
(1878) 03 AHC CK 0007
In the Allahabad High Court

Kallian Das and Others

APPELLANT

Vs

Nawalsingh and Others

RESPONDENT

Date of Decision : 07-03-1878

Acts Referred:

Citation : (1875) ILR (All) 620

Hon'ble Judges : Spankie, J;Pearson, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Pearson, J.—A doubt was expressed at the hearing as to the admissibility of this appeal. We do not shave that doubt. A case of exactly the same nature was entertained and disposed of on the 18th January last. * The Munsif's order for the return of the plaint was passed after the suit had been admitted on the file and parties had been called on to produce evidence. His order finally disposed of the suit, and was the legitimate subject of a regular appeal under Act VIII of 1859. The present appeal from the appellate decree of the lower Appellate Court has presumably been brought and admitted u/s 584 of Act X of 1877.

2. The lower Appellate Court's decision is, in our opinion, right. The question is not one of institution-fee but of jurisdiction: and it appears that the subject-matter of dispute in this case is not only whether the property has been redeemed by payment of the debt out of the usufruct, but whether the property and the right to redeem be longs to the plaintiff's. As the value of the property is found to exceed Rs. 1,000, it has been rightly held that the suit was not cognizable by the Munsif. The plaint was returned to the plaintiffs for presentation in the proper Court. Instead of presenting it there, they elected to appeal from the Munsif s order and the lower Appellate Court has properly disposed of their appeal. We dismiss this appeal with costs.

* In the case referred to the question of the admissibility of a first or second appeal was not raised. Turner and Spankie, JJ., held in it that, as the mortgaged

property was the matter in dispute and the value of the ownership was in excess of the pecuniary limits of the Munsif's jurisdiction, the Munsif could not entertain the suit.