

(1922) 02 CAL CK 0061
In the Calcutta High Court

Mea Hossain Khan and Others and Makram Khan and Others	APPELLANT
Vs	
Sheikh Samir and Others	RESPONDENT

Date of Decision : 23-02-1922

Acts Referred:

Citation : AIR 1923 Cal 282(1) : 68 Ind. Cas. 475

Hon'ble Judges : Panton, J;Newbould, J

Bench : Division Bench

Judgement

1. In this appeal several preliminary objections have been taken, but we do not think it necessary to consider them as we hold that the appeal fails on the merits.
2. On the merits the only point taken was that the lower Appellate Court had no jurisdiction to hear the appeal against a preliminary decree in a partition suit after the final decree had been, passed in that spit, Reliance is placed on the case of, Baikuntha Nath Kulada Prosad v. Ramanand Patnaik 61 Ind. Cas. 923 : 25 C. W. N. 776 : 33 C. L. J 414 : 48 C. 1036. But the facts of the present case are similar to those of the case of Nistarinee Dabee v. Bai Mohun Biswas 20 Ind. Cas. 576 : 18 C. L. J. 214. In the report in Baikuntha Nath : Kulada Prosad v. Ramanand Patnaik (2) there seems to be an error in the reference to the case of Khirioamoyi Dasi v. Adhar Ohandra Ghose (3) Obviously the case meant to be distinguished was that mentioned above Nistarinee Dalee v. Rai Mohun Biswas (2). As pointed out in that case there is a difference between cases where the final decree is passed before the appeal is preferred and where it is passed after the appeal is preferred. In the present case the appeal against the preliminary decree was filed on the 21st March 1917 and the judgment granting the final decree was delivered on the 2nd June 1917. Following the case of Nistarinee Babes v. Rai Mohun Biswas 21 Ind. Cas 516 PC: 18 C. L J. 321. we hold that the appeal to the lower Appellate Court was competent.
3. This being the only point taken on behalf of the appellants this appeal must be dismissed with costs.