

APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and
Justice Sir Pramada Charan Banerji.*

1917
November, 7.

KIRPA DEVI (PLAINTIFF) v. RAM CHANDAR SARUP (DEFENDANT).
*Act (Local) No. II of 1901 (Agra Tenancy Act), sections 175, 177, 193—Order
passed by a Revenue Court staying or refusing to stay a suit—Appeal.*

Held that no appeal will lie to the High Court from the order of a Court of Revenue staying, or refusing to stay, a suit pending before it.

Quære whether any appeal lies at all.

Two suits for profits were brought by the same plaintiff against the same defendant in the Revenue Courts, one in the district of Meerut, the other in the district of Bulandshahr. During the pendency of the suits it was alleged that the matters in dispute had been referred to arbitration. Applications were made in both Courts to stay the suit pending the arbitration, under schedule II, paragraph 18, of the Code of Civil Procedure. The Meerut court granted a stay; but the Bulandshahr court rejected the application. The plaintiff appealed to the High Court against the order of the Meerut Court, and the defendant appealed against the order of the Bulandshahr Court. When the appeals came on for hearing a preliminary objection was taken to the effect that no appeal lay in either case.

Dr. *Surendra Nath Sen*, for the appellant.

Mr. *Nihal Chand*, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—This and the connected appeal No. 18 of 1917 arise out of two suits which were instituted in the Revenue Court by the same plaintiff against the same defendant. The suits were suits for profits. The amounts in dispute were such that if decrees had been made appeals would have lain to the Civil Court. During the pendency of the suits it is alleged that the matters in dispute were referred to arbitration. One of the suits was pending in the Revenue Court at Meerut and the other suit was pending in the Revenue Court at Bulandshahr. An application was made by the defendant at Meerut to stay the suit pending the arbitration under schedule II, paragraph 18, of the Code of Civil Procedure.

* First Appeal No. 42 of 1917, from an order of Jai Narain, Assistant Collector, first class, of Meerut, dated the 17th of July, 1917.

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The Meerut court granted a stay. An exactly similar application was made to the Bulandshahr Revenue Court. That court took an exactly opposite view to that taken by the Meerut court and refused to stay the suit. This was a most unfortunate situation for all concerned, and will work great hardship and tend to prolong a useless litigation. The plaintiff appealed against the decision of the Meerut court whilst the defendant appealed against the decision of the Bulandshahr court. The defendant raises a preliminary objection against the plaintiff's appeal that no appeal lies. In the connected appeal an exactly similar preliminary objection is taken by the plaintiff. We think that the preliminary objection has force. Section 175 of the Tenancy Act expressly provides that no appeal shall lie from any decree or order passed by any court under this Act except as hereinafter provided. This section obviously applies to all appeals, whether they be appeals to the Revenue Court itself or to the Civil Court. Section 177 deals with appeals which lie to the Civil Court and a right of appeal is only given against a "decree" and then only in certain class of cases. No appeal is given against an order. It seems to us clear that neither the order staying the suit in the Revenue Court at Meerut nor the order refusing to stay the suit in Bulandshahr is a "decree" within the meaning of section 177. It is contended on behalf of the appellant that section 193 of the Tenancy Act incorporates the Code of Civil Procedure and in the present Code of Civil Procedure it is provided that an appeal shall lie against an order staying or refusing to stay proceedings (Schedule II, paragraph 18). We do not think that this argument has force. At most it would mean that by incorporating the Code of Civil Procedure an appeal is given in the Revenue Court. It certainly cannot mean that an appeal is given to the Civil Court. We have been invited to say whether or not an appeal lies in the Revenue Court. We do not think that this Court ought to take upon itself to decide this matter, which is not before it: if we did decide the matter the Revenue Court would not be bound by our decision. The result is that we allow the preliminary objection and dismiss the appeal with costs.

Appeal dismissed.