

**(2013) 02 CAL CK 0051**

**Calcutta High Court**

**Case No:** F.M.A.T. No. 1279 of 2012

Ram Prasad Chandra

APPELLANT

Vs

Budge Budge Floor Coverings  
Limited

RESPONDENT

**Date of Decision:** Feb. 6, 2013

**Citation:** (2013) 3 CHN 151

**Hon'ble Judges:** Subhro Kamal Mukherjee, J; Asim Kumar Mondal, J

**Bench:** Division Bench

**Advocate:** Uddyan Dutta and Bidyut Kumar Banerjee, for the Appellant; Dipak Kumar Ghosh, Govinda Chowdhury and Ranjay De, for the Respondent

### **Judgement**

Subhro Kamal Mukherjee, J.

A suit was instituted in the City Civil Court at Calcutta by the plaintiff/appellant for declaration, damage, compensation and other reliefs. The suit was valued at Rs. 4,37,858/- (Rupees Four lakh thirty-seven thousand eight hundred and fifty-eight) only. Ad valorem Court-fees were paid.

2. The defendant entered appearance in the suit and filed written statement. In the written it was stated that the suit was not maintainable as the City Civil Court at Calcutta had no jurisdiction to entertain the suit.

3. The learned Trial Judge framed several issues in the suit, but took up the preliminary issues:

(a) as to whether the suit was maintainable in fact and in law; and

(b) as to whether the Court had jurisdiction to try and entertain the suit, for decision.

4. No evidence was adduced by either of the parties.

5. The learned Trial Judge was conscious that at the stage of hearing of preliminary issues regarding maintainability of the suit on the ground of jurisdiction, it was not

possible for the learned judge to go in to the merits of the case as it was possible only after taking evidence of both the sides. Still, the learned Trial Judge, in substance, dismissed the suit on merits holding the same was not maintainable.

6. We are informed by Mr. Udayan Dutta, learned advocate appearing for the appellant that as no decree was drawn up, he has filed this appeal as an appeal from original Order, that is, First Miscellaneous Appeal.

7. Mr. Dutta heavily relies upon a decision in the case of Naresh Chandra Das Vs. Gopal Chandra Das, and submits that a Division Bench of this Court accepted registration of an appeal, filed against an Order directing the plaintiff to take back the plaint holding that the Court had no jurisdiction to try the suit, as an appeal from original Order.

8. Reliance placed, by Mr. Dutta in the case of Naresh Chandra Das (Supra) is misplaced. In Naresh Chandra Das (Supra) the Trial Court directed return of plaint on the ground that the Court had no jurisdiction to try the suit. Thus, the Order was passed in exercise of the power under Rule 10 of Order 7 of the Code of Civil Procedure. Order 43, Rule 1(a) of the CPC provides an appeal from original Order against such Order.

9. In the case in hand, the suit was dismissed. Irrespective of the fact as to whether decree has been drawn up or not, this appeal is to be classified/as an appeal from original decree. Ad valorem Court-fees are to be paid.

10. We, thus, direct the learned advocate for the appellant to take steps for removal of the defects by classifying the appeal as an appeal from original decree and by paying the deficit Court-fees with prayer for codonation of delay in depositing such Court-fees. Put up this matter after the defects are removed with the revised report of the Stamp Reporter.

Asim Kumar Mandal, J.

I agree.