

(1927) 12 CAL CK 0023
In the Calcutta High Court

Rama Nath Naskar and Others

APPELLANT

Vs

Tarak Nath Banerjee and Others

RESPONDENT

Date of Decision : 21-12-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1928 Cal 305

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Judgement

Mukerji, J.—The decree of the lower appellate Court which has given rise to this appeal is divisible into two parts. The first of these parts is the decree for arrears of rent that has been awarded to the plaintiff. The second part of it relates to the question of enhancibility of the existing rent. The appeal to this Court is directed against the second part aforesaid and is confined to the relief which the plaintiffs claimed for enhancement of rent. The trial Court decreed the suit at the existing rate of rent with damages at 12 1/2 per cent. The prayer for enhancement of rent was dismissed by that Court. The lower appellate Court has confirmed the decree for arrears of rent with the modification that instead of 12 1/2 per cent as damages, damages have been awarded at 25 per cent. As regards the prayer for enhancement of rent the order that has been made by the lower appellate Court is that the decree of the trial Court is to be set aside and the case remanded for a fresh decision of the question in the light of such further evidence as the parties may think fit to adduce. The order in question appears to me to be one which is not one of those orders of remand from which an appeal would lie under the Civil Procedure Code. It is an order which the learned Judge evidently thought fit to pass in the exercise of its inherent jurisdiction and for the ends of justice. I am, therefore, of opinion that no appeal would lie from this decision and that the present appeal must, therefore, on that ground be dismissed.

2. I have been asked by the learned vakil for the appellants to treat the memorandum of appeal as an application u/s 115, Civil P.C. I have given the

matter the consideration that it deserves but I am unable to say that the reason which the learned Additional District Judge has given for making an order would not justify the same. Speaking for myself, I would perhaps not entirely agree with the view which the learned Additional District Judge has taken at least as regards the form in which he has made the order. That, however, is a different matter. On the whole I am unable to hold that the order, such as it is, calls for the interference of this Court, under the provisions of Section 115, Civil P.C.

3. The learned vakil for the appellants has brought to my notice the fact that settlement operations are in progress in the district to which the case relates and that in view of the provisions of Section 111, Ben. Ten. Act, the further trial of the suit that has been ordered by the learned Additional District Judge should be stayed. This, no doubt, is a matter that has got to be considered, but I would leave it to the trial Court to determine whether the section to which I have just now referred is applicable under the circumstances and to pass such orders as regards this matter as it may consider proper to pass.

4. The appeal is dismissed, but in the circumstances there will be no order as to costs.