

(1925) 12 CAL CK 0033
In the Calcutta High Court

Mahendra Kumar Chakravarti

APPELLANT

Vs

Narayani Kar Purkaistha

RESPONDENT

Date of Decision : 11-12-1925

Acts Referred:

Citation : AIR 1926 Cal 912 : 95 Ind. Cas. 170

Hon'ble Judges : Cuming, J;B. B. Ghose, J

Bench : Division Bench

Judgement

B.B. Ghose, J.—This appeal is against an order of remand by the Subordinate Judge who in his judgment has observed that he upholds the finding of the learned Munsif with regard to two points and says that the appeal is allowed in part and the decree of the Trial Court is set aside and the suit remanded for a fresh trial after local investigation. What he does in effect is that he affirms certain findings of the learned Munsif but sets aside the decree and remands the case for a fresh trial. This as has been pointed out by this Court in numerous cases he has no authority to do. If the learned Subordinate Judge thought it necessary that a fresh local investigation should be held he might have ordered it himself or he might have directed the lower Court to direct a local investigation to be held and to send back to him the result of such local investigation. After having done so the Subordinated Judge himself ought to have decided the appeal finally.

2. The order of remand made by the Subordinate Judge is set aside and the case sent back to him for re hearing and if he thinks it necessary to have a local investigation he may make an order in the manner set forth above. Costs of this appeal will abide the result.

Cuming, J.

3. I agree.