

is a representative of Karam Singh is to beg the whole question.

For the reasons given above we hold that the appeal is devoid of any merit and dismiss it with costs.

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RANBIR
KARAM
SINGH
v.
J.C.
BRATTA-
CHARJI

MISCELLANEOUS CIVIL

Before Mr. Justice Iqbal Ahmad and Mr. Justice Bajpai

RISAL SINGH (PLAINTIFF) v. HIRA AND OTHERS
(DEFENDANTS)*

1939
November, 3

*Agra Tenancy Act (Local Act III of 1926), sections 270, 271(1)
—Defendant pleading jus tertii—Third party impleaded as
a defendant—Question of proprietary right raised by the
third party defendant—Procedure.*

Section 271(1) of the Agra Tenancy Act applies only when the original defendant to the suit pleaded that he was not a tenant but had a proprietary right in the land; it does not apply where such a plea was raised not by the original defendant but by a defendant added under section 270(1) of the Act.

Mr. K. C. Mital, for the applicant.

The opposite parties were not represented.

IQBAL AHMAD and BAJPAI, JJ.:—This is a reference by the learned Additional District Judge of Meerut under section 267(2) of the Agra Tenancy Act (Local Act No. III of 1926). There is an unfortunate history behind the reference and it is a pity that a suit for arrears of rent filed in the court of an Assistant Collector of the second class so far back as 1932 has not yet been finally decided. Originally it was pleaded on behalf of the defendants that they had paid the rent claimed in good faith to one Qabul. Qabul was made a defendant to the suit under section 270 of the Agra Tenancy Act. Both Qabul and the original defendants pleaded that the plaintiff was not the proprietor of the land in suit but

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that Qabul was the proprietor. It is important to notice at this stage that the original defendants did not plead that they were the proprietors of the land in suit but the plea was advanced only by Qabul. The Assistant Collector dismissed the suit.

There was an appeal presumably under section 241 of the Tenancy Act to the Collector and here again it was pleaded by the defendants that Qabul was the proprietor of the land in suit and that the plaintiff had no right in it. The Collector decided the appeal against the plaintiff and maintained the order of dismissal of the suit.

The plaintiff went in appeal under the provisions of section 243 of the Act to the learned District Judge. It is provided by section 243 that "An appeal shall lie to the District Judge from the appellate decree of a Collector in any suit in which (a) a question of proprietary right has been in issue between the parties claiming such right in the first appellate court, and is in issue in the appeal." From what we have said above it is clear that Qabul raised a question of proprietary right before the Collector and this question was in issue before the second appellate court as well. The appeal to the District Judge was therefore a competent appeal. Mr. S. Maitra the then Additional District Judge entertained the appeal and remanded the case to the court of first instance (the court of the Assistant Collector of the second class) directing that court to restore the suit on its original number on the file and to decide it on the merits after obtaining from the civil court a finding on the issue about the plaintiff's proprietary title. Mr. Maitra obviously was of the opinion that this was a case where section 271(1) of the Agra Tenancy Act applied, forgetting that that provision applied only when the original defendant to the suit pleaded that he was not a tenant but had a proprietary right in the land. It did not apply where such a plea was raised not by the original defendant but by a defendant added under section.

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270 (1) of the Act. Be that as it may, the order of remand made by Mr. Maitra was not appealed against in view of the provisions of section 249 of the Agra Tenancy Act. It became final. The case went back to the Assistant Collector of the second class and he framed an issue and submitted it for a finding to the civil court in pursuance of the directions contained in the order of Mr. Maitra. The civil court decided the issue submitted to it under section 271(2) of the Act and returned the record together with its finding on that issue to the revenue court which had submitted it. The revenue court accepted the finding of the civil court, as it was bound to do, but it held that "the plaintiff should get the mahals and area corrected according to the civil court judgment and after necessary correction claim for arrears from the defendant", and, therefore, the suit was once again dismissed.

The plaintiff went in appeal to the Collector and the Collector held the view that the appeal was not entertainable by him and he returned the memorandum of appeal for presentation to the District Judge. When the memorandum of appeal was presented before the District Judge, he submitted the record to this Court by way of reference, disagreeing with the view of the Collector, and our orders are sought as to whether the appeal should be decided by him or whether it should be presented to any other court.

The position is an unfortunate one, but we have got to decide whether the plaintiff's appeal filed under the circumstances enumerated above ought to be decided by the District Judge or by the Collector. The troubles of the plaintiff to a great extent are due to the attitude adopted by the defendants, for it was they who pleaded before the Collector that the appeal lay to the District Judge. It would be unfair to drive the plaintiff from pillar to post and some court must be found where the plaintiff can seek redress. Apart from that it is not for us at this stage to question the order of Mr.

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Maitra or to set it aside. With that order in existence the position is that section 271, clause (4) of the Agra Tenancy Act applies and the decree of the Assistant Collector passed after the finding of the civil court has been obtained becomes appealable to the civil court if a question of proprietary right is in issue in appeal also. As we said before, the order of Mr. Maitra was not appealable by reason of section 249 of the Act, nor was it revisable under any of the provisions of the Agra Tenancy Act, and while disposing of this reference it is not possible for us to set aside that order. We have at the present stage to accept its binding effect and dispose of the reference in that light. But if, and when, a second appeal is filed against the decision of the District Judge, who according to us is the court having jurisdiction to hear the present appeal, it will be for this Court to decide whether the order of Mr. Maitra was right or wrong and whether it could be set aside. If this Court even then entertains the opinion, which we entertain at the present moment, that Mr. Maitra was not justified in remanding the case to the Assistant Collector and in directing that court to obtain a finding from the civil court, it will be open to this Court to set aside all the proceedings that have so far been taken in the case consequent on the order of remand passed by Mr. Maitra and to give proper directions for the hearing of the original second appeal by the learned District Judge from the stage when Mr. Maitra heard it.

At the present moment our order on the reference is that the learned Additional District Judge should proceed with the appeal. Let the papers be returned.