

(1880) 05 CAL CK 0002

Calcutta High Court

Case No: None

Ram Lall Nag

APPELLANT

Vs

Koylash Chunder

RESPONDENT

Koosari and Another

Date of Decision: May 20, 1880

Citation: (1881) ILR (Cal) 206

Hon'ble Judges: Tottenham, J; Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

In this case, after the questions raised in appeal had been fully argued by Baboo Mohiny Mohun Roy, it was brought to our notice by Baboo Sreenath Dass, on the part of the respondent, that in this case the defendants before us are not entitled to appeal, inasmuch as, u/s 584, as u/s 540, of the Code of Civil Procedure; an appeal lies only as against the decrees of the Subordinate Courts. The words in Section 540 are, "from the decrees or from any part of the decrees," and the last mentioned expression is not to be found in Section 584. The contention of the respondent's vakil is, that the defendants in these cases, who have obtained the benefit of the decree of the Court below, by which the suits are dismissed, are not entitled to come up here in appeal by reason of a particular expression or finding contained in the judgment, against which the Code does not allow an appeal. It appears to us that, in regard to Section 584, that undoubtedly is so. It no doubt frequently happens that, in cases before the Court of first instance, the defendant is enabled to set up various pleas, and by succeeding on one or other of those pleas he may defeat the plaintiff as for instance in a suit for rent at an enhanced rate, the plaintiff may, after contest, succeed in showing that the defendant's tenure is liable to enhancement, but, he may fail to prove either that he served sufficient notice, or that the particular rent was claimable, or for some other cause the suit may ultimately fail. In such a case it appears to me that the plaintiff ought to take care that the decree sets out a declaration of the Court as to that part of the case on which he succeeds, because,

when that is done, the defendant has an opportunity, u/s 540, to appeal against that part of the decree which is prejudicial to his interest. Where that has not been done, where the decree of the Court is simply one dismissing the suit, there I apprehend the defendant is not entitled to appeal; but of course the question will afterwards arise whether the plaintiff, where the decree is in such terms, is entitled to the benefit of any expression favourable to him which may occur in the judgment upon which the decree is founded. This of course will be a question which may hereafter be of great importance with reference to the terms of Section 13 expl. ii (see *Niamut Khan v. Phadu Buldia*, post, p. 319). We express no opinion on that point at present. We dismiss this appeal, but, under the circumstances, without costs.