that in these circumstances the Civil Court ought to have entertained the suit and ought to have taken action under section 202 of the Tenancy Act, and the question of the defendant's tenancy would then really be decided by a Revenue Court. The courts below have merely erred in the procedure adopted by them, but still the procedure laid down by law must be followed. It must be noted that there has been no previous litigation between the parties either in the Revenue or Civil Court in respect of the matter in dispute in this suit. The rulings in *Ram Singh* v. *Girraj Singh* (1) and *Sher Khan* v. *Debi Prasad* (2) do not apply to the present case, for in each of the suits with which those decisions are concerned there was (in the end at least) an admitted tenancy, and the plaintiffs were merely making an attempt to get round a decision of the Revenue Court already passed. In this view we allow the appeal, we set aside the orders and the decrees of the courts below, and we direct that the record be returned to the court of first instance through the lower appellate court with directions to re-admit the suit on its original number and to proceed to hear and decide it according to law, keeping in view our remarks in respect of the use of section 202 of the Tenancy Act. Costs of this appeal as well as the costs so far incurred up to the present date by the parties in all courts will abide the result of the suit.

Appeal decreed and cause remanded.

Before Mr. Justice Tudball and Mr. Justice Ryves.

MUHAMMAD ASKARI (DEFENDANT) *v.* NISAR HUSAIN AND OTHERS (PLAINTIFFS).*

1919

November, 29.

Civil Procedure Code (1908), *order XLIII, rule* 1 *(s)*——*Order expressing merely an intention to appoint a receiver*——*Appeal.*

An appeal lies only from an order actually appointing a receiver, and not from an order by which the court expresses an intention to appoint a receiver and calls upon the plaintiff to suggest names with particulars regarding security, remuneration, etc. *Ramji* v. *Koman Das* (3) followed.

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* First Appeal No. 61 of 1919, from an order of Lachmi Narain Tandon, Subordinate Judge of Basti, dated the 15th of March, 1919.

(1) (1914) I. L. R., 37 All., 41. (2) (1915) I. L. R., 37 All., 254.

(3) (1914) 18 A. L. J., 79.

1919

MUHAMMAD ASKARI v. NISAR HUSAIN.

THE facts of this case were, briefly, as follows:—

In a suit before the lower court the plaintiffs applied for the appointment of a receiver. The defendant opposed the application, and the court after hearing both parties passed the following order:—"I would, therefore, allow the application for appointment of a receiver. Plaintiffs to suggest names for selection with particulars regarding security, remuneration and property to be taken possession of within a month."

The defendant appealed to the High Court from that order.

Dr. *S. M. Sulaiman*, for the respondents, took a preliminary objection that no appeal lay from the order in question, as it was not an order actually appointing a receiver. Order XLIII, rule 1 (*s*), did not give an appeal from such an order. Reliance was placed upon the case of *Ramji* v. *Koman Das* (1).

Mr. *S. A. Haidar*, for the appellants, in reply to the preliminary objection:—

The whole contention between the parties was whether a receiver should or should not be appointed in this case. The order in question has completely decided this question and has granted the plaintiffs' application for the appointment of a receiver. The words "I would, therefore, allow etc.," are here tantamount to "I, therefore, allow etc." This determination by the court of the question of the propriety or otherwise of appointing a receiver is binding on the court and on the parties. The order in question is essentially the receiving order; i.e., the order appointing a receiver, and is appealable under order XLIII, rule 1(*s*). I rely on the decision of the majority in the Full Bench case of *Palaniappa Chetty* v. *Palaniappa Chetty* (2). The decision in the case of *Rameshwar Singh* v. *Bheekdhari Singh* (3) is also in my favour. The case of *Ramji* v. *Koman Das* (1) cited by the respondents is distinguishable on the ground that the order there was expressly passed only "provisionally."

TUDBALL and RYVES, JJ.:—A preliminary objection is taken that no appeal lies from the order of the court below. In the suit in question an application was made by the plaintiffs for the appointment of a receiver. The defendants objected and after

(1) (1914) 13 A. L. J., 79 (2) (1916) I. L. R., 40 Mad., 18.
(3) (1915) 28 Indian Cases, 505.

hearing arguments, the court passed an order to the following effect:—"I would, therefore, allow the application for appointment of a receiver. Plaintiffs to suggest names for selection with particulars regarding security, remuneration and property to be taken possession of within a month." The present appeal has been preferred from that order. It is an admitted fact that no receiver has, up to the present time, been appointed. So there is no order by the court below actually appointing a receiver, but merely an expression by the court of its intention to appoint. Order XLIII, rule 1, clause (*s*), grants a right of appeal against an order under rule 1 of order XL. Order XL, rule 1, says that, where it appears to the court to be just and convenient, the court may by order appoint a receiver, and it is, therefore, clear that the law gives a right of appeal only against an order appointing a receiver and not against an expression by the court below of its intention to appoint. The matter is covered by many decisions. It was decided by the Calcutta High Court in *Upendra Nath Nag Chowdhry* v. *Bhupendra Nath Nag Chowdhry* (1), and also by the Bombay High Court in the case of *Narbadashankar Mugatram Vyas* v. *Kevaldas Raghunathdas* (2), and also by our own Court in the case of *Ramji* v. *Koman Das* (3). The only decision in favour of the present appellant is one of the Madras High Court in the case of *Palaniappa Chetty* v. *Palaniappa Chetty* (4). That was a decision of three Judges in which two held that an appeal would lie from an order such as the one now before us, but the third Judge disagreed. Moreover, an examination of the report shows that the third Judge fully agreed with the two Judges of the same Court who had referred the matter for the decision of a Full Bench with a view to the upsetting of a previous decision of the Madras High Court with which they did not agree. The decision in the case of *Ramji* v. *Koman Das* (3) is one which to our own knowledge has been followed more than once in this Court. We see no reason whatsoever to differ from the mass of opinion which is all against the appellant. We must, therefore, accept the preliminary objection. We hold that no appeal lies. The appeal will therefore be dismissed.

Appeal dismissed.

(1) (1910) 13 C. L. J., 157.
(2) (1915) 17 Bom. L.R., 510.
(3) (1914) 13 A. L. J., 79.
(4) (1916) I. L. R., 40 Mad., 18.