
(1910) 11 AHC CK 0014
In the Allahabad High Court
Case No : Appeal No. 149 of 1909

Baldeo Prasad

APPELLANT

Vs

Maharaja of Benares

RESPONDENT

Date of Decision : 25-11-1910

Acts Referred:

Citation : (1910) 11 AHC CK 0014

Final Decision : Allowed

Judgement

John Stanley Knight, C.J. and Banerji, J.—This appeal arises in a suit which was brought by Pandit Baldeo Prasad, respondent, against the principal defendants for assessment of revenue on land held by the said defendants, on the allegation that they were the tenants of the plaintiff, that the land was held rent free by them in the plaintiff's zamindari, and that it was liable to assessment to revenue. The principal defendant in answer to the claim urged that the plaintiff had no right to bring the suit inasmuch as the land in question was a part of the property of the Maharaja of Benares. The Maharaja was added as a defendant and urged that the land lay in his zamindari. The conclusion to which the court of first instance came was that the land in question lay in the zamindari of the plaintiff and that he was entitled to a decree. It accordingly made a decree to the effect that the principal defendant should pay Rs. 3-11-2, exclusive of cusses, to the plaintiff, on account of revenue. From this decree the Maharaja of Benares appealed to the District Judge of Benares. The appeal was entertained, and the learned District Judge held that as a question of proprietary title had been determined by the court of first instance, and was also raised in the appeal, the appeal lay to his court. As regards the merits of the case he held that, as the documents upon which the court of first instance relied were not on the record, the plaintiff had failed to establish his claim. The learned Judge accordingly dismissed the suit.

2. From this decree an appeal was preferred to this Court. The learned Judge who heard the appeal was of opinion that no appeal lay to the District Judge and

accordingly reversed his decision and restored that of the court of first instance.

3. From the decision of the learned Judge of this Court this appeal has been preferred under the Letters Patent and the first and main contention raised is that the appeal from the decree of the court of first instance was properly entertained and heard by the learned District Judge. In our opinion this contention is well-founded. Section 177 of Act No. II of 1901 provides that an appeal shall lie to the District Judge from the decree of an Assistant Collector of the first class in all suits in which a question of proprietary title has been in issue in the court of first instance and is a matter in issue in the appeal. The question whether the land which formed the subject-matter of the suit was the property of the plaintiff or of the Maharaja defendant, was a question which arose directly and substantially in the suit brought by the plaintiff. The plaintiff could not obtain a decree unless that question was determined and found in his favour. The court of first instance determined the question of title and decreed it in favour of the plaintiff. The decree of that court was a decree not only against the principal defendant but also against the Maharaja of Benares. Upon the question of title it was clearly a decree against the Maharaja by which he was prejudiced. As a question of title was in issue in the court of first instance and was also in issue in the appeal, the appeal lay to the District Judge, and we think the learned Judge was right in holding that he was competent to entertain it.

4. As regards the merits of the case the learned District Judge commented on the conduct of the court of first instance and of the plaintiff in not placing on the record copies of documents, which the court of first instance inspected after sending for the records which contained them. The learned Judge held that as those documents were not placed on the record, he was justified in holding that there was no evidence on the record which supported the plaintiff's claim. The conduct of the court of first instance in sending for records and not directing copies to be produced was no doubt irregular, but we do not think that on that ground alone the plaintiff's claim should have been dismissed. We agree with our learned colleague that under the circumstances of the case the learned District Judge would have exercised a proper discretion if he had received certified copies of the entries of public records which had been inspected by the court of first instance. We think it is not right to visit the plaintiff with the consequences of the neglect of duty of the court of first instance. The appeal to the District Judge was not therefore tried according to law, and we must hold that there has been no proper trial.

5. We accordingly allow this appeal, set aside the decree of this Court and the decree of the lower appellate court, and remand the case to the lower appellate court with directions to readmit it under its original number in the register and dispose of it on the merits after allowing the plaintiff to produce certified copies of the documents relied upon by him, the originals of which had been inspected by the court of first instance. Both parties will be at liberty to adduce any further evidence which may be relevant to the matters in issue. The plaintiff will pay the

costs of the appeal to this Court and of the abortive appeal to the District Judge.
All other costs will follow the event.