

## Aradhan Mondal and Others Vs Abhoya Charan Mondal and Others

**Court:** Calcutta High Court

**Date of Decision:** March 28, 1922

**Citation:** AIR 1923 Cal 321 : 68 Ind. Cas. 626

**Hon'ble Judges:** John Woodroffe, J; Ghose, J

**Bench:** Division Bench

### Judgement

1. In this case a preliminary objection has been taken that no second appeal lies. In support of that objection it has been pointed out that the suit

was described as a suit for recovery of the price of fish after declaration of title in respect thereof, The plaintiffs also prayed that the Court might be

pleased to establish the plaintiffs' right in respect of the fish and to pass a decree in their favour and against the defendants for recovery of the price

thereof, namely, Rs. 500, i.e., the amount claimed with costs and future interest, and in support of their view as to the nature of the suit they rely

upon the first ground of the memorandum of appeal, namely, that the Court of Appeal has erred in deciding the question of title to the tank which

was beyond the scope of the suit and in declaring plaintiffs' title to the tank in the present suit which was merely a suit for damages after

declaration of title to the fish and not to the tank. They contend, therefore, that the suit being a suit for money less than the sum of rupees five

hundred no second appeal lies, We think this objection succeeds. The appeal must, therefore, be dismissed with costs.

2. But in deciding this preliminary objection We may observe that the Judge in declaring the plaintiffs' title to the tank has gone beyond the scope

of the suit. It was open to the Judge to decide the question of title incidentally in so far as it was necessary for the purposes of giving relief to the

plaintiffs, namely, their prayer for declaration of right to and recovery of the price of fish, but it was not within his jurisdiction at all to declare the

plaintiffs' title to the tank in dispute as he has done. We are asked to deal with this matter by way of revision and we think that it is right for us to

do so. We, therefore, expunge so much of the decree of the lower Appellate Court which declares the plaintiffs' title to the tank in suit which was

not within the Judge's jurisdiction to declare. The rest of the decree of the lower Appellate Court will stand.