Upendra Chandra Singh Vs Sakhi Chand

Court: Calcutta High Court

Date of Decision: April 15, 1912

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 47(1)

Citation: 15 Ind. Cas. 573

Hon'ble Judges: Mookerjee, J; Carnduff, J

Bench: Division Bench

Judgement

1. This appeal is directed against an order of the Court of appeal below-made in affirmance of an order of the primary Court, directing an

application for assessment of mesne profits to be registered as an execution case on the basis whereof inquiry into the amount of mesne profits is to

proceed. A preliminary objection has been taken to the competency of the appeal on the ground that the application is in reality an application in

the suit and the order made thereon cannot be treated as a decree u/s 2 read with Section 47 Clause (1) of the CPC of 1908. In reply to this

contention, it has been urged by the learned Vakil for the appellant that the respondent has treated the application for assessment of mesne profits

as an application in execution, that, at his instance, it has been registered as such, and consequently, it is not open to the respondent now to urge

that the matter is not really one in execution. In support of this view, reliance has been placed upon the case of Bindeswari Prosad Singh v. Thakur

Lakpat Nath Singh 15 C.W.N. 725 : 8 Ind. Cas. 26.

2. In our opinion, the preliminary objection must prevail.

3. Even if it be assumed, on the principle explained in Bindeswari Prosad v. Thakur Lakpat 15 C.W.N. 725 : 8 Ind. Cas. 26, that it is not open to

the respondent to urge that the application is not properly an application in execution, still the order in question is an interlocutory order and does

not determine the rights of the parties. An older of this description is clearly not open to appeal as pointed out by this Court in the cases of

Dalgliesh v. Nandan Misser 13 Ind. Cas. 186 and Srinivas Prosad Singh v. Kesho Prosad Singh 14 C.L.J. 469 : 12 Ind. Cas. 745. A similar view

was taken by this Court in the case of Behary Lal Pundit v. Kedar Nath Mullick 18 C. 469.

4. The result is that the appeal is dismissed with costs. We assess the hearing fee in this Court at two gold mohurs.