
(1926) 12 AHC CK 0022
In the Allahabad High Court

Ram Chandra Bansal and Another

APPELLANT

Vs

Lalman and Others

RESPONDENT

Date of Decision : 15-12-1926

Acts Referred:

Citation : AIR 1927 All 329 : (1927) ILR (All) 396

Final Decision : Allowed

Judgement

1. In our opinion this appeal must be allowed. Circumstances alter cases. We are not attempting to lay down an invariable rule that in every case where there is a preliminary decree, notice ought to be issued to the other side before the final decree is passed. But in a case where the other side is absent and the preliminary decree is ex parte, we do lay down the rule. It appears that there is nothing in the Code especially dealing with the matter where, in a case like a partnership or a similar matter, the liability to pay a sum of money depends on the decision of a preliminary point, for example, the existence of the partnership, the issue to be decided in the preliminary decree is quite different from the issue to be decided in the final decree. If the preliminary decree is in favour of the claimant and accounts have to be adjusted then it is quite clear that the matter takes an entirely different aspect and complexion, and that the person whom it is sought to make liable is just as entitled to notice of the judicial proceeding which is to settle the question of the amounts as he is in an ordinary suit.

2. There is nothing in the rules enabling the Court to decide ex parte without further notice which is inconsistent with this rule, and on that ground we are bound to hold that the Commissioner had no jurisdiction at all to find the amount without having issued previous notice to the defendant.

3. We must allow the appeal, set aside the final decree and direct the Court below to carry out the order appertaining accounts according to law, after due notice to both parties.