REVISIONAL CIVIL.

Before Mr. Justice Abdul Raoof.

1918
June, 14.

JAMNA PRASAD (DEFENDANT) *v.* KARAN SINGH AND OTHERS (PLAINTIFFS) *

Act (Local) No. II of 1901 *(Agra Tenancy Act), sections* 58, 167—*Suit for ejectment—Decision of first court as to defendant's tenancy—Appeal—Order by District Judge returning plaint for presentation to proper court—Revision.*

In a suit for ejectment before a Court of Revenue the defendant pleaded that no relation of landlord and tenant subsisted between the parties. The court, however, found that the defendant was the plaintiff's tenant, and decreed his ejectment. On appeal by the defendant to the court of the District Judge, that court held that no appeal lay to it and returned the memorandum of appeal for presentation to the proper court. *Held* that no revision lay against this order to the High Court. *Damber Singh* v. *Srikishan Das* (1) followed.

THE facts of this case were as follows:—

One Khairati, an occupancy tenant, usufructuarily mortgaged his holding to Jamna Prasad prior to the passing of the present Tenancy Act. Some years later he executed a deed of relinquishment of his holding in favour of the zamindar, Karan Singh, who thereupon dispossessed Jamna Prasad. Jamna Prasad then brought a suit against Karan Singh and Khairati for cancellation of the deed of relinquishment and for recovery of possession. The final result of that litigation was that the suit was decreed and Jamna Prasad obtained possession. Thereupon the zamindar Karan Singh brought a suit in the Revenue Court against Jamna Prasad for ejectment under sections 58 and 63 of the Tenancy Act. The defence pleaded, *inter alia*, that the relationship of landlord and tenant did not subsist between the parties, and that the suit was not cognizable by the Revenue Court. Issues were framed embracing these two points among others. The Assistant Collector found that the relationship of landlord and tenant existed between the parties, and that accordingly Issue No. 3, relating to the question of jurisdiction, was decided against the defendant, as the suit was one for ejectment. The defendant appealed to the District Judge, who delivered the following judgment:—

"This Court has no jurisdiction to hear this appeal. No question of proprietary title is raised, because the defendant appellant does not profess to be a mortgagee of proprietary rights . . . It was next urged that an

* Civil Revision No. 27 of 1918.

(1) (1909) I. L. R., 31 All., 445.

appeal lay here under section 177(*f*) on the ground that a question of jurisdiction had been decided. This plea appears strange in view of the defendant appellant's ground of appeal No. 7, where he complains that the lower court has not decided the point of jurisdiction. It is clear that no question of jurisdiction was decided by the lower court."

The memorandum of appeal was returned by the District Judge for presentation to the proper court. Against this order the defendant appellant applied in revision to the High Court.

At the hearing, a preliminary objection was taken by Dr. *Surendra Nath Sen*, for the opposite party :—

The application for revision does not lie. There is no provision of law under which a revision can lie to the High Court in cases coming up from Rent Courts. Section 115 of the Civil Procedure Code has no application to Rent Courts or to cases originating in those courts. To apply that section to such cases would be contrary to its policy as formulated in section 167 of the Act. The High Court is not a Court of Revenue, and therefore, under section 167, the High Court cannot take cognizance of a Revenue Court case "except in the way of *appeal*." Section 185 of the Tenancy Act provides for revisions in cases instituted under that Act, but it gives the power of revision to the Board of Revenue and not to the High Court. The fact that the language of section 185 is almost bodily taken from section 115, Civil Procedure Code, shows that the Legislature deliberately did not give the power of revision to the High Court. In *Damber Singh* v. *Srikrishn Das* (1) the Assistant Collector had refused to execute a decree, and a revision was filed in the High Court against that order. The question was whether a revision could lie to the High Court at all; and it was decided, having regard to section 167, that no revision lay to the High Court. The circumstances under which the application for revision may arise are immaterial, so far as the competence of the revision is concerned. In *Parbhu Narain Singh, Kashi Naresh* v. *Harbans Lal* (2) there were dissentient judgments on the question whether a revision lay. Reference was made to the judgment of PIGGOTT, J., at pp. 290, 291 of the report. The view that the decision of a

(1) (1909) I. L. R., 31 All., 445. (2) (1916) 14 A. L. J., 281.

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District Judge in appeal from a Revenue Court is a decision of a Civil Court so as to be subject to revision under section 115, Civil Procedure Code, is, it is submitted, not correct and does violence to the language and spirit of section 167 of the Tenancy Act. *Dhandei Kunwar* v. *Chotu Lal* (1) was also referred to.

Munshi *Lakshmi Narain*, for the appellant:—

It is significant that chapter XLVI of the Civil Procedure Code of 1882, in which section 622 relating to revisions occurred, is not excluded by section 193 of the Tenancy Act from application to Revenue Courts. It would have been easy enough for the Legislature to have excluded that section as it did others. Some meaning and effect must be attached to the fact that the Legislature deliberately made that section, corresponding to section 115 of the present Code, applicable to Revenue Courts. The decision against which I have applied in revision is a decision of a Civil Court. It is none the less so because the matter had its inception in the Revenue Court. As the decision of a Civil Court subordinate to the High Court, it is amenable to the revisional jurisdiction conferred by section 115. Reference was made to the judgment of WALSH, J., in the case of *Parbhu Narain Singh, Kashi Naresh* v. *Harbans Lal* (2)

As for section 167, its function comes to an end when a Revenue Court case goes in appeal, under section 177 of the Tenancy Act, to the District Judge. When the District Judge has decided the appeal, that decision becomes subject to the revisional jurisdiction of section 115. The case of *Damber Singh* v. *Srikrishn Das*, (3) relied on by the opposite party, is clearly distinguishable. There the revision was filed against an order of an Assistant Collector and not against a decision of a District Judge. The court of an Assistant Collector could not by any manner or means be said to be a Civil Court subordinate to the High Court and section 155 was clearly inapplicable. It was not necessary to decide, nor was anything decided, more than that *primâ facie* revision would not lie to the High Court from an order of a Revenue Court. Whether such an order, after it had gone through appeal in the District Judge's court, could be

(1) (1916) I. L. R., 39 All., 254. (2) (1916) 14 A. L. J., 281.
(3) (1909) I. L. R. 31 All., 445.

revised or not was not in question at all. To entertain the present revision would not be going against the language or spirit of section 167 of the Tenancy Act. In this revision the applicant is not asking the Court to determine anything about the merits of the case. He is not asking the Court to "take cognizance of any dispute or matter in respect of which" a Revenue Court suit might be brought. Nor is it sought to obtain a decision as to whether the Civil or the Revenue Court had jurisdiction in the suit. All that he asks the court is to set the District Judge right when he says that there was no appeal to him. As for the judgment of PIGGOTT, J., in the case in 14 A. L. J., 281, which is relied on by the opposite party, it is to be noted that he really dismissed the application for revision on the ground that the District Judge had neither refused to exercise jurisdiction nor acted with material irregularity; vide p. 290 of the report. The present case may also be dealt with under the powers vested in this Court by section 107 of the Government of India Act of 1915 (5 and 6 Geo. 5, Ch. 61). Having regard to the denial of justice which has resulted from the undoubtedly illegal decision of the District Judge, this is a fit case which calls for the exercise of those powers. The view taken by the Judge that no appeal lay to him is clearly erroneous. The appeal did lie to him under clause (*f*) of section 177 of the Tenancy Act, as a question of jurisdiction had been decided. It is immaterial whether the question of jurisdiction was properly or improperly raised; it is enough that the question was raised and decided. The strength or weakness of the objection as to jurisdiction does not affect the applicability of section 177 (*f*); *Damodar Das* v. *Jhaoo Singh* (1). Section 185 of the Tenancy Act is not exhaustive. It applies to suits other than those in which the decree is appealable to the District Judge. Revisional jurisdiction in the case of the last mentioned class of suits was provided for by the extension of section 622 of the Code of Civil Procedure of 1882 to Revenue Courts by section 193 of the Tenancy Act. The District Judge has returned the memorandum of appeal for presenting to the Commissioner. But the appeal does not lie to the Commissioner, nor can the District Judge confer jurisdiction

(1) (1917) 15 A. L. J., 319.

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where it does not exist. The decision of the Commissioner would be merely *ultra vires* and useless. Unless the High Court interferes in revision the result will be that the decision of the first court will stand and the defendant will be practically deprived of his right of appeal. Supposing the District Judge returns all memorandums of appeal from Revenue Court decisions. If there be no remedy by way of revision to the High Court, the jurisdiction of the Civil Courts would be absolutely taken away in all Revenue matters.

Dr. *Surendra Nath Sen*, was not heard in reply.

ABDUL RAOOF, J. :—This was a suit brought under section 58/63 of Act No. II of 1901 for ejectment. One of the pleas raised in the court of first instance was that the relation of landlord and tenant did not subsist between the plaintiff and the defendant. There was also a plea that this suit for ejectment of the tenant was not cognizable by the Revenue Court. The court of first instance, the Assistant Collector, went into the question of the relation of landlord and tenant between the parties, fully examined the whole of the evidence given in the case, and came to the conclusion that there was a relation of landlord and tenant between the parties. On the plea of jurisdiction the court found that as it had already come to the conclusion that there was a relation of landlord and tenant between the parties, the question of jurisdiction was also involved in that issue and that the suit was cognizable by the Revenue Court. That court decreed the suit. From the decree and judgment of the Assistant Collector an appeal was filed by Jamna Prasad, and one of the grounds taken in the memorandum of appeal before that court was that the lower court had erred in law and fact in determining issues Nos. 3, 4 and 5. It did not record a finding on the point whether the suit was cognizable by the Revenue Court or not. When the appeal came up for decision before the learned District Judge, he was of opinion that there was no decision on proprietary right and that there was no decision on the question of jurisdiction as the appellant before him himself had complained, in the memorandum of appeal, that the court of first instance had not decided the question of jurisdiction. He therefore held that no appeal lay to him and ordered that the petition of appeal should be

returned to the appellant. From the order of the District Judge the present application for revision has been filed. Dr. *Sen* who appears for the opposite party has raised a preliminary objection to the hearing of this application and has argued that in matters coming under the Tenancy Act the power of revision has not been given to this High Court. He has relied upon the decision reported in the case of *Damber Singh* v. *Srikrishn Das* (1), and also upon the judgment of Mr. Justice PIGGOTT in the case of *Parbhu Narain Singh, Kashi Naresh* v. *Harbans Lal* (2). Mr. *Lakshmi Narain* argues in reply that this case is clearly distinguishable from the case of *Damber Singh* v. *Srikrishn Das* (1), because in that case a decision upon a revenue matter was challenged by way of revision in this Court and therefore having regard to the provisions of section 167 of the Tenancy Act, no revision could lie in that case, whereas in this case, the sole question raised being that the learned District Judge was wrong in refusing to entertain the appeal, a revision would lie, because in such a case the matter in dispute would not be brought forward and questioned on the merits. He also relies upon the judgment of Mr. Justice WALSH in the case of *Parbhu Narain Singh, Kashi Naresh* v. *Harbans Lal* (2). I have heard the arguments on both sides, but I do not see ground to distinguish this case from the case of *Damber Singh* v. *Srikrishn Das* (1). Having regard to the construction which the learned Judges put upon the provisions of section 167 of the Tenancy Act, I do not think there is any room for argument that power of revision to the High Court was given under the Tenancy Act. In this view I am bound to hold that the present application for revision does not lie. I, therefore, dismiss it with costs.

Application dismissed.

(1) (1909) I. L. R., 31 All., 445. (2) (1916) 14 A. L. J., 281.