

(1880) 02 AHC CK 0013**Allahabad High Court****Case No:** None

Yusuf Ali and Others

APPELLANT

Vs

Farzand Ali

RESPONDENT

Date of Decision: Feb. 5, 1880**Citation:** (1880) ILR (All) 669**Hon'ble Judges:** Straight, J; Pearson, J**Bench:** Division Bench**Final Decision:** Disposed Of**Judgement**

Pearson, J.

We regret to be obliged to interfere in a case which appears to have been unduly protracted by irregular procedure, but we cannot refuse to admit the validity in the main of the grounds of appeal.

2. The case after being originally tried by the Munsif appears to have been remanded to him by the Officiating Judge in appeal in contravention of the terms of Section 564, Act X of 1877. The second decision of the Court of First Instance was again the subject of an appeal which terminated in a second order of remand in contravention of the section aforesaid. The Munsif's third decision was also appealed; and the Judge in disposing of the third appeal has once more remanded the case for retrial in contravention of the same section with a direction to cause the plaint to be amended. The present appeal is the seventh stage which the proceedings have reached.

3. The claim as brought was for the restoration of a pond, which it was alleged that the defendants were wrongfully filling up, to its original condition. By the proposed amendment, if we rightly understand, the claim will be for the protection of the plaintiffs from any infringement of, or for a declaration of, their right to a share in the produce, and the use of the water by way of easement. The alteration is certainly a material one.

4. We observe that Section 53 of Act X of 1877 provides for the amendment of a plaint at or before the hearing of a suit in the Court of First Instance at the discretion of that Court, but we do not find any provision in the law empowering an Appellate Court to order or allow a plaint to be amended, or to remand a case u/s 562, for the purpose of such amendment. That section contemplates a case in which the decree of the first Court upon a preliminary point has been reversed in appeal. In the present case it does not appear that the decree of the Court of First Instance proceeded upon a preliminary point and has in respect thereof been reversed.

5. We have therefore no alternative but to set aside the lower Court's order of remand and to direct it to dispose of the appeal afresh in reference to the claim as brought. The costs of this appeal will be costs in the cause.