

(1944) 10 AHC CK 0002

In the Allahabad High Court

Case No : Privy Council Appeal No. 5 of 1939 and Civil Miscellaneous Application No. 419 of 1939

Rai Rajeshwar Bali

APPELLANT

Vs

Kunwar Rajendra Bahadur Singh and Others

RESPONDENT

Date of Decision : 09-10-1944

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109(a)

Citation : (1944) 10 AHC CK 0002

Hon'ble Judges : Thomas, C.J.; Ghulam Hasan, J

Bench : Division Bench

Advocate : Hyder Husein, for the Appellant; M.H. Kidwai, for Opposite-party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Thomas, C.J. and Ghulam Hasan, J.—This is an application for leave to appeal to His Majesty in Council by a Defendant from the order of a Bench of this Court dated the 4th January, 1939. The order in question is an order of remand passed by the Bench directing the trial Court to dispose of the remaining issues in the case which had been left undetermined. It appears that ten issues were framed by the trial Court in the suit. Issues Nos. 1, 4 and 5 had been decided by that Court and in appeal this Court set aside the decision of the trial Court for disposal according to law. It is clear, therefore, that the order against which the application is directed is not a final order within the meaning of Section 109(a) of the CPC and as such the order is not appealable. Following the previous decision in *Ramchand Manjimal v. Goverdhandas Vishindas Ratanchand* (1920) 47 I.A. 124, their Lordships of the Privy Council held in *Abdul Rahman v. D.K. Cassim and Sons* (1933) 60 I.A. 76, that an order of an appellate Court is not a final order within the meaning of Section 109(a) of the CPC relating to appeals to His Majesty in Council, unless it finally disposes of the rights of the parties in relation to the whole suit. That was a case in which the High Court had reversed the

decree dismissing the suit upon a preliminary point and had remanded the suit for trial on other issues. It was observed:--

"The (Sic) must be a finality in relation to the suit. If, after the order, the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it u/s 109(a) of the Code."

2. The case is on all fours with the present case and it is obvious, therefore, that no appeal lies.

3. It is conceded that there is no case u/s 109(c) of the Code of Civil Procedure, as the question decided by this Court was one of adverse possession which does not raise any question of principle or public importance--See also *Bhaiya Hari Saran Das v. Har Kishen Das* 1939 O.A. 568, 1939 Oudh App 568 .

4. Accordingly we dismiss this application with costs.

5. In view of our order dismissing the application for leave to appeal to His Majesty in Council, Civil Miscellaneous Application No. 419 of 1939 for stay of proceedings is also dismissed and the interim order of stay dated the 13th July, 1939, is vacated.