

APPELLATE CIVIL.

Before Mr. Justice Banerji.

MAHARAJ SINGH (DEFENDANT) *v.* CHITTAR MAL (PLAINTIFF) *
*Civil Procedure Code, sections 473 (c), 588 (23) — Decree—Order—Appeal—
 Interpleader suit.*

Held that an adjudication upon the claims of defendants in an interpleader suit is a decree and appealable as such under section 540 of the Code of Civil Procedure and not under section 588 of the Code.

THIS was a suit by the Municipal Board of Kasganj as lessee of a certain parao, or camping ground, asking for a decision as to the person to whom the rent for 1904-05 was payable. One Chittar Mal, defendant, claimed the whole rent upon the ground that he had purchased the entire parao in execution of a decree against one Sheoraj Singh, as manager and head of a joint family. Sheoraj Singh did not appear, but his brother Maharaj Singh contested the suit upon the ground that the parao was ancestral property in which he was entitled to a half share and that Chittar Mal was only entitled to one half of the rent in virtue of his purchase of Sheoraj Singh's interest. The Court of first instance (Munsif of Kasganj) decided in favour of Chittar Mal for the whole rent. On appeal by Maharaj Singh this decree was affirmed by the Additional District Judge. Maharaj Singh thereupon appealed to the High Court.

Lala Girdhari Lal Agarwala, for the appellant.

Babu Jogindro Nath Chaudhri (for whom *Babu Sarat Chandra Chaudhri*), for the respondent.

BANERJI, J.—This appeal arises out of an interpleader suit brought under section 471 of the Code of Civil Procedure by the Collector of Etah, as Chairman of the Municipal Board at Kasganj, against the parties to this appeal. It appears that the Municipal Board of Kasganj had taken on rent a camping ground (*parao*) which belonged to Sheoraj Singh and his brother, Maharaj Singh, the present appellant. Chittar Mal, respondent, obtained a decree against Sheoraj Singh, and in execution of it caused the *parao* to be sold by auction and purchased it

* Second Appeal No. 478 of 1906 from a decree of Khotter Mohan Ghosh, Additional Judge of Aligarh, dated the 14th of March 1906, confirming a decree of Kameshwar Nath, Munsif of Kasganj, dated the 23rd of September 1905.

himself. The rent for the year 1904-05 was not received either by Maharaj Singh or by Chittar Mal. The former claimed a half share in it, while the latter demanded the whole of it. Thereupon the Collector of Etah filed the present suit in order that it might be determined by the Court to whom the rent was to be paid. The Court directed the parties to the present appeal, who were defendants to the suit, to interplead one another, and in the end adjudicated in favour of Chittar Mal, holding that he was entitled to the whole of the money due by the Municipal Board. The decision of the Court of first instance having been affirmed by the lower appellate Court, this appeal has been preferred by Maharaj Singh.

A preliminary objection was taken to the hearing of the appeal on the ground that the appeal from the order of the Court of first instance lay to the lower appellate Court under clause (23) of section 588 of the Code of Civil Procedure; that the decision of the lower appellate Court is final, and that this appeal is not maintainable. In my judgment the objection is not well founded. Section 588 of the Code provides for appeals from orders made in interpleader suits under section 473, clauses (a), (b) or (d), section 475 or section 476. It is urged that the decision complained of is an order under clause (b) of section 473. It seems to me that section 588 only provides for an appeal from such decisions under section 473 as amount to orders as distinguished from decrees.

A decree is defined by section 2 of the Code to be the formal expression of an adjudication upon any right claimed or defence set up, when such adjudication, so far as regards the Court expressing it, decides a suit or appeal. Any adjudication of title under section 473 is, therefore, a decree and is appealable under section 540. Orders under clauses (a), (b) and (d) are appealable under section 588. Clause (d) provides for two things, namely, (1) a direction to the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and (2) an adjudication on such claims. The direction as to interpleading is an order and is appealable under section 588. The adjudication upon the claims of the defendants is a decree and stands on the same footing as an adjudication referred to in

1907

 MAHARAJ
SINGH
v.
CHITTAR
MAL.

1907

MAHARAJ
SINGH
v.
CHITTAR
MAL.

clause (c) of the section. It is, therefore, appealable under section 540 of the Code of Civil Procedure. It seems to me that the Legislature could not have intended that an adjudication as to the title to the thing claimed under clause (c) of section 473, should be either final and not appealable or should be appealable as a decree, and yet an adjudication under the last portion of clause (d), which is also an adjudication as to title, should be appealable as an order only and not as a decree. It seems to me that when the Legislature omitted clause (c) of section 473 from the provisions of section 588 clause (23) and provided only for appeals from orders made under section 473, it clearly meant that adjudications upon title, which are decrees, should be appealable like ordinary decrees under section 540. As, for the above reasons, the decision in this case is a decree, the present appeal is maintainable and the preliminary objection must be overruled.

As regards the merits of the case the contention of Chittar Mal was that the debt, for the realization of which the property in question was sold, had been incurred by Sheoraj Singh as manager of a joint Hindu family for the purposes of that family and that the auction sale in execution of the decree obtained in respect of that debt conveyed to the purchaser the interest of both the brothers. Maharaj Singh, on the other hand, alleged that he was separate from his brother. The Court of first instance found, and this finding has also been affirmed by the lower appellate Court, that the two brothers formed a joint family; that Sheoraj Singh was the head of it; that the debt was binding on Maharaj Singh, and that the auction sale for the realization of that debt conveyed to the purchaser the interests of both the brothers.

The first ground taken in the memorandum of appeal to this Court is that there is nothing to show that the decree obtained by Chittar Mal was passed against Sheoraj Singh in his capacity of manager of a joint Hindu family. No certificate, as required by the rules, has been furnished in regard to this ground. It cannot, therefore, be entertained.

The next plea in the memorandum of appeal refers to an entry in the khewat of the names of both the brothers. That

entry is not inconsistent with the finding that both brothers were joint.

The third plea refers to certain decisions in suits with which the present litigation has nothing to do. It is alleged that in one at least of these suits it was held that the brothers were joint.

The learned vakil for the appellant contends that the lower appellate Court ought to have found whether the debt was contracted for a family necessity. It seems to me that the Court did intend to hold that the debt was incurred for the purposes of the family, but there was no express finding because in the memorandum of appeal to the lower appellate Court no plea was taken to that effect. The appeal, in my opinion, has no force, and the findings of the Court below are fatal to it. I dismiss the appeal with costs.

Appeal dismissed.

Before Sir George Knox, Acting Chief Justice, and Mr. Justice Richards.

GENDA (DEFENDANT) v. SUKH NATH RAI (PLAINTIFF) AND RAI SINGH (DEFENDANT).*

Act (Local) No. II of 1901 (Agra Tenancy Act), sections 177, 199, 200—Question of proprietary title—Appeal—Civil and Revenue Courts—Jurisdiction.

When a Revenue Court, under the powers conferred on it by section 199 of the Agra Tenancy Act, 1901, decides a question of proprietary title it becomes for the moment a Civil Court; an appeal lies at the instance of either party to the District Judge, and if such an appeal is wrongly preferred to and decided by a Commissioner, such decision will have no effect in preventing the Revenue Court's decree from becoming final.

THIS was a suit to recover possession of land, and also for an injunction restraining the defendants from interfering with the possession of the plaintiff. The plaintiff's case was that the defendants had been his tenants, that they had been duly ejected and had retaken possession. One of the defendants appeared and pleaded that the possession was possession as owners, and that they were not and had never been the tenants of the plaintiff *quoad* the land in dispute. It appears that in a suit in the

* Second Appeal No. 263 of 1906, from a decree of G. C. Badhwar, Additional Judge of Saharanpur, dated the 18th of December 1905, reversing a decree of Murari Lal, Munsif of Saharanpur, dated the 18th of September 1905.

1907

MAHARAJ
SINGH
vs
CHITTAB
MAL.

1907
May 30.