

(1905) 02 CAL CK 0005
In the Calcutta High Court

Case No : Applications for leave to Appeal to his Majesty in Council Nos. 1 and 2 of 1908

Ananda Gopal Gossain and Others

APPELLANT

Vs

Naffor Chandra Pal Chowdhuri and Others

RESPONDENT

Date of Decision : 25-02-1905

Acts Referred:

Citation : (1905) 02 CAL CK 0005

Judgement

Maclean, C.J.—This is an application for a certificate that the case is a fit and proper one for appeal to His Majesty in Council. The suit was one under sec. 167 of the Bengal Tenancy Act and the object of it was to annul certain encumbrances by giving notice under sec. 167 of the Act.

2. The cardinal point in the suit was whether the notice was properly served. The Subordinate Judge found that it was not, and dismissed the suit. This Court took an opposite view and held that notice had been properly served and remanded the case to be tried out on the other issues. An application is now made for leave to appeal to His Majesty in Council from the decision of this Court and the only question is whether the order passed by this Court is a final decree within the meaning of sec. 595 of the Code of Civil Procedure. On the face it purports to be only an order of remand, but the question whether the notice was properly served or not is, as I have said, the cardinal point in the case. If the view taken by the Subordinate Judge is correct then there is an end of the suit, and the decree, therefore, was final, and the Petitioner contends that this is a final decree, because, if notice was not properly served, the suit must fail, and the Defendant is released from further liability. He says he is entitled to have that question decided by the Judicial Committee. I think his contention must prevail.

3. The case appears to be governed in principle by the judgment of the Judicial Committee, in the case of Saiyid Muzhar Hossain v. Bodha Bibi ILR 17 All. 113 (1894) and of Rohimbhoy Halibbhoy v. C.A. Turner ILR 15 Bom. 155 (1890). No question arises as to value and the decree against which it is sought to appeal is

one of reversal. I think therefore that a certificate must be granted. This order will also govern the application for leave to appeal to His Majesty in Council No. 2 of 1908.