

(1899) 03 AHC CK 0005
In the Allahabad High Court

Bholai Khan

APPELLANT

Vs

Abu Jafar

RESPONDENT

Date of Decision : 01-03-1899

Acts Referred:

Citation : (1899) ILR (All) 267

Hon'ble Judges : Banerji, J;Aikman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Banerji and Aikman, JJ.—The appellant, who is a tenant at fixed rates, erected a building on land held by him for agricultural purposes. Thereupon the plaintiff, one of the zamindars of the village, brought the suit, out of which this appeal has arisen, for the demolition of the building, and for the restoration of the land to its former condition. The Court of First Instance was of opinion that the suit was one which came within the purview of Clause (cc) of Section 93 of Act No. XII of 1881, and held that it was not cognizable by the Civil Court. In this view the Munsif ought to have returned the plaint for presentation in the proper Court, but instead of doing so he dismissed the suit. The plaintiff appealed to the District Judge and the learned District Judge was asked to apply Section 208 of Act No. XII of 1881 to the case, and to remand it for trial to the Court of First Instance. The learned Judge was of opinion that as the suit had not been tried by the Court of First Instance on the merits, Section 208 was not applicable. He then proceeded to consider whether the suit was or was not cognizable by a Civil Court, and, coming to the conclusion that it was cognizable by a Civil Court, remanded the case to the Court of First Instance u/s 562 of the Code of Civil Procedure. From this order of remand this appeal has been preferred, and the contention on behalf of the appellant is that the suit is cognizable by a Court of Revenue. If Section 208 of Act No XII of 1881 is applicable to the case, the last paragraph of that section precludes the appellant from raising the contention urged on his behalf. We have therefore to determine whether Section 208 is or is

not applicable. We are clearly of opinion that the learned Judge of the Lower Appellate Court is wrong in thinking that Sections 206, 207 and 208 would not apply to a case which has not been tried on the merits. The policy of those Sections was to protect a suitor from being bandied about from Court to Court. If the question of jurisdiction was raised in the Court of First Instance, Sections 207 and 208 would, in our opinion, undoubtedly apply. Section 207 applies to a case in which all the materials necessary for the determination of the suit are before the appellate Court. If such materials are not before the appellate Court, or if the materials before that Court are so imperfect that the appellate Court is not in a position to determine the suit, Section 208 empowers the appellate Court either to remand the case u/s 562 of the CPC or to frame and refer issues for trial u/s 566, or require additional evidence u/s 568. As in this case there were no materials before the Court for the trial of the suit, the Court was justified in remanding the case u/s 562. We shall treat the order of remand of the Lower Appellate Court as an order u/s 208, and, that being so, we cannot entertain the contention that the Court of First Instance, to which the case has been remanded, was not competent to entertain the suit. We therefore uphold the order of remand. We deem it necessary, however, to observe that when the case goes to the Court of First Instance, that Court will have to determine, in trying the question of limitation raised by the defendant, whether the limitation applicable to the suit is that provided by the Indian Limitation Act of 1877, or the limitation provided by Act No. XII of 1881. It may be necessary for the determination of that question to consider whether the suit was one of the nature cognizable by a Civil Court or a Court of Revenue, but in doing so the Court of First Instance should keep out of view the conclusion arrived at by the learned District Judge upon the question of jurisdiction. In our opinion it was not necessary for the learned District Judge, having regard to the view we have taken of the case, to consider that question at all.

2. We dismiss the appeal with costs.