
(1875) 02 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 565 of 1874

Mukhoda Soondery
Dassee

APPELLANT

Vs

Karim Sheikh

RESPONDENT

Date of Decision: Feb. 12, 1875

Judgement

Sir Richard Couch, Kt., C.J.

I think we should first consider whether a special appeal lies in this case. If it does not, it is not necessary to determine whether the decision of the lower Appellate Court is right, and as the law cannot be considered as settled by the Full Bench decision in *Doorga Churn Surma v. Jampa Dassee* 12 B.L.R., 289, it is better not to do so; for it might be said hereafter that our opinion upon this point was extra-judicial. By s. 102 of Beng. Act VIII of 1869, an appeal does not lie to this Court in a suit such as this is if the amount sued for, or the value of the property claimed, does not exceed one hundred rupees, and a question of right to enhance or vary the rent of a ryot or tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has not been determined by the judgment. It is true that the decree of the lower Appellate Court simply dismisses the suit, which was the only decree that could be made upon the judgment that was given. But the judgment shows, what was determined, and s. 102 uses that word, showing, I think, that the judgment and not the decree is to be looked at in applying that section. Where the judgment shows, not only that a question of title was not determined, but that the Judge did not even consider it, I think a decree in general terms cannot be held to have determined it. There are many cases in which the Court has resorted to the judgment for the interpretation of the decree, and there is frequently such a want of precision and accuracy in the decrees that if this were not done, much injustice would ensue. For instance, if another suit were brought by the plaintiff to try the question of title between herself and the third and fourth defendants, I think the Court could not say that the question had been heard and determined in this suit so as to make s. 2 of Act VIII of 1859 applicable. If it said so, it would be contrary to the fact, and the plaintiff would be concluded by a supposed determination when none was made. But

the learned Judge said that even if his view of the decree were not correct, he thought he ought to exercise the jurisdiction which is reposed in the Court by the 15th section of the Charter Act. As to this, the question appears to me to be whether, where the objection to the proceeding or judgment of the lower Court might be taken in an appeal and there is no want of jurisdiction, the lower Court having only erred in the exercise of it, and the appeal is expressly disallowed by law, the Court should exercise the power conferred on it by the 15th section. This would be to do indirectly what the law says the Court shall not do directly, and would be refusing to give effect to the law which disallows the appeal. In my opinion, the superintending power of the Court ought not to be used in this way, and as a matter of discretion I would not exercise it in this case. The title of the plaintiff to a share of the rent may be tried in a suit against the persons who have received it from the ryot without making him a defendant. We reverse the order appealed from, and dismiss the special appeal with costs including the costs of this appeal.