

(1899) 11 CAL CK 0014
In the Calcutta High Court

Abdul Hossein and Others

APPELLANT

Vs

Kasi Sahu by his Mother Debi Sahuni

RESPONDENT

Date of Decision : 20-11-1899

Acts Referred:

Citation : (1900) ILR (Cal) 362

Hon'ble Judges : Wilkins, J; Rampini, J

Bench : Division Bench

Judgement

Rampini and Wilkins, JJ.—This is an appeal against the decree of the District Judge of Purneah, dated the 10th August 1897. The suit was originally brought in the Munsif's Court, and the Munsif acceded to the plaintiffs' prayer to be allowed to withdraw the suit with liberty to bring a fresh suit u/s 373 of the Code of Civil Procedure. The defendant then appealed to the District Judge, and he set aside the order of the Munsif u/s 373, and dismissed the plaintiffs' suit.

2. The plaintiffs now appeal and contend that the District Judge's order is wrong, as no appeal lay to him from the Munsif's order u/s 373.

3. It is clear that an appeal does lie to this Court from the order of the District Judge, because the order was one dismissing the plaintiffs' suit, and this order is a decree within the definition given in Section 2 of the Code.

4. It further appears to us that the order of the District Judge is wrong, inasmuch as no appeal lay to him from an order u/s 373, the matter being concluded by a decision of this Court--Jogindro Nath v. Surat Sunduri Debi I.L.R (1891) 18 Cal., 322, in which judgment the cases of the Allahabad Court on this point, which are of a conflicting nature, are considered and disposed of.

5. Under these circumstances we must be guided by the decision of this Court referred to above. We, therefore, set aside the order of the District Judge and restore that of the Munsif.

6. The appellant is entitled to his costs.