

APPELLATE CIVIL

*Before Sir C. M. King, Knight, Chief Judge
and Mr. Justice Bisheshwar Nath Srivastava*

RAGHURAJ SINGH (APPELLANT) *v.* BABU SHANKAR
SAHAI AND OTHERS (RESPONDENTS)*

1936
May, 4

*United Provinces Agriculturists' Relief Act (XXVII of 1934),
section 5—Order of Additional Subordinate Judge in Oudh
dismissing application under section 5—Appeal, where lies.*

An appeal against an order of an Additional Subordinate Judge in Oudh dismissing an application made to him under section 5, U. P. Agriculturists' Relief Act, lies to the District Judge and not to the Oudh Chief Court.

Mr. H. H. Zaidi, for the appellant.

Mr. Anant Prasad Nigam, for the respondents.

KING, C.J., and SRIVASTAVA, J.:—This is an appeal against an order of the Additional Subordinate Judge of Sitapur dismissing an application made to him under section 5 of the Agriculturists' Relief Act.

The only question which we are called upon to decide at this stage is whether an appeal against the order in question lies to this Court or to the Court of the District Judge. Section 5 clause 2 of the Agriculturists' Relief Act provides that in such a case the order "shall be appealable to the Court to which the Court passing the order is immediately subordinate." It was argued on behalf of the appellant that the suit which resulted in the decree which was sought to be amended under section 5 was of a value of more than Rs.5,000 and the appeal against the decree passed in that suit lay to this Court and not to the District Judge. The argument proceeded that the intention of the Legislature could not have been anything else than that orders passed under section 5 should be appealable to the same Court to which appeals would ordinarily lie against the decree itself. It was further pointed out that a different interpretation might lead to some conflict for instance in a

*First Civil Appeal No. 45 of 1936, against the decree of Syed Abid Raza, Additional Subordinate Judge of Sitapur, dated the 27th of March, 1936.

1936

RAGHURAJ
SINGH
v.
BABU
SHANKAR
SAHAI

King, C.J.
and
Srinastaram,
J.

case in which while an appeal against the decree was pending in the Chief Court, an application was made under section 5 and decided by the District Judge. The considerations put forward on behalf of the appellant are not without some force but our function is merely to interpret the terms of the section. We notice that in section 23 of the Agriculturists' Relief Act which provides for appeals against orders passed under Chapter III of the Act, it is provided that an appeal shall lie from the order of a Civil Court passed under that chapter to the Court to which original decrees passed by such Court are ordinarily appealable and where such decrees are appealable to more courts than one, to the Court of lowest jurisdiction. If the intention of the Legislature had been to make orders passed under section 5 appealable to the same Court to which the decree was appealable, there is no reason why the Legislature should not have used in section 5 the same language as it has used in section 23. The language of clause 2 of section 5 shows that the orders under that section were intended to be appealable to one and the same Court irrespective of the valuation of the suit in which the decree was passed. We have no doubt that the Court to which the Subordinate Judge is immediately subordinate is the Court of the District Judge. This is also clear from the provisions of section 3 of the Code of Civil Procedure which lays down that every Civil Court of a grade inferior to that of the District Court is subordinate to the High Court and District Court. But as between these two courts, the Court to which it is immediately subordinate is the District Court. We are therefore of opinion that the appeal in the present case lies to the District Judge and not to this Court. We accordingly direct that the memorandum of appeal should be returned to the appellant for presentation to the Court of the District Judge.

As a result of this order, we discharge the order for stay which was passed in the case.