

Tara Kumar Bhattacharjee Vs. Monglu Shaik

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Court : Kolkata

Decided On : Aug-25-1936

Reported in : AIR1937Cal631,173Ind.Cas.598

Appellant : Tara Kumar Bhattacharjee

Respondent : Monglu Shaik

Judgement :

ORDER

Lodge, J.

1. This Rule was issued on the opposite party to show cause why the decree of the Subordinate Judge of Maldah modifying the judgment and decree of Babu Upendra Chandra Majumdar, Munsiff, First Court, Maldah, should not be set aside. The petitioner was plaintiff in the original suit. He sued the defendant for recovery of Rs. 49 as damages on the allegation that the defendant had cut down and misappropriated a mango tree. The learned Munsiff came to the conclusion that the value of the mango tree had been rather over estimated and he decreed the suit at Rs. 47 with proportionate costs. Against that judgment and decree, an appeal was filed and was heard by Mr. Syed Amjad Ali, Subordinate Judge of Maldah. The learned Subordinate Judge decreed the appeal in part and directed that the plaintiff would get Rs. 7 on account of damages with proportionate costs. The defendant also would get some costs from the plaintiff-respondent. The

petitioner plaintiff has obtained this Rule on the allegation that the suit was a suit triable by the Small Cause Court procedure and the Munsiff who tried the suit had Small Cause Court powers and consequently no appeal lay against his judgment and decree. It was held in *Indra Chandra Mukerji v. Srish Chandra Banerjee* (1913) 40 Cal 537, that:

Where a Judicial Officer invested with Small Cause Court jurisdiction tries a suit, which he might have under the summary procedure in the ordinary manner, the character of the suit is not thereby altered, and his decree is not appealable.

2. There can be no doubt therefore that if the suit was triable under summary procedure, the Subordinate Judge had no power to hear the appeal. It has been contended by the opposite party that the suit was a suit within Article 4, Sch. 2, Provincial Small Cause Courts Act. The Article deals with a suit for possession of immovable property and for recovery of an interest in such property. The learned advocate for the opposite party has drawn my attention to the case in *Lalji Singh v. Nawab Choudhuri* AIR 1928 Pat 652, in which it was held that a mango tree is immovable property within the meaning of Section 2, Registration Act, 1908. In that case the mango tree in question was still attached to the land and the question in issue was whether a fruit tree which is not standing timber comes within the definition of immovable property. In the present case the mango trees had been cut down and sold as fuel before the suit was instituted. They were no longer attached to the earth or permanently fastened to it. Therefore they were not immovable property at the time of the institution of the suit. The suit was not a suit for possession of immovable or for recovery of interest in such property. No other Article has been pointed out to me as applicable to the present case. I therefore hold that the suit was one triable by summary procedure and as the learned Munsiff who tried the suit had Small Cause Court powers, no appeal lay. It follows therefore that the Subordinate Judge exercised jurisdiction not vested in him by law in hearing the appeal and in modifying the decision of the original Court. The Rule must therefore be made absolute, the judgment and decree of the lower Appellate Court are set aside and the decree of the original Court restored. Hearing fee is assessed at two gold mohurs.

