

CALCUTTA HIGH COURT

Baikanta Nath Goswami

Vs

Sita Nath Goswami

(Chitty and Coxe, JJ.)

26.01.1911

JUDGMENT

Chitty, J.

1. These two appeals and application for revision may be conveniently disposed of in one judgment.
2. The plaintiffs instituted a suit in the Court of the Munsif at Natore for declaration of their title to and recovery of possession of certain lands. The parties are related to one another and it was in truth a family dispute.
3. After the hearing in the Munsif's Court had commenced and some evidence had been recorded, the parties agreed (and signified their agreement in a petition to the Court) to leave the questions in dispute between them to the determination of the Munsif, after he had inspected the locality.
4. The petition which was presented on 27th April, 1906, stated: "In this suit we shall not raise any objection nor shall we be competent to raise any objection to the decision that your Honour may arrive at upon an inspection of the locality; that we shall be bound by the decision of your Honour and neither of us shall be competent to value any objection to the same or to prefer an appeal." Acting upon this submission, the Munsif made a local inspection of the lands in dispute and passed an order on 28th May, 1906. This was subsequently on 8th June, 1906, embodied in a decree purporting to be made in the suit.
5. The plaintiffs were not content with the decision and applied to the Munsif under Section 623 of the Civil Procedure Code, 1882, for a review. This the Munsif granted on 9th March, 1907. On 16th April, 1907, he passed a second order in modification of his first order of 28th May, 1906, and again embodied the order in what purported to be a decree in the suit.

6. Against that so-called decree, the defendants appealed to the District Judge. The District Judge expressed an opinion that the Munsif's judgment of 28th May, 1906, was in the nature of an award and held that after delivering his award on that day it was not open to him to modify it. The District Judge appears to have thought that some portions of the Munsif's first order might be regarded as a judgment in a suit, and were thus open to review. He, however, set aside the order of the Munsif of the 9th of March and 16th of April, 1907, and remanded the suit to the lower Court for the parties to raise such objections to the Munsif's first order, regarded as an award, as they might be entitled to take under Sections 520 and 521 of the Civil Procedure Code, 1882. Against that order of the District Judge, both parties have appealed to this Court : the plaintiffs, because they say it was an order of remand which the District Judge had no power to make; the defendant No. 1, for the same reason, and also because the District Judge had no power in appeal to disturb the first judgment and decree of, the Munsif. The defendant No. 1 appeals as against an appellate decree, though it does not appear that the District Judge passed any decree.

7. We have heard the arguments of the plaintiffs' pleader. He urged (i) that the District Judge had no jurisdiction to entertain the appeal; (ii) that the Munsif had jurisdiction to come to a final decision and for that purpose to review his first order, and pass the second order, provided it was not beyond the agreement of the parties; and (iii) if the Munsif be regarded as an arbitrator, he had power to correct what was an apparent error in his award.

8. I am of opinion, that the judgment of the Munsif, dated the 28th May, 1906, was in the nature of an award, and that it did not lose that character because he embodied the operative part of that judgment in what purported to be a decree in the suit. He was in fact an arbitrator by the submission of the parties and his decision was an award. It was not open to him to alter that award when made or to review his decision : see *Dutto Singh v. Dosad Bahadur Singh*¹ and Russell on Arbitration pp. 114, 115. I am further of opinion that no appeal lay to the District Judge and that the District Judge in entertaining it and making the order of remand acted without jurisdiction : see *Sayad Zain v. Kalabhai*² In any case his order of remand would be erroneous as the Civil Procedure Code, 1882, contained no provision for a remand order of this nature. Taking this view, it follows, that no appeal lies to this Court. We have been asked by the plaintiffs to interfere in our revisional jurisdiction under Section 622, and his application was ordered to be heard along with appeal from Order No. 483. Under Section 622 we could interfere even without such an application. It appears to me that the order of the District Judge must be set aside as being incompetent. The orders of the Munsif, dated 9th March, 1907, and 16th April 1907, must also be set aside for the same reason. This will have the effect of restoring the first order, or, as it may be called, the award of the Munsif. Neither party can complain if they find themselves bound by a decision by which they expressly agreed to abide. Under the circumstances I would make no order as to costs.

Coxe, J.

9. I agree generally.

1(1883) I.L.R. 9 Cal. 575

2(1899) I.L.R. 23 Bom. 752