

(1880) 06 CAL CK 0005

Calcutta High Court

Case No: None

Ajoodhya Pershad and
Others

APPELLANT

Vs

Gunga Pershad and
Another

RESPONDENT

Date of Decision: June 10, 1880

Acts Referred:

- Court Fees Act, 1870 - Article 17(3), 12

Citation: (1881) ILR (Cal) 249

Hon'ble Judges: Pontifex, J; McDonell, J

Bench: Division Bench

Judgement

Pontifex, J.

We agree with the Court below that the plaint was insufficiently stamped under Article 17 of the Court Fees Act, Clause. 3.

2. Preliminary objections were taken to the appeal, on the ground that the order of the lower Court was final u/s 12 of the Court Fees Act, which enacts, that "every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit."

3. But of Section 588 of the Civil Procedure Code, as it originally stood, Clause. (c)t provided that an order u/s 54, Clause. (b)--being such an order as the present is--should be appealable, thereby removing the finality declared by Section 12 of the Court Fees Act.

4. A second preliminary objection taken was, that although by Section 588, Clause (b), an appeal was given in respect of rejection of plaints u/s 54, Clause (b), yet, u/s 588 as amended, no appeal is now given. But then, on behalf of the appellants it was

urged, that, under the definition of "decree" in the amended Code, an order rejecting a plaint is within the definition. Similarly, the new definition of "decree" also includes questions u/s 244, which were made appealable by Clause (i) of Section 588 as it originally stood, but which are omitted in Section 588 as amended.

5. We think though the amended Section 588 applies only to appeals from orders directing that the plaint shall be amended, and not to rejection of a plaint, yet the amended definition of the word [251] "decree" shows that an appeal lies in the present case. But, although an appeal lies, we are of opinion that the decision of the lower Court is correct. The appeal will, therefore, be dismissed with costs.