

Ajoodhya Pershad and ors. Vs. Gunga Pershad and anr.

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Court : Kolkata

Decided On : Jun-10-1880

Reported in : (1881)ILR6Cal249

Judge : Pontifex and ;McDonell, JJ.

Appellant : Ajoodhya Pershad and ors.

Respondent : Gunga Pershad and anr.

Judgement :

Pontifex, J.

1. We agree with the Court below that the plaint was insufficiently stamped under Article 17 of the Court Fees Act, Clause. 3.

2. Preliminary objections were taken to the appeal, on the ground that the order of the lower Court was final under Section 12 of the Court Fees Act, which enacts, that 'every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.'

3. But of Section 588 of the Civil Procedure Code, as it originally stood, Clause. (c)t provided that an order under Section 54, Clause. (b)--being such an order as

the present is--should be appealable, thereby removing the finality declared by Section 12 of the Court Fees Act.

4. A second preliminary objection taken was, that although by Section 588, Clause (b), an appeal was given in respect of rejection of plaints under Section 54, Clause (b), yet, under Section 588 as amended, no appeal is now given. But then, on behalf of the appellants it was urged, that, under the definition of 'decree' in the amended Code, an order rejecting a plaint is within the definition. Similarly, the new definition of 'decree' also includes questions under Section 244, which were made appealable by Clause (i) of Section 588 as it originally stood, but which are omitted in Section 588 as amended.

5. We think though the amended Section 588 applies only to appeals from orders directing that the plaint shall be amended, and not to rejection of a plaint, yet the amended definition of the word [251] 'decree' shows that an appeal lies in the present case. But, although an appeal lies, we are of opinion that the decision of the lower Court is correct. The appeal will, therefore, be dismissed with costs.

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