

(1880) 05 AHC CK 0010

Allahabad High Court

Case No: None

Wilayat Ali

APPELLANT

Vs

Akbari Begum and
Others

RESPONDENT

Date of Decision: May 31, 1880

Citation: (1880) ILR (All) 908

Hon'ble Judges: Straight, J; Pearson, J

Bench: Division Bench

Judgement

Pearson, J.

The main contention of the learned Counsel for the appellants was outside the grounds of the appeal. He contended that the lower Appellate Court was bound to accept the finding returned to it by the Court of First Instance u/s 566, Act X of 1877, because no objections thereto were presented in the form of a memorandum within the time allowed, and was not free or competent to decide the case in a manner inconsistent with and opposed to such finding. In support of his contention he referred us to a decision of a Bench, of this Court (Morgan, C.J., and Pearson, J.), dated 29th June 1866, H.C.R. N.-W.P. 186 p. 50. In the case then decided it was pleaded in appeal that, "no objection having been raised on the part of the respondent against the Munsif's decision, u/s 354, it was improper to award a decree for fourteen bighas and six biswansis of the resumed muafi land;" and the plea was allowed, and that portion of the Munsif's judgment which had not been objected to was restored. But the question as to the meaning and intention of the terms of Section 354, Act VIII of 1859, and Section 567, Act X of 1877, has since 1866 been not unfrequently considered, and the ruling of 1866 has not been followed. A Full Bench decision--Ratan Singh v. Wazir ILR All. 165--held that, when a memorandum of objections had not been presented by a party, he might with the permission of the Court urge them orally at the hearing. In the case now before us it may be that the Subordinate Judge allowed objections to the Munsif's finding on remand to be taken orally. But even if no objection to it was preferred in writing or

orally, we are not of opinion that the lower Appellate Court's duty was to accept it blindly, without examining the evidence on which it was founded and satisfying itself that it was correct and fit to be accepted.

2. No doubt an Appellate Court would hesitate to set aside such a finding in the absence of objections, and would deem it proper to record its reasons at length for coming to a contrary conclusion. In the present case the Subordinate Judge has fully stated the grounds on which he differs from the Munsif, and makes it clear that he has given a close and intelligent attention to the points in issue and the evidence relating to them. It is impossible to hold that his action has contravened the terms of Section 567 of the Code, which merely direct that "after the expiration of the period fixed for presenting such memorandum, the Appellate Court shall proceed to determine the appeal." But even had we been of opinion that the lower Appellate Court's action in the matter was irregular, we should be precluded from reversing its decree or remanding the case on account of the irregularity which is not of a nature affecting the merits of the case or the jurisdiction of the Court.