
(1919) 05 CAL CK 0042
In the Calcutta High Court

Imam Ali Sikdar

APPELLANT

Vs

Karim Buksh Sheikh and Moynuddin Mondal and Others

RESPONDENT

Date of Decision : 22-05-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1919 Cal 806 : 52 Ind. Cas. 401

Hon'ble Judges : Walmsley, J; Syed Shamsul Huda, J

Bench : Division Bench

Judgement

Appeal No. 40 of 1917.

Shamshul Huda, J.—This is an appeal against an order passed by the learned Subordinate Judge of the Assam Valley Districts, affirming an order of the Munsif of Dhubri, dated the 25th of February 1916. The facts are shortly these: The plaintiff obtained a decree for ejectment against the defendant, who is the appellant before us. In the judgment the ejectment was made conditional upon payment of a certain sum of money by the plaintiff as compensation to the defendant and the date for such payment was fixed on or before the 17th October 1915. In the decree that was drawn up, nothing was said about the ejectment being conditional upon payment of the compensation money, but it only directed the plaintiff to make the payment within the date fixed. Against that decree, the defendant preferred an appeal which was dismissed, and shortly after the dismissal of the appeal, on the 23rd November 1915 the plaintiff made the deposit. The defendant objected to the money being received, but the learned Munsif thought that it was within his competency to receive the money on that date. He accordingly overruled the objection. This order was passed by the successor of the learned Munsif who decided the case originally. The defendant has now preferred this second appeal to this Court, and the first question that we have to consider is whether an appeal lies. It seems to me that the order passed is not an order u/s 47, Code of Civil Procedure. The decree has not been put into execution yet and the order passed is not an order relating to

execution, discharge or satisfaction of the decree passed by a Court executing such a decree. Upon this view the appeal fails and is dismissed without costs.

Appeal No. 41 of 1917.

2. The judgment just delivered in Miscellaneous Appeal No. 40 of 1917 will govern this appeal also. This appeal is also dismissed. The appellant will pay to the respondent in this appeal his costs, the hearing fee being assessed at two gold mohurs.

Walmsley, J.

3. I agree.