

20.03.2024

Wednesday

Court : 04
Item : 223
Matter : FA
Status : OoL
Bench ID : 266175
Transcriber : NANDY

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**FA 118 of 2018
with
CAN 3773 of 2017**

Arambagh Pratidwandi Club, represented by
Sk. Taibul Hossain & Ors.
Vs.
Banshi Badan Dey & Ors.

Mr. Kaushik Dey, Advocate

Mr. Amar Krishna Saha, Advocate

.....for the appellants

Mr. Probal Kumar Mukherjee, Senior Advocate

Mr. Tapas Chandra Ghosh, Advocate

Mr. Tanmoy Chakraborty, Advocate

.....for the Respondent No. 3

1. It appears from the record that the instant appeal is filed assailing an order no. 34 dated 04.03.2017 passed by the Civil Judge (Senior Division), Arambagh in Title Suit No. 73 of 2014 whereby and whereunder an application under Order VII Rule 11(d) of the Code of Civil Procedure was allowed.
2. The Suit for declaration and permanent injunction filed by the appellants before the Trial Court indicates that the reliefs were valued at Rs.70,000/-.
3. In view of the provisions contained in Section 21(i)(a) of The Bengal, Agra and Assam Civil Courts Act, 1887, the appeal lies before the District Judge and not to the High Court. For the purpose of clarity, Section 21 of the said Act is quoted hereunder:-

21. Appeals from Subordinate Judges and Munsifs.—

(1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the State Government, direct, by notification in the Official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

4. Since the reliefs were valued at Rs.70,000/- and the order is passed by the Civil Judge (Senior Division), the appeal would lie before the District Judge and not to the High Court.
5. The appeal being **FA 118 of 2018** is **dismissed** as **not maintainable**. The connected application being **CAN 3773 of 2017** also stands **dismissed**.
6. Let the certified copy of the impugned order be given to the learned Advocate-on-record of the appellant by the Assistant Court Officer by replacement with a photocopy thereof.
7. Dismissal of the instant appeal shall not prevent the appellant to challenge the selfsame order before the appropriate forum in accordance with law.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

