

(1913) 07 CAL CK 0024
In the Calcutta High Court

Kumud Lal Roy Choudhry and Others

APPELLANT

Vs

Ramani Mohon Roy

RESPONDENT

Date of Decision : 23-07-1913

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12(2)

Citation : AIR 1914 Cal 804 : 25 Ind. Cas. 436

Hon'ble Judges : Roy, J;Coxe, J

Bench : Division Bench

Judgement

1. This was a suit for recovery. of possession of certain property and mesne profits which has been decreed by the Court below. The defendants appeal.

2. With regard to the question whether the plaintiff is entitled to recovery of possession, we think the appeal is clearly barred. That was decided in favour of the plaintiff and the defendants appealed and their appeal was dismissed on the 7th June 1909. The case was sent back to the lower Court to ascertain mesne profits which the first Court had disallowed. The wording of this order was not very precise, but it seems clear that it was an order passed under Order XX, Rule 12, directing an inquiry. The question whether or not the plaintiff was entitled to possession of the land, was finally determined and decided between the parties by that decision and was no longer pending for determination. Sub-section (2) of Rule 12 refers to the preparation of a final decree in respect of mesne profits and this implies that the decision with regard to the possession is a preliminary decree within the meaning of Section 2 of the Code of Civil Procedure. So far, therefore, the appeal must fail.

3. As regards the question of mesne profits the parties have come to an agreement and in accordance with that agreement, we allow a decree for Rs. 624 without interest. The respondents will get their costs of this appeal.

4. The cross-objection is dismissed without costs.