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March, 9.

Before Sir Shah Muhammad Sulaiman, Acting Chief Justice and Mr. Justice Sen.

RAMESHWAR DAYAL AND ANOTHER (DEFENDANTS) *v.*
OM PRAKASH AND ANOTHER (PLAINTIFFS).*

Agra Tenancy Act (Local Act III of 1926), sections 248, 249 and 264—Appeal from order—Order of remand by District Judge in suit for profits—No appeal lies.

No appeal lies from an order of remand passed by the District Judge in an appeal from a suit for profits under the Agra Tenancy Act, 1926. Section 249 of that Act clearly bars appeals from any order passed in appeal; the words, "order passed in appeal", can not be construed as meaning "order passed in appeal from an appellate order".

The scheme of the Agra Tenancy Act, 1926, is to provide for appeals from orders in certain specified cases only; and section 248 (3) shows that order XLIII, rule 1 of the Civil Procedure Code is not applicable in its entirety, excepting as regards orders passed by Assistant Collectors of first class and Collectors. The omission of order XLIII, rule 1, from list I of the second schedule of the Agra Tenancy Act does not make that rule wholly applicable; its application regarding orders passed in appeal is prohibited by section 264(a) of the Act, inasmuch as such application would be clearly inconsistent with the provisions of section 249 of the Act.

Mr. *H. K. Mukerji*, for the appellants.

Mr. *Shiva Prasad Sinha*, for the respondents.

SULAIMAN, A. C. J. :—This is a defendants' appeal from an order of remand passed in a suit for profits brought by a co-sharer against another co-sharer under section 227 of the Agra Tenancy Act. A preliminary objection is taken that no appeal lies.

Every order passed by a revenue court is not necessarily a decree. A decree has been defined as meaning an order which, so far as the revenue court is concerned, finally disposes of the suit.

Under the old Agra Tenancy Act it had been consistently held by this Court that there was no provision for an appeal from a mere order as distinct from a decree.

*First Appeal No. 92 of 1930, from an order of Triloki Nath, Second Additional District Judge of Meerut, dated the 15th of February, 1930.

Section 240 of the new Act lays down that no appeal shall lie from any decree or order passed by any court under this Act except as provided in the Act. It follows that there is no absolute right of appeal, and such right cannot be claimed unless there is provision for it in the Act itself.

The scheme of the Act is to provide for an appeal from the original decrees and also for appeals from orders in certain specified cases. So far as an appeal to the High Court is concerned it is referred to in section 246, but that relates to appeals from appellate decrees and not from appellate orders. Then follows a heading "Appeals from orders." Under this heading sections 247 and 248 provide for appeals to Collector, Commissioner and the Board from certain orders passed by revenue courts. It is noteworthy that in section 248(3) there is reference to order XLIII, rule 1 of the Civil Procedure Code. This fact in itself shows that if the whole of order XLIII, rule 1 were automatically applicable there would have been no necessity to refer to it specifically in this sub-section. We then have section 249 which says that no appeal shall lie from any order passed in appeal. Taking the section as it stands, the words "any order passed in appeal" obviously include the orders passed by the District Judge when hearing an appeal from a revenue court. They cannot, by any stretch of language, be paraphrased as meaning "further appeals from appellate orders", as the learned advocate for the appellants contends.

It is pointed out on behalf of the appellant that under section 264 the provisions of the Civil Procedure Code with certain exceptions have been made applicable. It is further pointed out that in the second schedule, list I, attached to the Act there is no statement that order XLIII of the Civil Procedure Code is to be excluded. It is accordingly argued that by implication the whole of order XLIII has been made applicable to revenue cases and therefore appeals from orders of remand are maintainable.

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The argument cannot be accepted. Section 264 does not make the whole of the Civil Procedure Code applicable. In the first place it excludes all provisions of the Civil Procedure Code which are inconsistent with anything in the Act. In the second place it excludes all provisions which are applicable to special suits or proceedings. In the third place it excludes those other provisions which are contained in list I of the second schedule.

As the right of appeal from orders of remand is wholly inconsistent with the provisions of section 249, there was no necessity to include order XLIII in list I of the second schedule.

Had the legislature intended to depart from the old law and to provide for appeals from all orders mentioned in order XLIII, rule 1, it would undoubtedly have said so in express terms. Instead of that we have section 249 which prohibits appeals from any orders passed in appeal, and we also have section 240 which does not allow of any appeal unless it is provided by this very Act.

I am therefore clearly of opinion that no appeal from an order of remand passed by the District Judge lies to the High Court. When the case is finally disposed of and a decree is passed, it would be open to the appellant to challenge the propriety of the order on the ground open to him by way of appeal.

SEN, J. :—A suit for profits was instituted by a co-sharer against another co-sharer under section 227 of the Agra Tenancy Act. The court of first instance dismissed the suit. The lower appellate court reversed the decree of the trial court and remanded the suit under order XLI, rule 23 of the Civil Procedure Code. The defendants come up before this Court in appeal.

A preliminary objection has been taken that no appeal lies. I am in entire agreement with the view of the learned ACTING CHIEF JUSTICE that this preliminary objection is well founded and ought to prevail.

A right of appeal is a creature of statute. No appeal from an order of remand under order XLI, rule 23 in a suit under section 227 of the Agra Tenancy Act has been provided for in the Act either expressly or by necessary implication. The term "order" has not been defined in the Agra Tenancy Act. For the definition of this term we have to go to the Civil Procedure Code. Order XLIII, rule 1 has not been bodily incorporated in the Agra Tenancy Act. That order has been made applicable to certain cases only which are set out in section 248, sub-section (3). Section 264 of the Tenancy Act provides that the provisions of the Civil Procedure Code are not applicable to suits and other proceedings under the Agra Tenancy Act except within the limits set out therein. Section 240 provides that no appeal shall lie from any decree or order passed by any court except as provided by the Act. Sections 247 and 248 provide for an appeal from certain orders, which do not include an appeal from an order of remand passed by the District Judge on appeal. Section 247 provides for an appeal to the Collector from every order of an Assistant Collector of the second class. Section 248 provides for an appeal to the Collector from the order of an Assistant Collector of the first class and to the Commissioner from the original order of a Collector. Section 249 in the clearest terms provides that no appeal shall lie from any order passed in appeal. We have been asked to construe the words "orders passed in appeal" to mean 'orders passed in appeal from an appellate order.' *Ex facie* the text of section 249 does not lend itself to this construction. We have to construe the words of the statute according to their natural and grammatical meaning. I am therefore of opinion that the Agra Tenancy Act contains no provision allowing an appeal from an order of remand passed by the District Judge in a suit under section 227 of the said Act. The preliminary objection therefore succeeds. I would therefore dismiss the appeal.

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