

(1903) 01 CAL CK 0024

In the Calcutta High Court

Case No : Appeal from Order No. 454 of 1900

Mothur Chandra Majumdar and others

APPELLANT

Vs

Tara Sunkar Ghose and another

RESPONDENT

Date of Decision : 15-01-1903

Acts Referred:

Citation : (1903) 01 CAL CK 0024

Final Decision : Dismissed

Judgement

1. In appeal from order No. 454 of 1900 a preliminary objection is taken by the learned vakil for the Respondents that the appeal does not lie. It is an appeal from a remand order of a Special Judge under the Bengal Tenancy Act and appeals from such orders are governed by sec. 109A of that Act. Sec. 109A in sub-sec. (3) enacts that "subject to the provisions of Chap. XLII of the CPC an appeal shall lie to the High Court from the decision of a Special Judge in any case under this section not being a decision settling a rent as if it were a Court subordinate to the High Court within the meaning of the first section of that chapter." That only provides for a second appeal from a decision of a Special Judge, a second appeal such as is provided for in Chap. XLII, C. P. C. There is no provision in sec. 109A or any other part of the Bengal Tenancy Act for an appeal from order such as sec. 588, cl. (28), C. P. C., contains allowing an appeal from a remand order under sec. 562. That being so, we must hold that this appeal does not lie. We may add that the view we take does not involve any anomaly because if the remand order is bad it will be open to the Appellant before us to take exception to that order, after the final decree in the case is made.

2. The appeal from order No. 454 of 1900 is therefore dismissed with costs. We assess the hearing fee at one gold mohur.