MISCELLANEOUS CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

JOKHAI (PLAINTIFF) *v.* JAWAHIR LAL (DEFENDANT)* 1937 *March*, 5

Agra Tenancy Act (Local Act III of 1926), sections 242, 248, 273—Question of tenancy raised in civil court—Issue of tenancy sent to revenue court—Finding on that issue is neither a decree nor an order nor a judgment—Appeal—Review of finding—Agra Tenancy Act, section 251—Appeal from alteration of finding.

When, in a suit in the civil court for ejectment, a plea of tenancy is raised by the defendant and according to section 273 of the Agra Tenancy Act an issue on the question of tenancy is sent to the revenue court for determination, what the revenue court does is to record a finding on that particular issue alone and return it to the civil court. The finding of the revenue court is not a decree, nor can it be regarded as an order within the meaning of chapter XV of the Agra Tenancy Act; and no appeal can lie from it under section 242 or 248 of the Act. Nor can the finding be regarded as a judgment within the meaning of section 251, and therefore the revenue court can not review it. But if the revenue court professes to review its finding and alters it, no appeal lies from such alteration.

It may be open to the revenue court, if satisfied later that it had made some mistake in its finding, to submit a supplementary finding to the civil court for the purpose of information; but the trial court would have to accept the finding which had been submitted in accordance with the provisions of section 273(2). When the matter goes in appeal before the District Judge, he would be entitled to take into account both expressions of opinion and come to his own conclusion, and in that way decide the matter in controversy.

Mr. *Lakshmi Saran*, for the applicant.

Mr. *Gopalji Mehrotra*, for the opposite party.

SULAIMAN, C.J., and BENNET, J.:—This is a reference by the District Judge of Benares under section 267 of the Agra Tenancy Act. Two suits had been filed by the plaintiffs zamindars against the defendant tenant

*Miscellaneous Case No. 351 of 1936.

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for the possession of certain plots on the ground that the last tenant had died heirless, and that the defendant was a mere trespasser. The defendant raised the plea that he was the tenant of the plaintiffs, and an issue was framed by the civil court "whether the relation of landlord and tenant exists between the parties". The trial court referred this issue to the revenue court, which was the court of an Assistant Collector. The Assistant Collector first decided the issue in favour of the defendant, having come to the conclusion that the defendant was the tenant of the plots in dispute. The zamindars then filed an application for review under order XLVII of the Civil Procedure Code, which was granted, and the previous finding was set aside, and the court came to the conclusion that the defendant was not the tenant of the plots in suit. The defendant accordingly preferred two appeals from the findings to the court of the District Judge, Benares; but they were returned by the District Judge for presentation to the proper court. The appeals were then filed in the court of the Subordinate Judge, Jaunpur; but the Additional Subordinate Judge to whose court they were transferred held that the appeals should have been filed in the court of the District Judge, and he had no jurisdiction to entertain them. He accordingly ordered that the appeals be returned for presentation to the proper court. Accordingly the defendant applied to the District Judge for a reference of this question to the High Court.

The question as to which forum the appeal will lie to will obviously depend on the further question whether an appeal lies at all. Section 242 of the Agra Tenancy Act does not in terms apply because it refers to appeals from the *decree* of an Assistant Collector. Section 248 refers to appeals from orders, and in sub-section (3) it is expressly provided that an appeal shall lie from the orders of the Assistant Collector, first class, mentioned in order XLIII, rule 1. It would therefore follow that if the Assistant Collector's finding were an

order, then an appeal would lie under order XLIII, rule 1, sub-rule (*w*). But the same section provides that such appeal shall lie to the court, if any, "having jurisdiction under section 242 of the Act" to hear an appeal from the decree in the suit. In this particular case, there would be no court which would have jurisdiction under section 242 of the Act to hear an appeal because the finding of the Assistant Collector certainly did not amount to a decree in any suit. No such difficulty would arise if the finding were not treated as an order of the Assistant Collector.

Section 251 also provides that a subordinate revenue court shall be competent to review its *judgment* in accordance with the provisions of the Civil Procedure Code and the provisions of order XLVII of the Civil Procedure Code. Thus if the finding of the Assistant Collector were to amount to a judgment, then he would have jurisdiction to review his judgment under order XLVII of the Civil Procedure Code.

It, however, seems that the sections referred to above deal with suits which are filed in the revenue courts and as to which a question arises whether an appeal lies or not, and, if so, to which court. Section 273, which occurs in chapter XVII, contains quite a different provision relating to suits which are filed in civil courts, and in which if the defendant pleads that he holds the land as a tenant of the plaintiff the civil court can frame an issue on the question of tenancy and send it to the proper revenue court for the decision of that issue only. It is more like remanding an issue for the purpose of taking fresh evidence and recording a finding than pronouncing judgment, or making any order in the case. Sub-section (2) provides that the subordinate court shall decide that issue only and return the record together with its finding on that issue to the civil court. Sub-section (3) provides that the civil court shall then proceed to decide the suit, accepting the finding of the revenue court on the issue referred to it; and sub-section (4)

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provides that the finding of the revenue court on the issue referred to it shall, for the purposes of appeal, be deemed to be part of the finding of the civil court.

It, therefore, appears that what the revenue court does is to record a finding on that particular issue which has been referred to it for decision. The revenue court is not seised of the whole case which is really pending in the civil court, but has to express its opinion on the particular issue which has been submitted to it. The finding of the revenue court cannot be regarded as an order passed by it within the meaning of chapter XV, or a judgment within the meaning of section 251, because it is the civil court which alone is competent to entertain the suit and pass orders and deliver judgment in it. The revenue court merely records the finding and returns it to the civil court. That explains why there is no specification as to the forum to which an appeal would lie, if one were allowed. It cannot be denied that no direct appeal is allowed from the finding of the revenue court on such an issue. The only remedy open to the aggrieved party is to prefer an appeal from the decree passed by the Munsif to the proper court, and then challenge the finding of the Assistant Collector. It would, therefore, seem to follow that no appeal would be allowed from an order altering the previous finding. It may be open to the Assistant Collector, if satisfied later that he had made some mistake in his finding, to submit a supplementary finding to the civil court for the purpose of information; but the trial court would have to accept the finding which had been submitted in accordance with the provisions of section 273(2). When the matter goes in appeal before the District Judge, he would be entitled to take into account both expressions of opinion and come to his own independent conclusion, and in that way decide the matter in controversy. We do not think that the legislature intended that there should be any appeal allowed either from the finding of the

Assistant Collector or from the order altering his previous finding. Our answer to the question referred to us is that no appeal lies at all to any court.

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APPELLATE CIVIL

Before Mr. Justice Harries and Mr. Justice Rachhpal Singh

KAILASH CHANDRA (JUDGMENT-DEBTOR) *v.* RADHEY SHIAM AND ANOTHER (DECREE-HOLDERS)*

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U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 5(2)—Appeal—Order of remand—District Judge allowing appeal from refusal to grant instalments and remanding case to lower court—Whether decision final.

No appeal lies from an order of the appellate court allowing an appeal from an order which refused to grant instalments, under the U. P. Agriculturists' Relief Act, for the payment of the decretal amount, and remanding the case to the lower court for determination according to law. What is made final in sub-section (2) of section 5 of the Act is the "decision" of the appellate court, though it may not amount to a decree or final order.

Messrs. *G. Agarwala* and *K. N. Agarwala,* for the appellant.

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

HARRIES and RACHHPAL SINGH, JJ.:—This is an application by a judgment-debtor appellant praying that this Court should extend the time for filing an appeal under the provisions of section 5 of the Limitation Act.

The proposed appeal is against an order of the District Judge passed on appeal in a case arising out of the Agriculturists' Relief Act.

The proceedings commenced by an application by the judgment-debtor in the court of the Civil Judge that the interest under a certain mortgage decree should be reduced and that it should be ordered that the amount due under that decree be paid by instalments. The Civil Judge came to the conclusion that the

*First Appeal No. Nil of 1936, from an order of Shamsul Hasan, District Judge of Aligarh, dated the 2nd of June, 1936.