

Mukhlal Singh and Another Vs. Kishuni Singh and Others

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Court : Privy Council

Decided On : Jun-24-1930

Judge : Viscount Dunedin, Sir John Wallis, Sir Lancelot Sanderson, Sir George Lowndes & Sir Binod Mitter.

Appeal No. : Privy Council Appeal No. 162 of 1927 (From Patna: Patna Appeal No. 5 of 1927)

Appellant : Mukhlal Singh and Another

Respondent : Kishuni Singh and Others

Advocate for Pet/Ap. : A.M. Dunne and S. Hyam, for Appellants ; W. Wallach, for Respondents. Solicitors for Appellants, Barrow Rogers and Nevill; Solicitors for Respondents, Douglas Grant and Dold.

Judgement :

Facts:

The suit as instituted by one N only asked for declaration of title and possession in the alternative, valuing the claim at Rs. 6,500, the court-fee being paid on the same. The suit was decreed. During the pendency of the defendant's appeal against that decree N instituted a suit for mesne profits worked out at Rs. 3,890 and accruing subsequent to the institution of the suit. The High Court allowed the defendant's appeal and dismissed the main suit with the result that the suit for mesne profits was also dismissed. N then applied for leave to appeal to His

Majesty in Council against the decree dismissing the main suit contending that the value of the subject-matter of appeal for purpose of S. 110. Civil P.C., was Rs. 10,390, i. e., Rs. 6,500 plus Rs. 3,890. The High Court rejected the application whereupon N obtained special leave to appeal to His Majesty. The appeal was dismissed on the preliminary point, Viscount Dune-din delivering the judgment.

Viscount Dunedin:

In this case the question has been raised as to whether the appeal is competent. Special leave to appeal was granted on an ex-parte application; but it has been settled in a judgment of this Board that that does not preclude the Board, when the true facts are brought before it, from going into the question of whether the appeal is competent or not: *Shah Zahid Husain v. Mohammad Ismail* (1). Upon that question the present case seems to be entirely covered by another decision of the Board in *Mangamma v. Mahalakshamma* (2). Under these circumstances their Lordships will humbly advise His Majesty that the appeal is incompetent and should be dismissed with costs.

Appeal dismissed.

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