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should also be set aside. In our opinion clause (5) of rule 32 does not authorize the court to make these orders, and provides for a different state of things.

We accordingly vary the order of the court below by directing that an order do issue to the defendants appellants forbidding them to interfere with the performance of the duties of the decree-holder, namely, "*Singar Arti*" every day and on festive days in the temple of Radha Ballabhji. If the defendants appellants fail to obey the injunction it will be time for the decree-holder to make a proper application in the terms of order XXI, rule 32. We direct the parties to bear their own costs of this appeal.

Decree varied.

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June, 5.

Before Sir George Knox, Acting Chief Justice, and Justice Sir Pramada Charan Banerji.

ANANDGIR (DEFENDANT) *v.* SRI NIWAS (PLAINTIFF) *

Act (Local) No. II of 1901 (*Agra Tenancy Act*), *section* 198—*Order of remand—Appeal—Preliminary and final decrees.*

A suit was brought in a Court of Revenue for a declaration that the plaintiff was the proprietor of certain *muafi* land. The court of first instance dismissed the suit. The lower appellate court set aside that decree and allowed the appeal to the extent that it held the plaintiff entitled to be declared a rent-free grantee of so much of the land as was entered in his name. It then added that "the suit be remanded to the lower court for determination of the revenue payable by the plaintiff appellant." *Held* that the order being one of remand no second appeal lay to the High Court; and as there was no provision in the Tenancy Act about preliminary or final decrees, the order could not be appealed against as a preliminary decree.

THE plaintiff brought a suit in the court of an Assistant Collector, first class, to be declared proprietor of certain *muafi* land under section 158 of the Tenancy Act. The main plea in defence was that the *muafi* had been resumed long ago, and that the plaintiff was only an occupancy tenant of the land. The Assistant Collector found against the plaintiff and dismissed his suit. On appeal the District Judge found that the plaintiff had become proprietor; the decree of the Assistant Collector was,

* Second Appeal No. 1544 of 1916, from a decree of B. C. Forbes, District Judge of Cawnpore, dated the 23rd August, 1916, modifying a decree of Gursewak Upadhya, Assistant Collector, first class, of Fatehpur, dated the 13th of March, 1916.

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accordingly, set aside, the plaintiff was declared proprietor, and the suit was remanded to the first court for determination of the revenue payable by the plaintiff. Against this decision the defendant filed a second appeal to the High Court. The appeal came up for hearing before a single Judge, who referred it to a Bench of two Judges.

Mr. *N. C. Vaish*, for the respondent, took a preliminary objection that the appeal did not lie.

The District Judge has remanded the suit, and under the Tenancy Act no appeal is given from an order of remand. Section 182, which is the section which provides for a second appeal to the High Court, does so only from decrees. Section 193 excludes the application to suits under the Tenancy Act of the provisions of chapter XLIII of the Code of Civil Procedure of 1882, corresponding to order XLIII of the present Code. Order XLIII rule 1 (*u*) of the Code, which provides an appeal from an order of remand, has therefore no application to Rent Court suits. Hence, no appeal lies from the order of remand; *Vilayat Husen* v. *Maharaja Mahendra Chandra Nandy* (1), *Zahur Ali* v. *Sher Ali*, (2) and *Gulzari Lal* v. *Latif Husain* (3). Unless an appeal is expressly provided for by the Tenancy Act it will not lie; nor will it be sustained upon any analogy furnished by the provisions of the Code of Civil Procedure; *Karanpal Singh* v. *Bhima Mal* (4) and *Kirpa Devi* v. *Ram Chandar Sarup* (5).

Munshi *Haribans Sahai* (for Munshi *Nawal Kishore*), for the appellant (in reply to the preliminary objection).

The appeal is in form and substance an appeal from a decree and not an appeal from a mere order of remand. It is submitted that the decision of the District Judge amounts to a decree. It is to be remembered that the definitions of "decree" and "order" given in the Code of Civil Procedure have not been adopted by the Tenancy Act and do not apply to all cases under that Act; *Zohra* v. *Mangu Lal* (6). So, the notion derived from the Code of Civil Procedure that where an appellate court reverses the decision of the first court and remands the case the

(1) (1905) I. L. R., 28 All., 88.
(2) (1905) I. L. R., 28 All., 283.
(3) (1916) I. L. R., 38 All., 181.
(4) (1910) I. L. R., 32 All., 378.
(5) (1918) I. L. R., 40 All., 219.
(6) (1906) I. L. R., 28 All., 753

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decision of the appellate court amounts merely to an "order" and not a "decree" has to be discarded in considering cases arising under the Tenancy Act. The Act itself furnishes no definition of what is and what is not a "decree" within the meaning of the Tenancy Act. The District Judge had decided all the material issues in the case; and the remand order related only to the assessment of revenue, as regards which there was no issue in the court of the first instance; nor was it a substantial issue between the parties. The order of remand related only to a matter which did not affect the real merits of the claim but was purely a matter of arithmetical calculation. The decision was a "decree" in substance. It amounted to a preliminary decree if not a final decree; and the remand order was for the purpose of determining the proportionate revenue and preparing the final decree. The Board of Revenue of the United Provinces has taken this view in the case of *Tikaram Singh* v. *Kunwar Sen* (1). The matter decided in this preliminary decree could not be questioned in appeal from the final decree; and if the present appeal be held incompetent then the appellant will have absolutely no remedy. Such a decision will lead to great hardship and failure of justice.

Mr. *N. C. Vaish*, in reply:—

The contention that in a case like the present the order of remand amounts to a decree so as to be appealable under section 182 is not sound. If it had been the intention of the Legislature to give certain orders passed under the Act the force of decrees so as to be appealable as such, it could have given a definition of "order" or of "decree" in the interpretation clause of the Act in furtherance of that intention. The Legislature has not done that; there is nothing to indicate that it ever intended to make any distinction between one class of orders and another, in this respect. There is no such thing as a preliminary decree under the Tenancy Act. The Act recognizes only one decree, namely, a final decree. A comparison of the language of section 177 of the Tenancy Act and sections 96, 97, and 100 of the Code of Civil Procedure, clearly shows the distinction between the

(1) (1916) Unreported decision of the Board of Revenue in petition No. 28 of 1915-16, decided on the 2nd of August, 1916.

meanings attached to the term "decree" in the two Acts. The words used in section 177 of the Tenancy Act, are "the decree," which connote only one class of decree; while the words in sections 96, 97, and 100 of the Code are "every decree," which connote several classes of decrees. And further, there is a specific mention of the term "preliminary decree" in section 97, Civil Procedure Code. It is from the decrees passed in the suits included in the fourth schedule of the Tenancy Act that appeals are provided for and the only decree, mentioned in the fourth schedule, under section 158 is a decree "for the assessment to revenue of a rent-free grant." That is the only decree, therefore, from which an appeal can lie in a suit under section 158. Any order passed prior to such a decree cannot possibly amount to that decree and be appealable as such decree. To regard the decision of the District Judge as a preliminary decree and to hold it to be appealable would be inconsistent with the provisions of the Tenancy Act. As was held in *Zohra* v. *Mangu Lal* (1) a provision of the Code of Civil Procedure which would be inconsistent with the provisions of the Tenancy Act cannot be applied.

KNOX, A. C. J., and BANERJI, J.:—The plaintiff in the court of first instance is the respondent here. He brought a suit in the Revenue Court in which he prayed that he might be declared proprietor of a disputed *muafi* and that costs, etc., might be granted to him. The court of first instance dismissed his claim altogether. He then went in appeal to the District Judge of Cawnpore who ordered that the decree of the lower court, that is to say, the court of first instance, dated the 13th of March, 1916, be set aside and the appeal be allowed to the extent that the plaintiff was entitled to be declared rent-free grantee of so much of the land in suit as he was then entered in the revenue papers as occupancy tenant of the same. The order, however, did not stop here. It went on as follows:—"That the suit be remanded to the lower court for determination of the revenue payable by the plaintiff appellant." The defendant has now come to this Court and asks that the decree of the lower appellate court be set aside and the decree of the Assistant Collector be restored or any other order that may be deemed fit, may be passed. Various pleas were then set out attacking the judgment

(1) (1906) I. L. R., 28 All., 753.

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of the District Judge. Upon the appeal being called on in this Court for hearing a preliminary objection was at once raised on behalf of the plaintiff respondent, namely, that no second appeal lies from the order of the District Judge. In support of the contention stand was taken upon section 193 of the Agra Tenancy Act of 1901, and it was contended on the ground set out in clause (*a*) of section 193, that the provisions of the Code of Civil Procedure did not apply to the procedure in suits and other proceedings under the Rent Act. Our attention was called to the case of *Vilayat Husen* v. *Maharaja Mahendra Chandra Nandy* (1), and *Gulzari Lal* v. *Latif Husain* (2). The learned Vakil for the appellant meets this objection by maintaining that he is not appealing from any order, but from a decree, and so seeks to bring the case away from clause (*a*) of section 193. He dwelt a great deal upon the hardship that, if it was held otherwise, he would have no remedy. Be that as it may, we are here not to make law but to expound it as it stands and it appears to us that the only meaning we can put upon clause (*a*) of section 193 of the Rent Act is that no appeal lies from an order of this kind. He contended that the decision of the District Judge of Cawnpore was in reality a preliminary decree. We have considered this, but we are unable to agree with it. The Tenancy Act says nothing from first to last about preliminary or final decrees. The result is that the objection prevails and the appeal is dismissed with costs. There is a cross-objection but we have heard nothing about it from the beginning of the case up to this moment. It stands dismissed.

Appeal dismissed.

Before Mr. Justice Tudball and Mr. Justice Abdul Raoof.

1918
June, 7

MATABADAL SINGH AND ANOTHER (DEFENDANTS) *v.* GOURISH NARAIN SINGH AND ANOTHER (PLAINTIFFS).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 150—*Resumption of muafi*—"*Proprietor*"—*Perpetual lessee entitled to resume.*

In substitution for a monthly cash payment which the Maharaja of Benares used to make to the lessees, the Maharaja granted to them a perpetual

* Second Appeal No. 961 of 1916, from a decree of B. J. Dalal, District Judge of Benares, dated the 8th of March, 1916, confirming a decree of Madan Mohan Sinha, Assistant Collector, first class, of Benares, dated the 7th of January, 1916.

(1) (1905) I. L. R., 28 All., 1. (2) (1916) I. L. R., 38 All., 181.