
(1914) 04 CAL CK 0015
In the Calcutta High Court

Ganga Dhar Muradi and Another

APPELLANT

Vs

Banabashi Padihari and Others

RESPONDENT

Date of Decision : 08-04-1914

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33

Citation : AIR 1914 Cal 722 : 24 Ind. Cas. 208

Hon'ble Judges : Lawrence Jenkins, C.J.; N.R. Chatterjee, J

Bench : Division Bench

Judgement

Lawrence Jenkins, C.J.—This is an appeal from the District Judge of Cuttack in a suit brought to recover possession of certain properties.

2. The Judge of the first Court granted the plaintiff a decree for possession against defendant No. 6 and directed payment of salami by defendants Nos. 1 to 5. The plaintiff appealed with the result that the Appellate Court so far from modifying the decree of the first Court in his favour, deprived him of what had been awarded to him though no cross-appeal or cross-objection had been filed by any of the defendants. The result then is that the appellant by reason of his appeal is in a much worse position than he was before he preferred his appeal.

3. It is argued that the decree of the lower Appellate Court is justified by Rule 33 of Order XLI. There is no doubt that the words of that rule are widely expressed, but they must be applied with discretion.

4. In this case the proper order for the lower Appellate Court to have made on its findings would have been to dismiss the appeal. This would not have necessitated any further order and I hold that the decree actually made was beyond the legitimate scope of the rule. No hard and fast rule can be laid down, but I think it may be fairly said that ordinarily the power contained in Rule 33 should be limited to those cases where, as the result of the Appellate Court's interference with the decree in favour of the appellants, further interference is required in order to adjust the rights of the parties in accordance with justice,

equity and good conscience.

5. In this case I have no doubt that the power should not have been exercised as it was.

6. Therefore, we must set aside the decree of the lower Appellate Court and restore the decree of the Munsif.

7. Each party will bear his own costs of this Court and of the lower Appellate Court.

N. Chatterjee, J.

8. I agree.

Decree of first Court restored.