

## Malati Chandra and Others Vs Dilip Kumar Debnath and Others

**Court:** Calcutta High Court

**Date of Decision:** Feb. 22, 2008

**Acts Referred:** Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 â€” Section 21, 21(1)

**Citation:** (2008) 2 CHN 1 : (2008) 1 ILR (Cal) 307

**Hon'ble Judges:** Subhro Kamal Mukherjee, J; Kalidas Mukherjee, J

**Bench:** Division Bench

**Advocate:** Buddhadev Ghosal, Tapas Mukherjee and Dipanjan Sinha Roy, for the Appellant;

### Judgement

Subhro Kamal Mukherjee, J.

This is an appeal against judgment and decree dated December 22, 2000 passed by the learned Civil Judge

(Senior Division), First Court, Howrah in Title Suit No. 33 of 1993.

2. The said suit was for pre-emption and was valued at Rs. 30,010/- (Rupees thirty thousand and ten) only.

3. The learned Civil judge by his said judgment and decree dismissed the said suit on contest with costs and, further, directed the plaintiff to pay

additional Court-fees on Rs. 1,39,990/- (Rupees one lac thirty-nine thousand nine hundred ninety) only. The learned Judge, inter alia, held that the

valuation of the suit property at Rs. 1,70,000/- (Rupees one lac seventy thousand) only, as on January 1, 1993, as mentioned in Exhibit-4, was

reasonable as the defendant No. 1 was in possession of the suit property, the suit ought to have been valued not less than at Rs. 1,70,000/-

(Rupees one lac seventy thousand) only. He, therefore, held that the defendant was liable to pay Court-fees on Rs. 1,70,000/- (Rupees one lac

seventy thousand) only; the Court-fees paid was insufficient.

4. In the decree, however, it was clearly mentioned that the suit was instituted claiming for contractual pre-emption along with other reliefs and the

suit was valued at Rs. 30,010/- (Rupees thirty thousand and ten) only.

5. The question cropped up for consideration is whether an appeal against such decree should lie in this Court or in the Court of the learned

District Judge?

6. Mr. Buddhadev Ghosal, learned Advocate appearing for the appellant, suggests as the learned Civil Judge held that the valuation of the suit

property was Rs. 1,70,000/- (Rupees one lac seventy thousand) only and directed the plaintiff to pay Court-fees of Rs. 1,70,000/- (Rupees one

lac seventy thousand) only, the appellant has rightly filed this appeal before this Court.

7. Sub-section (1) of Section 21 of the Bengal, Agra and Assam Civil Courts Act, 1887 runs as under:

21. Appeals from Civil Judge (Senior Division) and Civil Judges (Junior Division). - (1) Save as aforesaid, an appeal from a decree or order of

Civil Judge (Senior Division) shall be-

a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not

exceed one lakh and fifty thousand rupees, and

b) to the High Court in any other case.

8. The forum of appeal is determined in accordance with the amended Section 21 of the said Act as on the date of the judgment and decree

challenged in the appeal. Under Sub-section (1) of Section 21 of the said Act an appeal from a decree of the learned Civil Judge (Senior Division)

shall lie to the District Judge where the value of the original suit in which the decree was passed did not exceed Rs. 1,50,000/- (Rupees one lac

fifty thousand) only.

9. In this case the value of the original suit was Rs. 30,010/- (Rupees thirty thousand and ten) only. Therefore, the appeal lies before the District

Judge and not to this Court.

10. The report of the Stamp Reporter that the appeal is maintainable before this Court is wrong.

11. We, accordingly, dispose of this appeal by holding that it lies to the District Judge and not to this Court and directing return or the

memorandum appeal to the learned Advocate-on-record for presentation to the proper Court and for taking other necessary steps. These,

however, in the special circumstances of this case, should be done with as much expedition as possible.

12. The appeal is disposed of as above.

13. There will be no order for costs in this Court.

Xeroxed plain copy of this order duly counter-signed by the Assistant Registrar (Court) be given to the parties on usual undertakings.

Kalidas Mukherjee, J.

I agree.