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MISS EVA MOUNT-STEPHENS v. MR. HUNTER GARNETT ORME.

Court is concerned, appeals from decisions of a single Judge of this Court under the Probate and Administration Act have been treated as appeals from decrees, whatever may have been the practice in respect to appeals in similar cases from the decisions of the District Judges. We have, therefore, no hesitation in holding that the present appeal is a first appeal from decree.

As regards court fees, we have little hesitation in holding that the court fee payable is rupees ten under article 17, clause vi, Schedule II, of the Court Fees Act. The subject matter in dispute is in our opinion impossible to estimate at a money value. Therefore the above article will apply. A court fee of rupees two has already been paid. Therefore there is a deficiency of court fee in respect of rupees eight only. As the appellant has been allowed time up to the 4th August, 1913, within which to deposit security for costs of the respondent, we allow her time up to that date to make good the deficiency in court fees.

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May, 26.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

KHUNNI LAL (PLAINTIFF) v. RAGHUNANDAN PRASAD (DEFENDANT.)*

Act (Local) No. I *of* 1900 *(United Provinces Municipalities Act), section* 187—*Municipal election—Rules framed by Local Government for regulation of elections—Petition by defeated candidate—Appeal—Procedure—"Decree"—"Order."*

Held, on a construction of rule 42 of the rules framed by the Local Government under section 187 of the Municipalities Act, 1900, for the regulation of municipal elections, that the term 'competent court' as used in rule 42 means a civil court of competent jurisdiction with reference to the valuation given by the petitioner in his petition. *Gur Charan Das* v. *Har Sarup* (1) followed. *Held* also that no appeal lies from the order of a competent court passed on an election petition under rule 42 above referred to. *Sundar Lal* v. *Muhammad Faiq* (2) approved. *Raghunandan Prasad* v. *Sheo Prasad* (3) and *Sabhapat Singh* v. *Abdul Ghaffur* (4) referred to

THE facts of this case were shortly as follows:—

By an election which took place on the 18th of March, 1912, Babu Raghunandan Prasad was returned as a duly elected member for Ward 7 of the Bareilly Municipality. The

*Second Appeal No. 308 of 1913, from a decree of H. Nelson Wright, District Judge of Bareilly, dated the 4th of January, 1913, confirming a decree of Aghor Nath Mukerji, Officiating Subordinate Judge of Bareilly, dated the 19th of August, 1912.

(1) (1912) I. L. R., 34 All., 391. (3) (1913) I. L. R., 35 All., 308.
(2) (1912) 16 Oudh Cases, 86. (4) (1896) I. L. R., 24 Calc., 107.

validity of the election was questioned on various grounds by Lala Khunni Lal, one of the rival candidates, by a petition in the court of the Subordinate Judge of Bareilly. That court held that the election of Babu Raghunandan Prasad, defendant, was valid. From that decision the petitioner appealed to the District Judge of Bareilly, praying for a declaration that the election was void. That court, on a preliminary objection on behalf of the opposite party, held that no appeal lay from an order on an election petition. The petitioner appealed.

Babu *Girdhari Lal Agarwala*, for the appellant, contended that the decree of the court of first instance was appealable and that the court below was wrong in holding that no appeal lay. Section 96 of the Code of Civil Procedure gave a right of appeal from every decree, unless such appeal was barred by any special provision of law. The order passed by the first court, being a decree within the meaning of section 2 of the Code and there being no provision in the election rules forbidding a right of appeal, the decree so passed was appealable as such under section 96. The lower appellate court was wrong in holding that the hearing and decision of a petition contesting an election was not the hearing and decision of a suit and that the proceedings in the trial of such a petition were miscellaneous proceedings. The word 'suit' was not defined in the Code of Civil Procedure, but section 26 provided that a suit should be commenced with a plaint and that the contents of the plaint were to be in accordance with the provisions of order VII, rule 1, and those requirements had been complied with in the plaint in the present case, which went by the name of an election petition. In *Gur Charan Das* v. *Har Sarup* (1) it was held that the competent court, referred to in rule 42, was a Civil Court. The suit being declared to be of a civil nature, the final order passed in that suit was a decree and was as such appealable as a decree of the Civil Court. He further pointed out that second appeals had been presented and heard in this Court against orders passed on election petition; *Nawab Khan* v. *Muhammad Zamin* (2), *Gur Charan Das* v. *Har Sarup* (1) and *Raghunandan Prasad* v. *Sheo Prasad* (3).

(1) (1912) I. L. R., 34 All., 391. (2) (1912) I. L. R., 34 All., 649.
(3) (1913) I. L. R., 35 All., 508.

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The fact that the plaint in the present case was better known by the term 'election petition' did not alter the character of the proceedings based on such petition. Plaints were generally termed petitions of plaint and so also were appeals called petitions of appeals.

He also submitted that the matter was a very important one and was not quite free from doubt owing to the obscure language used in rule 42 of the election rules. The old election rules clearly provided that election suits were to be heard and decided by the Magistrate of the District; but the new rules introduced a change and authorized the Civil Courts to hear such applications. The procedure in the matter had by no means been uniform, and in the present case it had to be seen what result would follow from a consideration of rule 42 along with the provisions of the Civil Procedure Code. In the circumstances, the present suit was one of a civil nature, and as such was triable only by a Civil Court; the final order passed thereon was a decree, and, there being no provision anywhere forbidding a right of appeal from such decree, was appealable.

Dr. *Satish Chandra Banerji*, for the respondent, argued that election petitions were tried in England by specially constituted courts, whose decisions were final, except that the court had power to reserve certain questions as to admissibility of evidence for the consideration of the High Court. He referred to Halsbury's "Laws of England," Vol. 12, pp. 486, 488, 408, 460. He further urged that, as a matter of public policy, the litigations based on election petitions should not have a long course and a speedy determination of the matter and its finality should be enforced.

Babu *Girdhari Lal Agarwala* was heard in reply.

TUDBALL and MUHAMMAD RAFIQ, JJ.:—This is a second appeal arising out of an election petition. The election petition was presented under rule 42 (1) made by the Local Government under section 187 (1), clause *(h)*, of the Municipalities Act. It was filed in the court of the officiating Subordinate Judge of Bareilly and it was dismissed. The petitioner appealed to the District Judge, who, relying upon the ruling in *Sundar Lal* v. *Muhammad Faiq* (1), held that no appeal lay to him, as the decision of the first court was an order and not a decree, and

(1) (1912) 16 Oudh Cases, 36.

there was nothing in law which gave the petitioner a right of appeal against the order of the first court. The petitioner has come up in second appeal, and a plea is urged that the decision of the first court is a decree within the definition thereof in section 2 of the Code of Civil Procedure and therefore an appeal would lie therefrom. The decision of the question really depends upon the answer to another question—Was or was not the proceeding in the court of first instance a suit within the meaning of the word in section 2 of the Code of Civil Procedure?

Under the Municipalities Act, section 187 (1), sub-section *(h)*, the Local Government has power to frame rules consistent with the Act and applicable to all or any municipalities generally for regulating all elections under the Act. Under the former Municipalities Act, under the rules framed by the Government thereunder regulating elections, an election petition had to be filed in the court of the District Magistrate, and his decision thereon was final. When the draft rules under the present Act were published, they contained the same provisions, but when they were considered, the power of the District Magistrate to hear election petitions was removed and the rule was cast in the present rules as follows:—"The validity of an election, made in accordance with these rules, shall not be questioned except by a petition presented to a competent court within 15 days after the day on which the election was held by a person or persons enrolled in the municipal electoral roll." It is quite clear, therefore, that the petitioner in the present case presented his petition to the competent court under the above mentioned rule. It has been held in this Court that the competent court means a court of civil jurisdiction, as the question which arises is neither a criminal nor a revenue matter (1). Civil Courts have to do with a number of miscellaneous matters under special Acts which empower Civil Courts in certain circumstances to pass certain orders. Orders passed under those Acts are only appealable in so far as provision is made for appeals in the Acts themselves. They are orders which are not dealt with by the Code of Civil Procedure, and they are not decrees, as they are not passed in the course of suits. In the present instance, the action taken by the Civil Court is taken in pursuance of the powers granted under the rules passed by

(1) *Cf.* Gur Charan Das v. Har Sarup, I. L. R., 34 All., 391.

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Government under section 187 of the Municipalities Act. Neither the Act nor the rules make any provision whatsoever for any appeal from an order which the competent court may pass on an election petition, and unless it can be established that the orders passed amount to decrees, it is quite clear that no appeal lay to the District Judge. In our opinion, an order passed on an election petition in the circumstances of the present case is not an order passed in a suit and does not amount to a decree, and, in the absence of any special provision, no appeal lies therefrom. The question was considered at considerable length in *Sundar Lal* v. *Muhammad Faiq* (1). Though appeals have been filed in this Court and decided, the present question was not raised nor decided. That does not prevent it being raised now and decided as between the parties to the present appeal. The case of *Raghunandan Prasad* v. *Sheo Prasad* (2) was not an appeal from an order passed on an election petition. An election had been held and an election petition had been presented to the District Magistrate and rejected. The suit was brought by the plaintiff in the court of the Subordinate Judge praying for a declaration that he had been elected by a majority of lawful votes, and only in the alternative for a declaration that the election was void, having been held under rules which had been cancelled. In *Sabhapat Singh* v. *Abdul Ghafur* (3) a candidate who had been elected had his election set aside under the rules made under the Bengal Act of 1884 by the authority of the District Magistrate, who there determined the validity of the election. Thereupon a suit was brought in the Civil Court by the person whose election had been set aside for a declaration of his right to vote and to stand as a candidate and for a declaration that he had been duly elected. It was there held that the suit, so far as it related to the declaration that he had a right to vote and to stand as a candidate, was of a civil nature and would lie in the Civil Court. It was further held that the plaintiff was not entitled to a declaration that his election was good, and that he was only entitled to a declaration that he was entitled to vote and to stand as a candidate for election.

(1) (1912) 16 Oudh Cases, 36. (2) (1913) I. L. R., 35 All., 308.

(3) (1896) I. L. R., 24 Calc., 107.

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In England in cases of municipal elections, a special court is constituted by Statute for the trial of municipal election petitions. It consists of a single commissioner, whose decision is final. He has the power to reserve a question of law as to admissibility of evidence or otherwise for consideration of the High Court, if in his opinion the question requires such consideration. It seems to us that the policy of the law has all along been finality of the decision of the court, commissioner or other special officer empowered to hear election petitions. It seems to us unnecessary to discuss the reasons for such a policy. They appear to us to be obvious. Some awkward and absurd results are mentioned in the ruling mentioned above, to wit, *Sundar Lal* v. *Muhammad Faiq* (1). We agree with this decision in holding that the order passed on an election petition is not a decree and that no provision has been made for appeal from such order. The appeal fails and is dismissed with costs.

Appeal dismissed.

1913

May, 27.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

AMOLAK CHAND (DEFENDANT) *v.* BAIJNATH (PLAINTIFF) AND BHOLANATH (DEFENDANT.)*

Act No. IX of 1908 (Indian Limitation Act), schedule I, article 75—Bond—Option of suing for whole amount due on default of payment of instalments—Limitation.

A bond payable by instalments gave to the creditor the option of suing for the whole amount due on default in payment of any instalment or of suing for the instalments separately. Two instalments were paid; the third was not, and more than six years after default in payment of this instalment, nothing further having been paid on the bond, the creditor sued to recover the whole amount due stating that the cause of action arose on the date when the third instalment became due

Held that the suit was time-barred. *Ajudhia* v. *Kunjal* (2) distinguished.

THE facts of this case were as follows:—

The appellant executed an instalment bond in favour of the plaintiff respondent on the 7th of July, 1904. The sum borrowed was Rs. 600, which, with Rs. 80 as interest, the defendant promised to pay by six-monthly instalments of Rs. 75, in four and a half years.

* First Appeal No. 56 of 1913 from an order of Bans Gopal, Additional Subordinate Judge of Agra, dated the the 18th of January, 1913.

(1) (1912) 16 Oudh Cases, 26. (2) (1908) I. L. R., 30 All., 123.