11th January, as it is obvious that the true meaning of the facts as found was not present to their minds. However, on this occasion we have had the opportunity of hearing Mr. Amiruddin, who has taken care that we shall not overlook the findings. On the 11th January a further remand arising out of the objections originally taken was ordered. The return is now before us. Mr. Amiruddin contends that we have got to decide the whole case, and that we are not entitled to treat the expressions of the Judges on the 11th January as a judgment on the appeal. He has contended that the determination of an appeal when there has been a remand must be on a hearing of the appeal, that is, on a hearing of the whole case, and that this applies equally to an appeal in which there are objections as to an appeal in which there are none. I confess I thought at one

part of the argument that we might treat the appeal as already decided and the questions arising on the objections the sole matter for our consideration. The practical difficulty which would arise from separating the appeal and the objections and treating the appeal as having been decided on the 11th of January last leads me to think that Mr. Amiruddin's argument is well founded. A difficulty would arise u/s 579 of the Code of Civil Procedure. That section provides that the decree of the Appellate Court shall bear the date on which the judgment "was pronounced, and the decree must be signed by the Judge or Judges who passed it. If Pandit Sundar Lal's contention were correct, there would be here two decrees, one of the 11th January of this year, the other a decree of to-day's date. If his contention is correct, we could not adopt the decree of 11th January as our own, as it would not be the decree of this Bench as constituted. I therefore come to the conclusion that the question which has been raised by the appellant and the objections raised by the respondents are to be considered by us. From my ruling on this point it must not be inferred that where Judges have heard arguments on some of the issues and have come to or expressed their views on those issues and have remanded another issue or issues u/s 566, the same Judges should be bound to hear on the return to the remand the case de novo. In such a case I for one would confine counsel to the findings on remand, which, of course, I had not had an opportunity of considering before. The defendant in his appeal asks to have set aside that part of the decree which interferes with the chajja and drain he had made. It is found that no chajja or drain existed previous to the time of the erection of the additional building which the defendant has erected. The chajja extended an appreciable distance over the plaintiff's land. It is obvious that if the plaintiffs were not entitled to a decree with regard to the chajja and drain, the defendant might in course of time acquire an easement which might seriously interfere with the enjoyment by the plaintiff of his land. I am of opinion that the appeal should be dismissed with costs. As to the objections, the findings on remand show that the plaintiff is entitled to have his right of privacy observed, and to have a mandatory order to compel the appellant to permanently close the door or window complained of. In this respect the decree of the Court below will be varied. I am of opinion that the objections should be allowed with costs.

Brodhurst, J.

2. On further consideration of this second appeal, I no longer hold the opinion that is expressed in the order of remand dated the 11th January last, and I concur in the judgment that has been delivered by the learned Chief Justice.