

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

MIRZA ANAND RAM (DEFENDANT) v. MAUSUMA BEGAM (PLAINTIFF). *

Landholder and tenant—Suit for rent where the right to receive it is disputed—Jurisdiction of Civil and Revenue Courts—Act XII of 1881 (North-Western Provinces Rent Act) s. 148.

M sued I and another for rent in the Court of the Collector. The defendants pleaded payment to V, who was accordingly brought on to the record as a co-defendant under s. 148 of the North-Western Provinces Rent Act (XII of 1881). The Collector decided in favour of V. The plaintiff appealed to the District Judge making all three persons respondents. The District Judge reversed the decision of the Collector and ordered the whole costs to be paid by V, who thereupon appealed to the High Court.

Held that the District Judge had no jurisdiction to entertain the appeal so far as the party brought in under s. 148 was concerned, and, that being so, had no power to award costs against him.

In this case the plaintiff, Musammât Mausuma Begam, sued two persons, named Ilahi Bakhsh and Abdul Rahman, whom she alleged to be her tenants, under s. 93, cl. (a) of the North-Western Provinces Rent Act (XII of 1881) for arrears of rent for the years 1291, 1292 and 1293 fashi. Her case was that the land in respect of which the rent was claimed had been her *sîr* down to the end of 1292 fashi, when her proprietary rights had been disposed of to the Mahârâja of Vizianagram, and that since that time she had held ex-proprietary tenant rights in the land, and was therefore entitled to receive the rents. The Mahârâja of Vizianagram intervened under s. 148 of Act XII of 1881, alleging that he was the person entitled to receive the rents and denying the plaintiff's ex-proprietary rights in the land. The defendants, Ilahi Bakhsh and Abdul Rahman, admitted the rent to be due and expressed their willingness to pay it to the person in whose favor the Court should decide. The Court of first instance (the Collector of Ballia) found that the defendants, Ilahi Bakhsh and Abdul Rahman, were not tenants of the plaintiff, and accordingly dismissed her suit. The plaintiff then appealed to the District

* Second appeal No. 946 of 1888 from a decree of F. W. Fox, Esq., District Judge of Ghâziipur, dated the 18th April 1888, reversing a decree of F. B. Mulock, Esq., Collector of Ballia, dated the 2nd May 1887.

Judge, making the Mahārāja, Ilahi Bakhsh and Abdul Rahman respondents. The District Judge found in favor of the appellant, and, reversing the decree of the Court below, gave a decree for the plaintiff for the amount claimed against Ilahi Bakhsh and Abdul Rahman and ordered the whole costs of the suit to be borne by the Mahārāja. The Mahārāja then appealed to the High Court.

Mr. T. *Conlan* and *Munshi Kashi Prasad*, for the appellant.

Hon'ble Mr. *Spankie*, for the respondent.

EDGE, C. J., and TYRRELL, J.—This is an appeal by the Mahārāja of Vizianagram against so much of the decree of the District Judge of Gházipur, sitting as a Court of appeal in a rent suit as affected the Mahārāja. Musammat Mausuma Bili brought her suit against Ilahi Bakhsh and another for rent alleged to be due by them to her for land which had been her *sír* land. The Mahārāja was brought in under s. 148 of Act XII of 1881. The Collector decided the case in favour of the Mahārāja. The plaintiff appealed, making Ilahi Bakhsh, the other man, and the Mahārāja respondents. The District Judge reversed the decision of the Collector, holding that the rent was payable to the plaintiff and decreed the whole costs of the suit and appeal to be borne by the Mahārāja. The appeal so far as the question between the plaintiff and her two alleged tenants was concerned lay to the District Judge. The question raised in this appeal is whether, so far as the Mahārāja is concerned, the District Judge had jurisdiction to entertain the appeal. If he had not jurisdiction to entertain the appeal, he had no jurisdiction to decree the costs of the suit and appeal against the Mahārāja. There is a long current of rulings bearing on this question, some relating to the corresponding section of the former Act. The rulings do not appear to have been brought to the notice of the District Judge. We consider they are binding on us. We do not propose to discuss those rulings, all we need say is that we agree with them. The first of those is the case of *Chotu v. Jitan* (1). The next is the case of *Kishna Ram v. Hingu Lal* (2). Next is *Madho Prasad v. Ambar*

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(1) I. L. R., 3 All. 63. (2) I. L. R., 4 All. 237.

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(1) and the case of *Gobind Ram v. Narain Das* (2). Also there is a case decided in 1866, viz., *Musammât Thakoorayeen Bhagmanee Koonwar v. Syud Farzand Ali and others* (3). It appears to us that these cases are in point.

Following these authorities, we allow this appeal with costs and set aside so much of the decree of the Court below as affects the Mahârâja of Vizianagram. We do not disturb the decree so far as it affects Ilahi Bhaksh and Abdul Rahman.

Appeal modified.

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May 2.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Knox.

UMMI FAZL (DEFENDANT) v. BAHIM-UN-NISSA AND OTHERS (PLAINTIFFS).*

Civil Procedure Code, ss. 522, 525—Award—Decree on an award filed in Court, how to be framed—Appeal.

When an award has been filed in Court, as provided by s. 525 of the Code of Civil Procedure, the judgment and decree based thereon must be drawn up specifically in terms of the award. If the decree merely decrees in general terms the claim of one party or of the other, it cannot be said that such decree is in accordance with the award, and being "not in accordance with the award" an appeal will lie therefrom.

The facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

Pandit *Sundar Lal* and Mr. *Malcomsen*, for the appellant.

Munshi *Ram Prasad*, Maulvi *Ghulam Mujtaba* and Maulvi *Mahmud Husain*, for the respondents.

EDGE, C. J., and KNOX, J. An agreement of reference having been entered into between certain parties, the arbitrator appointed by that agreement made his award. Musammât Bahim-un-nissa, one of the persons interested in the award, applied to the Court of the Subordinate Judge of Sahâranpur to have the award filed in Court. The application was made under s. 525 of the Code of Civil Procedure. In her application she also asked that a decree should be passed according to the award in her favor against the

* First Appeal No. 88 of 1890 from a decree of Maulvi Sayyid Muhaammad, Subordinate Judge of Sahâranpur, dated the 13th November 1887.

(1) I. L. R., 5 All. 503. (2) I. L. R., 9 All. 394.
(3) N. W. P., H. C. Rep., 1866 R. C. A. 20.