

(1879) 05 AHC CK 0008

Allahabad High Court

Case No: None

Hardeo Das and
Another

APPELLANT

Vs

Hukam Singh

RESPONDENT

Date of Decision: May 29, 1879

Citation: (1880) ILR (All) 322

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

Bench: Division Bench

Final Decision: Allowed

Judgement

Pearson, J.

The appeal must, in our opinion, prevail. The lower Court has erred in applying the provisions of Section 210, Act X of 1877, to this suit, which is not a mere suit for money but asks for the recovery of the amount of a bond-debt by the sale of the property hypothecated in the bond. Section 210 was not intended to enable the Courts to set aside and over-ride such a contract as that on the basis of which the present claim is laid. The security over the hypothecated property which it gave for the payment of the debt would be of little value, if it could be so set aside and over-ridden. The plaintiffs are entitled to an award against the defendants of the principal sum (Rs. 12,000), with interest at the rate of twelve per cent, per annum to date of decree, and to interest from the latter date to the date of realization at the rate of six per cent, per annum, and to their costs with interest thereon at the same rate; and to be empowered to recover the amount of the bond-debt by the sale of the hypothecated property. The decree of the lower Courts is modified accordingly; and the costs of this appeal are allowed.