

(1900) 01 CAL CK 0005
In the Calcutta High Court

Benode Lall Roy and Others

APPELLANT

Vs

Bussunto Kumari Debi

RESPONDENT

Date of Decision : 11-01-1900

Acts Referred:

Citation : (1900) ILR (Cal) 355

Hon'ble Judges : Sale, J

Bench : Single Bench

Judgement

Sale, J.—The question whether this suit is rightly on the list of suits for liquidated claims depends upon whether it is an ordinary mortgage suit. It is contended that it does not come within the terms of Rule 281, inasmuch as it is not a suit in which the claim is only for a liquidated demand in money. It has been the practice for many years to place ordinary mortgage suits on the list of suits for liquidated claims, in order that they may be expeditiously disposed of, and the view held has been that the incidental relief sought in such suits did not prevent them from being regarded as suits in which the claim was in substance a claim only for a liquidated demand in money. This is what I have said on previous occasions when the same question has been raised, and other Judges have said the same thing. This practice should I think be adhered to. The question then is, is this an ordinary mortgage suit? To answer this question it is necessary to look at the plaint and the relief sought. The plaint is (framed as in ordinary mortgage suits. The relief sought is just the usual mortgage relief. No declaration of title is sought, nor any equitable relief of an unusual or special character. The questions arising in the suit are those appearing on the face of the deed itself, and no cause of action is introduced other than that which is based on the mortgage itself. It is not at present necessary to consider whether the amendment, which has been made in the plaint, is sufficient for the purpose of enabling the Court to bind by its decree any one but the original party. That is a matter to be considered at the hearing of the suit. The suit is, I think, rightly on the list of suits for liquidated claims. It was originally on the general list of causes and not on the general list of suits for liquidated claims.

2. On the 7th of December last it was transferred without notice to the defendant to the general list of suits for liquidated claims. When a suit is transferred from the general list of causes, it is, I think, desirable that this should be done on notice to the defendant. When this course has not been followed, the defendant is taken by surprise, and the result very often is that an application is made for an adjournment of the case. Having regard to the fact that this case has come suddenly on the Peremptory List of Causes I am prepared to consider any application that may be made for an adjournment.

3. Mr. Chaudhuri.--I ask for a fortnight's adjournment.

4. The Court.--I allow you a fortnight. The case to go out of the Peremptory list for a fortnight, in order to enable you to take steps to be prepared with your defence.

5. Mr. Sinha.--If the defendant desires to be examined under a commission I ask that it should be done and completed within the fortnight.

6. The Court.--No; I will deal with any application for any further adjournment when it is made.

7. Costs of application to be costs in the cause.