

ALLAHABAD HIGH COURT

Piare Lal

Vs.

Madan Lal

(H. Richards and P. Banerji, JJ.)

21.11.1916

JUDGMENT

H. Richards, J.

1. In this case an application was made in the Court executing the decree to set aside an auction-sale on various grounds. The Court refused to set aside the sale and dismissed the application, A first appeal from that order was preferred to this Court and heard by a Bench of two Judges, who took a somewhat different view of the evidence. The result was that the opinion of the Judge which concurred with the first Court prevailed. The present matter purports to be an appeal under the Letters Patent against the order of this Court. A preliminary objection has been taken to the hearing of the appeal based on the Full Bench decision in the case of *Muhammad Naim-ul-lah Khan v. Ihsan-ul-lah Khan*¹ Section 104 of the Code of Civil Procedure provides for the cases in which an appeal shall lie against "orders". Clause (ii) provides that "No appeal shall lie from any order passed in appeal under this Section." The contention of the respondents in the preliminary objection is that no second appeal lies and reliance is placed upon the authority quoted to show that even a Letters Patent Appeal is not permissible. We are, of course, bound by the Full Bench ruling of this Court. It is contended, however, that the words in Section 588 of the Code of Civil Procedure, which was in force when the decision in the Full Bench case was given, differed from the words of the present Code. The only difference is that in the old Code the words were: "The orders passed in appeals under this Section shall be final," whereas in the present Code the words are: "No appeal shall lie." We cannot see how the change in the words can in any way help the appellant. Possibly the reason for the change is that under the words in the old Code it might have been argued that even "revision" or "review" of judgment would not lie against an order passed by an Appellate Court. We think the preliminary objection must prevail and we accordingly dismiss the appeal with costs, including in this Court fees on the higher scale.

¹14 A. 226; A.W.N. (1892) 14 ; 7 Ind. Dec. (N.S.) 515