

AIR 1926 Cal 897 : 94 Ind. Cas. 393

Calcutta High Court

Case No: None

Rajani Kanta Dey

APPELLANT

Vs

Khatir Mahomed

RESPONDENT

Date of Decision: Nov. 20, 1925**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27

Citation: AIR 1926 Cal 897 : 94 Ind. Cas. 393**Hon'ble Judges:** Cuming, J; B.B. Ghose, J**Bench:** Division Bench

Judgement

Cuming, J.

The appellant in this appeal brought a suit" against the respondent to recover possession of a certain plot of land after establishment of his right to it. The suit was decreed in part. The defendant then appealed to the District Court. The District Court held that the report of the amin was unreliable and the learned Judge, therefore, set aside the judgment and decree of the first Court and remanded the case to the Primary Court for trial after making a fresh local investigation, against this order the plaintiff has appealed to this Court; and he contends that the learned Subordinate Judge"s order is bad in law. He contends that the order does not come under Order XLI, Rule 23 or Rule 25 which are the only rules which provide for the remand of a case to the Primary Court.

2. The respondent contends that although the order does not come under Rule 25 or Rule 23 the order was made under the inherent powers of the Court.

3. It seems to me quite clear that the order of the learned Subordinate Judge is wrong. So long as there are distinct provisions in the Code it is not open to the Court to invoke the inherent powers of the Court. In this case the Court should obviously have proceeded under Order XLI, Rule 27 and himself ordered a fresh local enquiry or to remand the case to -the Primary Court to have a fresh enquiry made and the result reported to his Court,

4. The order of the learned Subordinate Judge is, therefore, set aside and the appeal is sent back to him for hearing. It would be open to him to order a fresh local enquiry himself or to send the case to the first Court to have a fresh local enquiry made and decide the appeal after considering the result of this fresh local enquiry.

5. Costs of this appeal will abide the final result. We assess the hearing fee at three gold mohurs.

Ghose, J.

6. I agree