

**Priya Nath Roy Vs. Sridhar Chandra Roy and ors.**

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**Court :** Kolkata

**Decided On :** Jun-04-1941

**Reported in :** AIR1942Cal60

**Appellant :** Priya Nath Roy

**Respondent :** Sridhar Chandra Roy and ors.

**Judgement :**

B.K. Mukherjea, J.

1. This rule is directed against an order made by the District Judge at Alipore on 5th May 1941, returning a memorandum of appeal which was presented by the petitioner before him. The facts, so far as they are material for our present purpose, may be shortly stated as follows: The petitioner instituted a suit for partition in the Court of the third Subordinate Judge, 24-Parganas, claiming 4 annas share of certain Sundarban properties which were alleged to be joint properties of the plaintiff and the defendants. The suit was valued for purposes of jurisdiction at Rs. 2200 only. The defendants in their written statement challenged the valuation made by the plaintiff, and a specific issue was raised, namely issue 5 which was worded as follows: 'Has the suit been properly valued ?' The trial Court decided this issue in favour of the plaintiff and held that the suit was properly valued. There was a preliminary decree passed in that suit by the trial Judge, against which an appeal was taken by the plaintiff to the Court of the District Judge at Alipore. The appellate Court modified the decision of the trial Court and passed a fresh preliminary decree. There was a second appeal taken to this Court, which was eventually dismissed. The matter then went before the Commissioner of Partition and on the basis of a report made by the Commissioner a final decree was passed. In course of the investigation before the Commissioner it seems to have been admitted by both the parties that the actual market-value of the properties was Rs. 5435-2-0 and the allotments that were made by the Commissioner were made on this basis. The petitioner preferred an appeal against the final decree to the Court of the District Judge at Alipore.

2. An objection was raised by the respondents that as the value of the property was found to be over Rs. 5000 under Section 21, Bengal, Agra and Assam Civil Courts Act, an appeal would lie not to the Court of the District Judge but to this Court. The learned lower appellate Court has accepted that view and has returned the memorandum of appeal to be presented to the proper Court. Having heard the learned advocates of both sides we are of the opinion that the Court below was not justified in returning the memorandum of appeal and that, as a matter of fact, it had jurisdiction to entertain and hear the appeal. The plaintiff-petitioner, when he filed the suit, did put a definite value upon it, and it was a valuation made for purposes of jurisdiction. The allegation in the plaint was challenged by the defendants, and it was

the subject-matter of a specific issue which was expressly decided by the Court. In our opinion, this decision must be taken as final and conclusive during all the stages of the suit and must determine the right of appeal under Section 21, Bengal, Agra and Assam Civil Courts Act. It is not a case where valuation has increased pending the hearing of the suit and if it is taken that the value of the original suit was Rs. 5435 for purposes of jurisdiction the District Judge who heard the appeal from the preliminary decree had no jurisdiction to modify the judgment of the trial Court. In our opinion, the decision on the question of valuation is conclusive irrespective of what the parties might agree later on to be the actual market-value of the properties in suit, and consequently it was quite competent for the District Judge to hear and determine the appeal that was presented before him. The result therefore is that the rule is made absolute. The order of the District Judge, dated 5th May 1941, is set aside and the case is sent back to him in order that the appeal may be heard and disposed of in accordance with law. We make no order as to costs in this Court.

Roxburgh, J.

3. I agree.

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