

Agilul Hosain Vs. Dino Nath Dutt

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Court : Kolkata

Decided On : Jul-22-1907

Reported in : (1907)ILR34Cal996

Judge : Stephen and ;Holmwood, JJ.

Appellant : Agilul Hosain

Respondent : Dino Nath Dutt

Judgement :

Stephen and Holmwood, JJ.

1. This is an ejectment suit in which the first Court decreed the suit in favour of the plaintiff. One of the defendants then appealed to the Subordinate Judge, who modified the decree of the first Court. The plaintiff then appealed to the High Court which ordered that the case should be remanded to the Court of the Subordinate Judge and that an inquiry should be made by the Court Ameen to supplement the information which he had already derived from an inquiry based on the map produced by the plaintiff, by comparing the plaintiff's map with that of the defendant. This was accordingly done, and a decree has now been passed by the Subordinate Judge in favour of the plaintiff.

2. It is in the first place urged before us in second appeal from this decision, that the Judge has not come to a proper finding as to the irregularities alleged to exist in the Ameen's report. This is entirely a question of fact. The Judge had before him the final report of the Ameen and considered that it might safely be relied on. On this no question of law arises that can be taken in second appeal.

3. In the second place, it is argued that the result of the decree is to give to the plaintiff more than he recovered in the first Court. Whether this is so or not we cannot tell on the materials before us. It has been argued by the respondent that this is immaterial, because on the proceedings on remand the plaintiff may recover more than in fact he recovered from the first Court. Consequently, it follows that the amount that the plaintiff can recover in this suit is not restricted to the amount which he recovered in the first Court, and he has quoted the case of Bikramajit Singh v. Husaini Begam (1881) I.L.R. 3 All. 643 in favour of his contention. The two cases are distinguishable. In that case the plaintiff appealed from the decision in the original suit; in this case he accepted the judgment of the Munsif without appealing from it in any way. We, accordingly, hold that the Subordinate Judge has no power to award to him more than he recovered in the Munsif's Court. The Subordinate Judge must consider whether his decree has this effect, and if it has, it must be amended.

4. The appeal is so far allowed, and the case is remanded to the Subordinate Judge to be disposed of in accordance with the directions given above.
5. As the plaintiff has succeeded in the main point, we allow him the costs of the investigation.
6. We make no order as to the costs of the appeal.

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