

Mehendra Singh Vs. Haqimuddin

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SooperKanoon Citation : sooperkanoon.com/492969

Court : Allahabad

Decided On : Nov-27-2008

Reported in : 2009(2)AWC1271

Judge : Pankaj Mithal, J.

Appellant : Mehendra Singh

Respondent : Haqimuddin

Advocate for Pet/Ap. : Sri. Nalin Kumar Sharma

Disposition : Appeal dismissed

Judgement :

ORDER

Pankaj Mithal, J.

1. Heard Sri Nalin Kumar Sharma learned Counsel for the plaintiff-appellant.
2. The plaintiff-appellant had instituted a suit for recovery of Rs. 25,000. The suit was dismissed by the Court of first instance and so is the appeal by the lower appellate court. Thus, the plaintiff-appellant has preferred this second appeal.
3. The valuation of the suit as well as this second appeal is Rs. 25,000. Section 102, C.P.C. as amended w.e.f. 1.7.2007 provides that no second appeal would lie

in petty matters in which valuation of the original suit does not exceed Rs. 25,000. Section 102, C.P.C. as it stand today is reproduced hereinbelow:

102. No second appeal in certain cases.-'No second appeal shall lie from any decree, when the subject-matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.

4. Admittedly, the subject-matter of the original suit from which the appeal arises is not more than Rs. 25,000. The second appeal against such orders have been specifically barred by Section 102, C.P.C. A right to appeal is not an inherent or a vested right but only a statutory right. Therefore, where the appeal is expressly barred, it cannot be maintained under law. Accordingly, this appeal is not maintainable being excluded by Section 102, C.P.C.

5. Learned Counsel for the plaintiff-appellant requests for return of the certified copies of the judgments and orders of the courts below and the decree appealed against to enable him to file a writ petition challenging the said judgments and orders. There is no difficulty in accepting the above request of the counsel simplicitor but a writ petition under Article 227 against the judgments and orders of the courts below would not be maintainable as it would amount to frustrating the very purpose of the amendment made under Section 102, C.P.C. The jurisdiction of the High Court under Article 227 of the Constitution of India is very limited and it cannot be permitted to be used to circumvent the provisions of the C.P.C. and to invoke writ jurisdiction where the second appeal has been specifically barred particularly when the judgment and order of the court of first instance had already been scrutinized once in appeal before the lower appellate court.

6. In view of the aforesaid circumstances, the appeal is dismissed as not maintainable with the direction to the office to return the certified copies of the judgments, orders and the decree to the counsel for the plaintiff-appellant within a week after retaining true copies of the same.