Before Justice Sir Edward Bennet, Mr. Justice Allsop and Mr. Justice Verma

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MAHENDRA MAN SINGH (PLAINTIFF) *v.* BADRI AND OTHERS (DEFENDANTS)*

Agra Tenancy Act (Local Act III of 1926), section 242(1)(d)—"Amount of revenue payable" is in issue—Question whether defendant is liable to pay any revenue at all—Appeal lies to civil court.

An appeal lies to the District Judge under section 242(1)(*d*) of the Agra Tenancy Act, 1926, against the decision of the revenue court in a suit for recovery of arrears of revenue brought under section 223 of that Act where the defendant pleads that he is not liable to pay any revenue at all.

The words "amount of revenue payable is in issue" cover the case where a plaintiff claims a certain amount as arrears of revenue and the defendant denies his liability for any part of that amount, and are not confined to the case where the defendant admits his liability for a part of the amount but not for the whole.

Pearey Lal v. *Amna Khatun* (1), *Rameshwari Prasad* v. *Dina Nath* (2) and *Mohammad Yusuf Ali Khan* v. *Shiam Kunwar* (3), overruled.

Mr. *N. Upadhiya*, for the appellant.

Mr. *S. B. L. Gaur*, for the respondents.

BENNET, ALLSOP and VERMA, JJ.:—This is a reference to a Full Bench in the following terms:

"Does an appeal lie to the District Judge under section 242(1)(*d*) of the Agra Tenancy Act (III of 1926) against the decision of the revenue court in a suit for recovery of arrears of revenue brought under section 223 of that Act if the defendant pleads that he is not liable to pay any revenue at all?"

The plaintiff brought two suits in the court of an Assistant Collector, first class, under section 223 of the

*Second Appeal No. 1661 of 1935, from a decree of L. V. Ardagh, District Judge of Agra, dated the 25th of March, 1935, confirming a decree of B. R. Yadav, Assistant Collector first class of Agra, dated the 31st of May, 1933.

(1) (1935) I.L.R. 57 All. 974. (2) [1936] Rev. Dec. 17.
(3) [1938] A.L.J. 3.

Agra Tenancy Act claiming arrears of revenue under Rs.200 from a number of defendants. On the decision of the Assistant Collector dismissing the suits the plaintiff applied to the Commissioner in revision and the Commissioner forwarded the application in revision to the Board of Revenue stating his opinion that a revision lay. The Board of Revenue differed and held that these were cases in which appeals lay to the District Judge under section 242 of the Agra Tenancy Act of 1926 and therefore that no revision lay to the Board, in accordance with section 252 of that Act. The plaintiff therefore filed two appeals in the court of the District Judge of Agra and the District Judge of Agra has dismissed these two appeals in one judgment. The plaintiff brought two second appeals in this Court and a preliminary objection was taken that no appeal lay to the District Judge under section 242(1)(*d*) and therefore that the dismissal of the suits of the plaintiff by the trial court had become final. The question, therefore, of whether an appeal lay has been referred to this Full Bench. There are several decisions of learned Judges of this Court to which reference has been made. One of these is a Bench decision, *Pearey Lal* v. *Amna Khatun* (1). In this case the learned Judges stated as follows on page 976:

"The language of section 242(*d*) clearly contemplates cases in which the amount of revenue payable in respect of a land is in dispute. Questions regarding the liability of particular lands and individuals owning interest therein have been advisedly left out of the jurisdiction of civil courts. Such questions fall within the purview of certain provisions of the Land Revenue Act. If we accept the contention of the learned advocate for the plaintiff and assume an extended jurisdiction, a conflict of jurisdiction may arise in view of the provisions of section 233 of the United Provinces Land

(1) (1935) I.L.R. 57 All. 974.

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Revenue Act. Accordingly we hold that the language of section 242(*d*) should not be strained in the manner suggested and that only when the amount of revenue, as distinguished from liability in respect thereof, is in dispute an appeal lies to the District Judge. As the amount of revenue annually payable is not in dispute in this case no appeal lay to the District Judge. We answer the reference accordingly."

The learned Judges also state: "It should be noted that clause (*d*) of section 242, quoted by us above, is limited to cases in which the *amount* of the revenue payable is in dispute. Its language is not wide enough to include cases in which the *liability* to pay revenue as between two individuals is the question at issue." The view taken by that Bench has been also taken by a learned single Judge of this Court in two rulings, one of which is *Rameshwari Prasad* v. *Dina Nath* (1) and the other is *Mohammad Yusuf Ali Khan* v. *Shiam Kunwar* (2).

In discussing this provision of the legislature learned counsel for the respondent who claims that no appeal lies has referred to the provision of the previous Act, Act II of 1901. In that Act the fourth schedule, Group (A) stated: "Suits triable, when not exceeding Rs.100 in value, by Assistant Collector of second class—appeal to Collector; when exceeding Rs.100 in value, by Assistant Collector of first class—appeal to civil court." The present class of suit which was then designated as No. 10 in the schedule, "Section 161: By a muafidar or assignee of revenue for arrears of revenue due to him as such" came in this Group (A). The provision in section 176 of the Act was that an appeal shall lie from a decree of an Assistant Collector, second class, in any of the suits included in Group (A) of the fourth schedule, and the appeal would lie to the Collector. In section 177 it was provided that an appeal shall lie to the District Judge from a decree of

(1) [1936] Rev. Dec. 17. (2) [1938] A.L.J. 3.

an Assistant Collector of the first class "in any suit under sections 159, 160, 161, 162, 164 and 165 in which—(*d*) the amount of the revenue annually payable has been a matter in issue in the court of first instance, and is a matter in issue in the appeal." It is therefore clear that under this Act of 1901 there was an appeal provided in every suit which was brought under section 161, the appeal lying in some cases to the Collector and in other cases to the District Judge.

In the Act of 1926 there is a change introduced into the heading of Group (A) in the fourth schedule which provides: "Suits triable, in the case of serial Nos. 1, 2, 3, 10, 11, 12, 14 and 15, whatever the value, and in the case of serial Nos. 4 to 9 (inclusive) when exceeding Rs.200 in value, by Assistant Collector of the first class —appeal, if any, to the civil court; in the case of serial Nos. 4 to 9 (inclusive) when not exceeding Rs.200 in value, by Assistant Collector of the second class—appeal to Collector." The section in question in these suits, section 223, is serial No. 12, and by the language of the heading in Group (A) a case under this section will always be tried by an Assistant Collector of the first class, and the words then follow: "Appeal, if any, to the civil court." But it has to be noted that these words apply not only to the class of cases with which we are dealing, sections 221, 222, 223, 224, 226 and 227, serial Nos. 10 to 15, but they also apply to serial Nos. 1, 2 and 3 which deal with sections 48, 84 and 85, which are matters probably of less importance. It does not follow therefore that there would be no appeal to the civil court in serial Nos. 10 to 15. When we turn to the provisions in section 242 we find it provided in sub-section (1) that an appeal shall lie to the District Judge from the decree of an Assistant Collector of the first class or of a Collector "in any suit under sections 221, 222, 223, 224, 226 and 227 in which—(*d*) the amount of the revenue annually payable has been

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in issue in the court of first instance and is in issue in appeal." Now the contest between learned counsel in this case is on the point as to whether the Act of 1926 has taken away the right of appeal in certain classes of these suits for arrears. It is not contended that in regard to the present suits the jurisdiction in appeal has been taken away on any broad lines. It is admitted for the respondent that an appeal will lie where the defendant admits that he has a liability to pay some amount of land revenue, however small, but claims that the amount is less than what the plaintiff claims. For example, if the plaintiff claims Rs.100 as land revenue and the defendant says "I only am liable for one anna" then an appeal will lie. But learned counsel for respondent contends that if the defendant says "I am not liable for any land revenue at all" then no appeal will lie. It is clear that it would be very improbable that any legislature would enact that no appeal would lie where there was a total denial of liability but that an appeal would lie where there was an admission of liability for some sum however slight. We do not find that there is any reason in the language of the section to place this somewhat peculiar construction on the provisions of section 242(1)(*d*). It appears to us that the amount of revenue annually payable is in issue when a plaintiff claims a certain amount and defendant denies that the plaintiff is entitled to any part of that amount. The reason given for the allegation that a defendant does not owe the amount to the plaintiff does not seem to us to matter. If the defendant pleads that he is liable for a less sum or he is not liable for any sum at all it seems to us that in both cases the language of the section will allow an appeal. The plaintiff has claimed an amount of revenue as annually payable. The defendant has denied that that amount is payable and it is just as much a denial to say that no part of it is payable as to say that only a

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certain part of it is payable. It is for this ground chiefly that we consider that the reasoning in the judgements of this Court to which we have been referred is not correct reasoning and with due respect to the learned Judges who decided those cases we feel unanimously that we cannot accept that reasoning.

Moreover the fact that in all cases the previous Act, Act II of 1901, allowed an appeal is also to be taken into account and where the previous Act allowed an appeal in all cases it is not probable that the present Act would take away the right of appeal.

For these reasons we answer this reference in the affirmative and we hold that an appeal does lie to the District Judge under section 242 (1)(*d*) of the Agra Tenancy Act, Act III of 1926, against the decision of the revenue court in a suit for recovery of arrears of revenue brought under section 223 of that Act if the defendant pleads that he is not liable to pay any revenue at all. We allow to the appellant the costs of the hearing before the Full Bench in both cases.

REVISIONAL CIVIL

Before Mr. Justice Mulla

ZAFAR UDDIN (PLAINTIFF) *v.* DEBI PRASAD AND ANOTHER (DEFENDANTS)* 1939 *April*, 5

Limitation Act (*IX of* 1908), *section* 14, *explanation I—Exclusion of period of pendency of former suit—"Date on which the proceedings therein ended"—Return of plaint for presentation to proper court—Time up to actual return of plaint, and not only up to the order for return, to be excluded.*

Where a plaint is returned for presentation to the proper court, the proceedings in the first court come to an end within the meaning of explanation I to section 14 of the Limitation Act, not on the date on which the order directing the return of the plaint is passed but on the date on which the plaint is actually returned to the plaintiff; the court has seisin of the plaint, even after passing the order for return, until the plaint is actually returned. The period to be excluded under section

*Civil Revision No. 392 of 1938.