

(1928) 02 CAL CK 0027
In the Calcutta High Court

Maffizuddin Bepari

APPELLANT

Vs

Jelaluddin and Others

RESPONDENT

Date of Decision : 03-02-1928

Acts Referred:

Citation : AIR 1928 Cal 748 : 110 Ind. Cas. 448

Judgement

1. In this case the Subordinate Judge has made an order of remand by setting aside the judgment of the trial Court. His order is not warranted by the law. If he was dissatisfied with the local investigation that was made by the commission and accepted by the trial Court he might have himself issued a commissioner or directed the lower Court to take evidence as provided by Rules 27, 28 and 29 of Order 41, Civil P.C. The order reversing the judgment of the Munsif and sending it back for re-trial is wrong. We are further informed that the observation made by the Subordinate Judge that the landlady or her successor-in-interest should also be made a party is inaccurate and unnecessary, because the landlord was already a party to the suit. Even if the landlord is not a party he would not be bound by the result of the litigation and at the appellate stage the Court ought not to have allowed any third person to be added as a party. The opinion that if necessary the public should be made a party again is unwarranted, whatever might be the result of the suit, the public would not be bound and it was not necessary for the Subordinate Judge to say that the public should be made a party.

2. With these directions we set aside the order of the Subordinate Judge and send back the case for trial of the appeal according to law.

3. The costs will abide the final result. We assess the hearing-fee at three gold mohurs.