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## Reoti Singh Vs Radha Kunwar

## None

Court: Allahabad High Court

Date of Decision: June 26, 1916

**Acts Referred:** 

Civil Procedure Code, 1908 (CPC) â€" Section 110

Citation: (1916) ILR (All) 488

Hon'ble Judges: John Edge, J; Chancellor, J; Atkinson, J

Bench: Full Bench

Final Decision: Dismissed

## **Judgement**

## Chancellor, J.

It is always to be regretted when an appeal is disposed of on a preliminary point, and the parties are compelled, after having

incurred considerable expense to leave this Board without a determination of the real merits of their dispute. But in this case their Lordships feel

that they have no choice in the matter, and that they are bound to advise His Majesty that the preliminary point raised must prevail.

2. The facts of this case are these: In 1884 a mortgage was executed of certain property for a sum of Rs. 2,000, with interest at 12 per cent. On

the 20th of November, 1909, the persons who were entitled to the benefit of that mortgage took proceedings in order to have it enforced. They

claimed that the amount due upon the mortgage was Rs. 38,494, and they asked for an order for payment of that sum against the defendant and a

sale of the property. They made, as parties to that suit, not merely the people who claimed under the mortgagors but also certain people who had

set up adverse claims to the mortgaged property, among whom the appellant was one. Their Lordships think that this joinder of these parties was

irregular, and that it could only tend to confusion.

3. What followed was this: The present appellant, who claimed through a person named Huknm Singh, said that she was entitled to 4 biswas of the

property. That dispute was entirely independent of the mortgage transaction of 1884. Whatever the amount of that mortgage might be, in no

circumstances could the appellant have been made responsible for it. If it had been held that her claim was good, the mortgagee would have

completely failed, so far as her share of the estate was concerned: if it had been held that her claim was bad, she could have had no right whatever

to redeem the mortgage. The cause, however, proceeded without any objection being taken, and, in the end, on the 8th of June, 1910, a decree

was made by the Subordinate Judge in which he declared that the appellant was entitled to one-half of the 4 biswas which had been set up as her

original claim. From that decree an appeal was taken to the High Court, and on the 14th of November, 1910, the High Court decided that the

appellant had no title at all. The result was that as to one-half there were concurrent findings both of the Subordinate Judge and of the High Court

that the appellant had no claim and as to one-half there were differing judgements. The appellant accordingly sought to obtain leave to appeal to

His Majesty in Council from the Judgment of the High Court, and for that purpose it was essential that she should satisfy the condition of Section

110 of the CPC of 1908. That section provides that an appeal can only be allowed in certain cases where the amount or value of the subject

matter of the suit in the Court of First Instance was Rs. 10,000, or upwards ""and the amount or value of the subject-matter in dispute on appeal to

His Majesty in Council must be the same sum or upwards.

4. Upon the appellant's application for a certificate that the value of the subject-matter exceeded the Rs. 10,000 there appears to have been

argument before the High Court and a certificate has been given in her favour. But it is objected that that certificate, on the face of it, proceeds

upon a wrong principle, and that this Board ought not to regard it as conclusive of the appellant"s right to appeal.

5. Their Lordships think that the respondent"s contention in this respect is correct. The certificate is prefaced by an order in which the High Court

state what the reasons were that led them to the conclusion that the subject-matter was above the prescribed limit, and it is quite plain, on an

examination of that order, that they were deciding as between two rival contentions. The one that was put forward on behalf of the respondent was

that in point of fact the appeal related only to the value of the 2 biswas, while the appellant asserted that it related to the whole subject-matter of

the suit which was Rs. 38,000. This latter argument was enforced by suggesting that if the appellant"s case failed the mortgage would operate over

the whole of the property and there would be a right loft in the mortgagee to sell and dispose of this piece of the estate for the total value of the

mortgage debt; that as the mortgage debt affected equally every part of the property subject to the original mortgage, it affected the whole of those

2 biswas, and the subject-matter of the disputes therefore was Rs. 38,000. This contention prevailed before the High Court, and they state in

terms that the decree which was the subject of appeal had imposed on the property a liability for Rs. 38,000 and that in consequence the value of

the subject-matter of the appeal exceeded, the necessary prescribed sum.

6. Their Lordships think that this was an entire mistake. As between the respondent, who was seeking to enforce his mortgage, and the appellant

the subject-matter of the suit was not Rs. 38,000. The subject-matter of the dispute was simply the value of the property which the appellant

claimed, and it was quite immaterial for that purpose what the value of the mortgage might be. As has already been pointed out, the appellant could

under no circumstances have been made responsible for the amount of the mortgage nor could its extent in any way whatever have in the least

degree varied her rights. In truth the confusion has arisen because the cause of action against the appellant, that is to say, the right to obtain a

declaration of title against her adverse claims, has been joined with another which was quite distinct, the enforcement of rights under a mortgage.

7. Their Lordships think that the subject matter of this appeal is nothing but the 2 biswas to which the Subordinate Judge found that the appellant

was entitled.

8. Then Sir William Garth urges that in these circumstances, as this question of the value has never been determined by the High Court, the matter

ought to go down for the purpose of seeing whether those 2 biswas would support the value of Rs. 10,000 and thus enable an appeal to be

maintained. After considering all the arguments upon this point, their Lordships think that, out of consideration for the parties themselves, no such

direction ought to be given. Had it been possible, when the original certificate was applied for, to have established that the value of those 2 biswas

exceeded the Rs. 10,000--a perfectly simple and straightforward thing to do--all this difficulty as between the value of the estate and the value of

the mortgage would at once have vanished, but it seems impossible to read the Judgment of the High Court without seeing that there were two

contentions, and only two, before them. Upon the one contention the appellant would have failed, and that was that the subject-matter of the suit

related to the 2 biswas, and on the other contention she would have succeeded, and that was that the subject-matter of the suit was affected by the

value of the mortgage debts. It was the latter contention which the High Court wrongly adopted.

9. Their Lordships will therefore humbly advise His Majesty that this objection must succeed, and that this appeal should be dismissed with costs.