

Mozaffer Ali Vs. Hedayet Hosain

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Court : Kolkata

Decided On : May-03-1907

Reported in : (1907)ILR34Cal584

Judge : Francis W. Maclean, C.J. and ;Feltcher, J.

Appellant : Mozaffer Ali

Respondent : Hedayet Hosain

Judgement :

Francis W. Maclean, C.J.

1. The first question we have to decide is whether an appeal lies.
2. The appeal is against the leave granted by the District Judge of Murshidabad to the plaintiff (the present respondent) to bring a suit for the purpose of having the accounts taken of a certain religious endowment known as Basanta Ali Khan's estate. The Court went into the matter and was satisfied that a prima facie case had been made out, and gave the requisite leave, which it is empowered to do under Section 18 of Act XX of 1863. The question is whether an appeal lies from that order.
3. The matter is governed by the section I have already referred to. There is nothing in that section about any appeal; the Act is silent about any appeal. I do not see how there can be any appeal from such an order. It is clearly not a 'decree'

within the meaning of Section 2 of the Code of Civil Procedure, and unless this be so, whence comes any right of appeal? It was held in the case of *Kazem Ali v. Azim Ali Khan* (1891) I.L.R., 18 Calc. 382 that no appeal lay against an order refusing such leave. The same principle applies to the present case. There is no provision for appeal in the Act, and unless the appellant can show that the order is a 'decree' within the meaning of Section 2 of the Code of Civil Procedure, no appeal lies.

4. The appeal must, therefore, be dismissed with costs.

Fletcher J.

5. I agree.