

Fischer Vs. Bapu and anr.

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Court : Chennai

Decided On : Feb-03-1902

Reported in : (1902)12MLJ99

Appellant : Fischer

Respondent : Bapu and anr.

Judgement :

1. We find that both the Subordinate Judge and the District Judge on appeal, have founded their judgments, to a very great extent, on facts observed by them when making a local inspection of certain places and on impressions conveyed to their minds by what they observed on such inspections. These notes, which are in considerable detail are, set out in pages 21 to 25 of the printed papers. We must hold that the course thus adopted by the, judges was most irregular and that the judgments now before us are in certain material points based on what was in no sense legal evidence. We have no option, therefore, but to set aside the decisions of both the lower Courts and remand the suit to the Subordinate Judge of Madura (West.) for re-trial on the evidence already on record and such additional evidence as ho may consider it advisable to allow either party to adduce. The notes of inspection of the judges already alluded to must be expunged from the record, and the. Subordinate Judge in re-trying the case must not take into consideration either the judgment of his predecessor or his own previous finding on an issue referred to him by the appellate Court or the judgment of the appellate Court.

2. Costs will abide and follow the result.

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