

1936

BHAGWAN
DEEN
v.
BILLESUR
alias
SUTTOO

only to the division of offerings made at the temple. There is no justice in the defendants appropriating the whole of the offerings to themselves, and refusing to give the plaintiffs their proper share therein.

*Srivastava,
C. J. and
Smith, J.*

In the circumstances we are of opinion that no case has been made out for interference with the decision of the lower appellate Court. We accordingly dismiss the appeal with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith*

1936
August 27

THAKURAIN GAJRAJ KUER (APPELLANT) *v.* THAKURAIN
CHABRAJ KUER (RESPONDENT)*

*Civil Procedure Code (Act V of 1908), Order XLIII, rule 1(w)
and Order XLVII, rule 7—United Provinces Land Revenue
Act (III of 1901), section 111(c)—Order of Assistant Collec-
tor under section 111(c), Land Revenue Act—Application
for review—Order granting review, if appealable.*

The provisions of Order XLIII, rule 1(w), C. P. C., must be read with the provisions of Order XLVII, rule 7, C. P. C., with the result that no appeal can be entertained against an order of an Assistant Collector granting an application for review of an order passed under section 111(c), Land Revenue Act, except on one of the grounds mentioned in Order XLVII, rule 7(1), C. P. C.

Mr. Radha Krishna Srivas'ava, for the appellant.

Messrs. Zahur Ahmad, S. M. Hafeez and Girja Shankar, for the respondent.

SRIVASTAVA, C.J. and SMITH, J.:—This is an appeal under Order XLIII, rule 1(w) of the Code of Civil Procedure against an order of an Assistant Collector of the First Class of Partabgarh District, granting an application for review.

*Miscellaneous Appeal No. 5 of 1935, against the decree of Shah Fakher Alam, Assistant Collector, First Class of Partabgarh District, dated the 11th of October, 1934.

It appears that an application for partition of a village forming part of a "taluka" was made before the Assistant Collector. An objection was made by one of the co-sharers raising a question of title. This objection was disallowed by the Assistant Collector. Thereafter, the objector made an application for review, which was allowed. The appellant, who is the applicant for partition, filed an appeal in the Court of the Deputy Commissioner of Partabgarh against the order of the Assistant Collector granting the application for review. The Deputy Commissioner was of opinion that the original order of the Assistant Collector disallowing the objection was an order passed under "section 111(c)" of the Land Revenue Act, and, therefore, the order reviewing it was appealable not to his Court, but to the Civil Court. He, therefore, returned the appeal to the appellant for presentation to the proper Court. The appellant submitted to this order and filed the appeal in this Court.

A preliminary objection has been raised on behalf of the respondent that the appeal is not maintainable inasmuch as it does not raise any of the grounds laid down in Order XLVII, rule 7 of the Code of Civil Procedure. We are of opinion that the preliminary objection must succeed. It is perfectly clear and is not seriously disputed by the learned Counsel for the appellant, that the grounds of objection raised in the appeal do not fall under any of the three heads mentioned in sub-rule (1) of rule 7. It has, however, been argued on behalf of the appellant that the learned Assistant Collector had no power to grant the review inasmuch as the original order passed by him was not one under section 111(1), clause (c) of the Land Revenue Act. It seems to us that the contention does not lie in the mouth of the appellant. As already stated, the Deputy Commissioner held that the order was one under "section 111(c)" of the Land Revenue Act, and it was on this

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basis that he refused to entertain the appeal. If the appellant was dissatisfied with the order of the Deputy Commissioner and disputed the correctness of it, her proper remedy was to appeal against that order to the Commissioner. She did not adopt that remedy. On the contrary she submitted to that order and filed the appeal in this Court. In the circumstances she must be taken to have accepted the position that the order of the Assistant Collector was one passed under section III(1), clause (c) of the Land Revenue Act. Thus, we are of opinion that the appeal must be decided on the footing that the order passed by the Assistant Collector was one under section III(1), clause (c) of the Land Revenue Act. This was the position taken up by the respondent, which was accepted by the Deputy Commissioner and to which the appellant submitted. We are, therefore, of opinion that the appeal must fail, because it is not based on any of the grounds mentioned in Order XLVIII, rule 7(1) of the Code of Civil Procedure.

It was also argued that Order XLIII, rule 1(w) gives a general right of appeal against all orders granting an application for review, and is uncontrolled by the provisions of Order XLVII, rule 7 of the Code of Civil Procedure. We regret we are unable to accede to this argument. We are of opinion that the provisions of Order XLIII, rule 1(w) must be read with the provisions of Order XLVII, rule 7 of the Code of Civil Procedure, with the result that no appeal can be entertained against an order granting an application for review except on one of the grounds mentioned in Order XLVII, rule 7(1) of the Code of Civil Procedure. The result, therefore, is that the appeal fails and is dismissed with costs.

Appeal dismissed.