
(1913) 11 BOM CK 0005
In the Bombay High Court
Case No : Second Appeal No. 565 of 1911

Ahmedbhoy Habibbhoy

APPELLANT

Vs

Waman Dhondu

RESPONDENT

Date of Decision : 18-11-1913

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 16
Civil Procedure Code, 1908 (CPC) — Section 96(I)
Land Acquisition Act, 1894 — Section 54

Citation : AIR 1914 Bom 82 : (1914) 16 BOMLR 72

Hon'ble Judges : Batchelor, J; Basil Scott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Basil Scott, Kt., C.J.—In this case an award was made under the Land Acquisition Act which did not exceed Rs. 5000. The reference to the Court was in accordance with the provisions of the Bombay Civil Courts Act to the Assistant Judge, and he tried the reference. Under the same Act an appeal lay to the District Judge as the amount or value of the subject-matter did not exceed Rs. 5,000, and he heard the appeal. That was analogous to an appeal from an original decree.

2. An appeal is now preferred from the decision of the District Judge to the High Court, and the question is whether such appeal lies, An appeal lies only if it is expressly given by the Act. It does not lie merely by analogy to appeals in civil suits : see Rangoon Botatoung Co. v. The Collector, Rangoon (1912) L.R. 39 IndAp 197 : 14 Bom L.R. 833.

3. Now an appeal lies to the High Court in proceedings under the Land Acquisition Act under the conditions specified in Section 54 of that Act. That section says:" Subject to the provisions of the CPC applicable to appeals from original decrees, an appeal shall lie to the High Court from the award, or from any part of the award, of the Court in any proceedings under this Act." The section is there obviously dealing with appeals from original decrees, and

impliedly it recognizes that there may be cases in which the appeal from the original decree will not lie to the High Court.

4. Turning to the provisions of the CPC relating to appeals from original decrees we find that Section 96(I) provides : " Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court." Now, u/s 16 of the Bombay Civil Courts Act, the Court authorized to hear appeals from the Assistant Judge's Court where the value of the subject-matter is less than Rs. 5,000 is the District Court and not the High Court. We are, therefore, of opinion that the preliminary objection is good that the appeal to the High Court is not maintainable. One set of costs.