

(1880) 03 AHC CK 0014

Allahabad High Court

Case No: None

Durga Prasad

APPELLANT

Vs

Ram Charan and
Another

RESPONDENT

Date of Decision: March 24, 1880

Citation: (1880) ILR (All) 785

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

Bench: Division Bench

Final Decision: Disposed Of

Judgement

1. The Subordinate Judge's order dated the 25th June 1879, was appealable to the Judge u/s 588 (TO), Act X of 1877, and was made the subject of an appeal to him on the 25th July 1879, before Act XII of 1879 was passed. An order setting aside a sale under the second clause of Section 312, Act X of 1877, is not appealable u/s 588, Act X of 1877, as amended by Section 90(16), Act XII of 1879. This being so, Section 102 of the latter Act, which provides for the disposal of "every appeal now pending which would have lain if the Act had been in force on the date of its institution," does not apply in this case, for the appeal would not have lain at all, had Act XII of 1879 been in force on the date of its institution; but, as the appeal lay to the Judge under the law in force on that date, he was competent and bound to dispose of it under the provisions of Section 6, Act I of 1868, which declare that the repeal of any Act shall not affect any proceeding commenced before the repealing Act shall have come into operation. As the Judge failed to exercise a jurisdiction vested in him by law in the matter of the appeal, we set aside the order and direct the memorandum of appeal to be transmitted to him for disposal on the merits according to law.

2. In the course of considering this matter we have had occasion to examine two decisions, passed by us on the 11th of February last, in appeal from Order No. 138 of 1879 (unreported, decided the 11th February 1880) and Revision Case No. 38B of 1879 (unreported, decided the 11th February 1880).

3. We think it right to take this opportunity to say, as regards the first of these, that it was determined under an erroneous conception of Section 102 of Act XII of 1879. It was incorrect to say, that that section was "inapplicable" to that appeal. The order thereby appealed was one "confirming a sale," and it was appealable both u/s 588 of Act X of 1877 and the amendment of that section contained in Act XII of 1879. Moreover, that appeal was pending, when the last-mentioned Act came into force, and should, therefore, have been heard and determined as provided by the amendment to Section 589, namely, by this Court. Accordingly our order sending it back to the Judge for disposal was incorrect.

4. In Revision Case No. 38B we were in error in using the expression "had the provisions of Act XII of 1879 been applicable, the appeal from the Munsif's order setting aside the sale would lie, not to the Judge but the High Court"; for Section 588, as amended, enacts, by omission, that appeals from orders setting aside sales can no longer be had. We have thought it right to correct this inaccuracy of expression, though our order in the case was perfectly regular.