

(1897) 01 CAL CK 0010
In the Calcutta High Court
Case No : Suit No. 596 of 1893

Pran Gobinda Shaw and Kishori Mohan Roy
Vs

APPELLANT

Kali Charan Ghosh and others

RESPONDENT

Date of Decision : 04-01-1897

Acts Referred:

Citation : (1897) 01 CAL CK 0010

Judgement

Sale, J.—It is on every account desirable that the third mortgagee should also obtain full relief in this suit. He was u/s 85 of the Transfer of Property Act made a defendant because some of the properties comprised in his mortgage were also comprised in a for (sic) mortgage in favour of the plaintiffs. His mortgage was thus included in the subject of suit and a decree was made in respect of all the mortgages. The Court therefore, had and has exercised jurisdiction with respect to the third mortgage. The only question is whether it is restrained from dealing with the remaining properties comprised therein--and which are situated outside the local limits of the jurisdiction of this Court because prior leave to sue in respect thereof had not been obtained u/s 12 of the Letters Patent.

2. This clause vests the Court with jurisdiction to deal with suits for land, where the land is situated either wholly, or partly within and partly without the local limits of its Ordinary Original Civil Jurisdiction, but in the latter case the exercise of its jurisdiction is made dependant upon prior leave to sue having been obtained. See *Kellie v. Eraser* ILR 2 Cal. 445, 451, 465. But words restrictive of the exercise by the Court of its jurisdiction must be construed strictly.

3. The restrictive words of the Charter apply to the case of a plaintiff, but there is no similar restraining provision applicable to a case where the person seeking the exercise of the Court's jurisdiction is the defendant. In the absence of any such restriction, I think I ought to make the order as prayed.