

Akshoy Kumar Bhattacharjee and ors. Vs. Ashutosh Bhattacharjee and ors.

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Court : Kolkata

Decided On : Jul-25-1927

Reported in : AIR1928Cal73

Appellant : Akshoy Kumar Bhattacharjee and ors.

Respondent : Ashutosh Bhattacharjee and ors.

Judgement :

1. This is an appeal against an order of the learned Subordinate Judge of the 24-Pargannas whereby he purported to grant an application to review an order dated the 6th August 1925.

2. A preliminary objection was taken to the maintenance of this appeal upon the ground that if this is an appeal against an order of review passed on an application under Order 47, Rule 1, then an appeal will only lie upon the grounds set out in Order 47, Rule 7. We are of opinion that the preliminary objection is pro tanto a good one and that in so far as the order under appeal is an order granting an application for review it is not subject to an appeal. But in our opinion, the learned Subordinate Judge in considering the application for review and in making an order thereon made an order which went beyond the scope of the application for review, because the application was to review the order of the 6th August 1925, whereby the report of a commissioner appointed to determine the boundaries of the land for purposes of the execution of the decree was sought to be set aside, and in passing the order under appeal the learned Subordinate Judge not only

granted the application to review the order of the 6th August but went further and passed an order that the map and the report of the commissioner, the subject-matter of the order of the 6th August 1925, be accepted. That further order in our opinion he had no jurisdiction to make upon the application which was before him.

3. The result is that that part of the order which granted a re-hearing of the application which was the subject-matter of the order of the 6th August 1925, is confirmed and pro tanto this appeal is dismissed. But that part of the order which directed that the report and map of the commissioner be accepted cannot stand and must be set aside, and the proceedings will be returned to the learned Subordinate Judge in order that the application and the order thereon setting aside the final report of the commissioner may be reheard on the merits.

4. Costs of, and incidental to, this appeal, the hearing fee being assessed at two gold mohurs, will abide the result.

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