
(1870) 03 CAL CK 0017

Calcutta High Court

Case No: Regular Appeal No. 207 of 1869

Ibrahim Sali Bhay Dapti

APPELLANT

Vs

Hawabi

RESPONDENT

Date of Decision: March 9, 1870

Judgement

L.S. Jackson, J.

It seems to me there is nothing in the objections raised against the hearing of this appeal. The decision appealed against is not, so far as I can see, an interlocutory one, but a final decision disposing of the points at issue between the parties. It seems to me, also, that it is not a decision of the Recorder upon any case under any of the Acts specified in section 29, Act XXI of 1863. It is, in fact, a regular suit for the purpose of dividing and distributing the assets of the estate of the deceased Assabi. I think, therefore, it is a decision in a regular suit, and one subject to appeal.

2. Another objection has been raised which seemed to arise on the face of the decree, namely, that the case did not come within the 27th section of Act XXI of 1863, that is to say, that the subject-matter of the suit was not above rupees 3,000, and less than rupees 10,000. It is unquestionable that the suit, as originally framed, did relate to property exceeding rupees 10,000 in value, that is to say, to rupees 13,000; but then seeing that a part of that property valued at rupees 6,000 has been shown in the opinion of the Court below not to have existed, and the suit in respect of such property has been altogether dismissed, it results that the amount or value of that portion of the suit that remains and forms the subject of appeal, is less than rupees 10,000; and it appears to me, upon a fair construction of sections 27 and 39 of the Act, that the appeal which is now before us, relating as it does to a property less than rupees 10,000, is cognizable by this Court.

(1) Act XXI of 1863, section 27.--All suits heard and determined by a Recorder under this Act, in which the amount or value of the suit exceeds rupees three thousand, and be less than rupees ten thousand, an appeal shall lie to the High Court of Judicature at Fort William in Bengal, subject to the rules contained in the said CPC regarding regular

appeals.

Section 39.--In all suits heard and determined by a Recorder under this Act, in which the sum or matter at issue is rupees ten thousand or upwards, or in which the judgment, decree, or order shall involve, directly or indirectly, any claim, demand, or question to, or respecting property of, the value of rupees ten thousand or upwards, an appeal shall lie to Her Majesty in Council, subject to the rules and orders for the time being in force regarding appeals to Her Majesty in Council on decisions of the High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction.

(2) Act XXI of 1863, section 29.--"All cases and proceedings arising under Act XIX of 1841, Act XXXV of 1858, Act XL of 1858, as amended by Act IX of 1861, or Act XXVII of 1860, may be received and disposed of by the Recorder of any Court established under this Act, subject always to all the rules and provisions as to jurisdiction and otherwise in the said Acts contained respectively. Orders passed by the Recorder in cases arising under the said Acts shall not be open to appeal, but the parties shall be at liberty to contest such a decree in a regular suit."