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Banshibadan Mandal Vs Chhaunat Bibi and Others

Court: Calcutta High Court

Date of Decision: May 19, 1925

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 43 Rule 1(j)

Citation: AIR 1926 Cal 400

Judgement

1. This is an appeal by the auction-purchaser in execution of a money decree. The respondents deposited the amount for which the property was

sold sand purchased by the appellant; but it was contended the money deposited was short by 12 annas. Both the Courts below have held that this

was due to a bona fide mistake and set aside the sale. The second appeal is from the appellate order of the District Judge of 24-Par-ganas.

2. A preliminary objection is taken by the respondents that no second appeal lies. We think that this contention should prevail. The order passed

after the deposit made under Order 21, Rule 89 is an order under E. 92. An appeal lies from an order passed under that yule under Order 43,

Rule 1(j), Code of Civil Procedure. But no second appeal lies from the order passed upon first appeal, u/s 104, Clause (2). It is argued by the

learned advocate for the appellant that as the auction-purchaser was the decree-holder, the matter is covered by Section 47; and u/s 2, Civil P.C.

the order passed u/s 47 is a decree and is appealable. We think that this contention is not sound. Section 47 covers matters arising between parties

to the suit relating to execution, discharge and satisfaction of the decree. An order passed under that section is a decree as defined in Section 2,

Civil P.C. But Clause (a) of that section excludes an order which is an adjudication from which an appeal lies as an appeal from order. All orders,

therefore, between decree-holder and judgment-debtor u/s 47 are not decrees and appealable as such. In the present case an appeal lies as an

appeal from order under Order 43, Rule (1)(j). A second appeal therefore does not lie. We are fortified in our view by the decision in the case of

Asimadi Sheikh v. Sundari Bibi [1911] 38 Cal. 339. The appellant has referred to the case of Raghubar Dayal Sukul v. Jadu Nandan Misser

[1911] Cri.L.J. 89 which was, however, a case under the Bengal Tenancy Act. In this view we hold that a second appeal does not lie and this

appeal is dismissed with costs two gold mohurs.