

(1911) 01 CAL CK 0056
In the Calcutta High Court

Promodini Chowdhurani

APPELLANT

Vs

Banga Chandra Datta

RESPONDENT

Date of Decision : 31-01-1911

Acts Referred:

Citation : 9 Ind. Cas. 306

Hon'ble Judges : N. Chatterjee, J; Chitty, J

Bench : Division Bench

Judgement

1. This is an appeal nominally from a decree of the learned Subordinate Judge dated the 31st August 1908, but really from his order of that date setting aside the judgment of the Court, below and remanding the case to that Court for a re-trial. The matter was before the learned Subordinate Judge under the CPC of 1882. The Judge realised that he had no power u/s 562 or 566 to make the remand. He purported to do so under some inherent power of the Court. It has been frequently held in this Court that the subordinate Courts had no power to make such remands. It appears that the learned Subordinate Judge admitted certain documentary evidence, which was produced for the first time before him on the appeal, and he thought that it was necessary to have the case re-tried by the Court of first instance in the light of that evidence in addition to the evidence already on the record. This was unfortunately not in accordance with the law as it then stood. It was open to the learned Subordinate Judge to take that additional evidence if he thought it necessary. It was also open to him to send the case down to the Court of first instance for the framing of any issue or the determination of any further question of fact. But he was bound to keep the appeal on his own file and to ultimately deal with the whole matter and record his decision. This, we think, he must do now.

2. We accordingly set aside the order of the Subordinate Judge dated the 31st of August 1908 and send the case back to him for a re-hearing of the appeal in accordance with law. We express no opinion as to the desirability of calling fresh evidence or as to the desirability of sending any issue or a question of fact down

to the Court of first instance for determination. That must be in the discretion of the learned Subordinate Judge.

3. The costs of this appeal will be costs in the cause.