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has rightly directed the trial court to proceed in accordance with section 271, sub-clause (2).

Although it is by no means obligatory on the subordinate court to stay the suit, it is entirely a matter of discretion whether or not to adjourn the hearing for a reasonable time and await the decision of the final court of appeal in order to prevent the same evidence being recorded over again.

The application is dismissed with costs.

Before Justice Sir Shah Muhammad Sulaiman and
Mr. Justice Niamat-ullah.

JAGDEO SINGH AND OTHERS (DEFENDANTS) v. KESHO
PRASAD SINGH (PLAINTIFF).*

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Act (Local) No. III of 1926 (Agra Tenancy Act), section 253—Revision by High Court—“Subordinate revenue court” does not include District Judge—High Court can not revise orders of District Judge—Civil Procedure Code, section 115 not applicable.

The High Court has no power of revision, in matters under the Agra Tenancy Act, except under section 253 of that Act; the provisions of section 115 of the Civil Procedure Code are not applicable.

The expression “subordinate revenue court” in section 253 means only a first revenue court of original jurisdiction and does not include the court of a District Judge hearing an appeal from the former court. Therefore, the High Court has not got any power of revision over orders passed by the District Judge, however *ultra vires* or illegal they may be; but if the order passed by the trial court be open to objection it may be revised.

Mr. Ambika Prasad Pandey, for the applicants.

Mr. Haribans Sahai, for the opposite party.

SULAIMAN and NIAMAT-ULLAH, JJ. :—This is an application in revision from an order passed by the District Judge on the 11th of February, 1928, remanding

*Civil Revision No. 144 of 1928.

a case to the Assistant Collector with directions to retry it. The Assistant Collector had, on the 2nd of August, 1927, held that the land in respect of which arrears were claimed had by an action of the river been transferred to another pargana and he had no jurisdiction to try the case. He accordingly ordered the plaint to be returned for presentation to the proper court. An appeal was preferred to the District Judge, who held that the revenue court had jurisdiction to try the case. The suit related to years during which the land had not been so transferred. On behalf of the appellant it is contended that no appeal lay to the District Judge, because so far as the question of appeal is concerned the matter was governed by the old Tenancy Act under which no appeal from an order was allowed, but he contends that a revision lies under the new Act.

It was held by a Full Bench of this Court under the old Act that no revision lies from an order of the District Judge hearing the appeal. In the present case it is contended that revision is maintainable under the new Act. If the revision is governed by the new Act it has to be conceded that the case must fulfil the provisions of section 253 before a revision can be entertained. Under section 264 of the new Act only selected provisions of the Code of Civil Procedure are made applicable to cases under this Act and list I of the second schedule clearly excludes the provisions of section 115 of the Civil Procedure Code from the Act. It is thus clear that the High Court has no power of revision except under section 253. This conclusion is further fortified by the language of section 230, under which the exception is confined to "appeal or revision as provided in this Act". Now under section 253 the High Court may call for the record of any case which has been decided by any subordinate revenue court and in which an appeal lies to the court of the District Judge and in which no appeal lies to the High

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Court, if such revenue court appears to have exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or to have acted in the exercise of its jurisdiction with illegality or material irregularity. The question to consider is whether the expression "such subordinate revenue court" means only a first revenue court of original jurisdiction or includes the court of a District Judge. Considering the phraseology of section 253 side by side with that of section 252, there can be no doubt that "such revenue court" does not include the District Judge mentioned therein. Furthermore, any doubt that one may have on this point is made clear by the definition of "revenue court" in section 3, sub-clause (12). That definition is the same as that given in the United Provinces Land Revenue Act of 1901, where under section 4, sub-clause (8), the District Judge would be excluded from its scope. It is thus clear that, however unfortunate the result may be, the High Court has not got any power of revision of orders passed by a District Judge, howsoever *ultra vires*, irregular or illegal they may be. If the order passed by the trial court is open to objection it can be revised.

It is the applicant's case that the order passed by the trial court was perfectly right. We have therefore no power to interfere with the order of the District Judge. The application is accordingly rejected with costs.