

Kundan Singh and ors. Vs. Dalip Singh and ors.

Kundan Singh and ors. Vs. Dalip Singh and ors.

SooperKanoon Citation : sooperkanoon.com/449152

Court : Allahabad

Decided On : Dec-02-1913

Reported in : (1913)ILR36All58

Judge : Henry Richards, C.J. and ;Tudball, J.

Appellant : Kundan Singh and ors.

Respondent : Dalip Singh and ors.

Judgement :

Henry Richards, C.J. and Tudrall, J.

1. This appeal arises out of a suit for pre-emption which was brought in the court of the Munsif by the plaintiffs respondents. They sought possession of certain property, the value of which they gave as Rs. 800. There were many defences, but, amongst other objections taken by the defendants, it was urged that the real value of the property was Rs. 1,500 and the Munsif's court had no jurisdiction to entertain the suit. The Munsif framed all the issues in the case; took evidence thereon; held that the value of the property was Rs. 1,500, but in spite of that proceeded to decide all the issues and dismissed the suit. The right to pre-empt was based on village custom, and he held that the custom did not exist. The plaintiffs appealed, urging that the custom of pre-emption did exist and that the true value of the property was Rs. 800. The lower appellate court decided that the value of the property was Rs. 1,500. It, thereupon, without deciding any other

point, set aside the decree of the first court and directed the plaint to be returned to the plaintiffs for presentation in the proper court.

2. The defendants have come here on appeal from this order, and it is urged that the lower appellate court should have taken action under Section 11 of the Suits Valuation Act and ought not to have returned the plaint as it has done. A preliminary objection is taken that no appeal lies to this Court from the order of the lower appellate court directing the plaint to be returned. The point is one which was considered by a Full Bench of this Court in *Wahid-ullah v. Kanhaya Lal* (1) (1902) I. L. R., 25 All. 174. The present Code has made no alteration in this respect, and in accordance with that ruling it is clear that an appeal does lie to this Court. That case, moreover, is in other respects parallel to the case before us. It was therein pointed out that in circumstances such as those of this case, it was the duty of the lower appellate court to take action under Clause (2) of Section 11 of Act No. VII of 1887. The lower appellate court, having come to the conclusion that the valuation was Rs. 1,500, ought to have at once considered the question whether or not the under-valuation had prejudicially affected the disposal of the suit. (Under the circumstances of this case this is not likely to have happened.) If the lower court had then found that the parties had not been prejudicially affected and the materials necessary for the decision of the suit were on the record (as they appear to be), it was clearly its duty to dispose of the appeal as it there had been no defect of jurisdiction in the court of first instance. We agree with, and are bound by, the ruling in the Full Bench decision mentioned above; and, as in that case, we set aside the order of the lower appellate court and remand the case for disposal by it, having due regard to the provisions of the Suits Valuation Act as mentioned above. The costs of this appeal will abide the event.