

(1879) 06 AHC CK 0005

Allahabad High Court

Case No: None

Gauri Shankar and
Another

APPELLANT

Vs

Mumtaz Ali Khan

RESPONDENT

Date of Decision: June 26, 1879

Citation: (1880) ILR (All) 415

Hon'ble Judges: Robert Stuart, C.J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Robert Stuart, C.J.

The opinions expressed in the order of reference in this case appear to me to be substantially sound, Badal's claim under his agreement with Mumtaz Ali could not be made good against the Government, or in any way against the profits of the ferry, but only against Mumtaz Ali himself personally, and in that light could only be measured in damages, and a contract between him and Mumtaz Ali to any other effect could not be enforced. I am clear, therefore, that Badal had no claim for specific performance, so far as the subject-matter of the Government lease to Mumtaz Ali Khan was concerned. This, however, does not exclude Badal's claim against Mumtaz Ali or damages. As to the case decided by this Court in 1872 Special Appeal No. 119 of 1872, decided on the 1st August 1872 (unreported), I am not prepared at this distance of time to say that it is exactly in point. I observe that the judgment in that case states that it was admitted by the appellant's pleader that the claim for possession of a share of the ferry in suit was unmaintainable, and it clearly was so; but, if so, the claim there was different from that pleaded in the present case, which is that of a shikmi partner suing for his rights under his personal sub-contract. I cannot say more about the judgment of 1872 * as the record has long since gone back to the district, Banda, from whence it came. I would answer in accordance with the referring order.

Pearson, J.

2. The view taken by the learned Judges who have made this reference appears to me on consideration to be more correct than that taken in the former decision of 1872 Special Appeal No. 119 of 1872, decided on the 1st August 1872 (unreported).

Oldfield, J.

3. (Spankie, J., concurring)--We adhere to the view already expressed in our order of remand.

4. The Division Bench, following the judgment of the Full Bench, decreed the appeal, and remanded the case to the Court below for trial on the merits.