

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan

1940

January, 29

TRIBHUWAN BAHADUR SINGH, THAKUR (PLAINTIFF-
APPELLANT) *v.* BAIJNATH (DEFENDANT-RESPONDENT)*

United Provinces Agriculturists' Relief Act (XXVII of 1934), sections 3 and 33—Suit for accounts under section 33, Agriculturists' Relief Act—Decree under section 33, whether can be made payable by instalments—Section 3, whether applicable to decrees under section 33—Civil Procedure Code (Act V of 1908), order XX, rule 11, whether applies to decrees under section 33, Agriculturists' Relief Act—Appeal—Order refusing instalments under section 3, whether appealable.

The wording of section 3(1) of the Agriculturists' Relief Act is wide enough to cover all "decrees for money" and when there is no specific provision excluding the application of section 3 to suits under section 33, there is no reason to exclude decrees passed under section 33 from the purview of section 3.

In a case under section 33 of the Agriculturists' Relief Act instalments can also be granted under the ordinary law contained in order XX, rule 11(1), Civil Procedure Code.

It is wrong that because there is no provision under section 3 of the Agriculturists' Relief Act with regard to appeals no appeal lies against an order passed under that section. An order under section 3 refusing to grant instalments is, therefore, appealable. *Mahadeo Prasad v. Lal Bakhsh Singh* (1), *Ram Narain v. Chandrika Prasad* (2), and *Sundar Lal v. Kaushi Ram* (3), relied on.

Mr. *Haidar Husain*, for the appellant.

Mr. *H. N. Dass*, for the respondent.

ZIAUL HASAN, J.:—This is a plaintiff's second appeal against a decree of the learned District Judge of Rae Bareilly in a suit brought under section 33 of the United Provinces Agriculturists' Relief Act.

The appellant filed a suit for accounts under section 33 of the Agriculturists' Relief Act and under sub-section 2 of section 33 the creditor-defendant applied for a

*Second Civil Appeal No. 393 of 1937, against the order of M. B. Ahmad, Esq., I.C.S., District Judge of Rae Bareilly, dated the 13th September, 1937.

(1) (1936) I.L.R., 12 Luck., 586. (2) (1938) I.L.R., 14 Luck., 49.

(3) (1939) A.J.R., All., 31.

decree being passed in his favour. When the court was going to pass a decree in favour of the defendant, the plaintiff prayed that the decree might be made payable by instalments. The trial court rejected this prayer as it was of opinion that section 3 of the Agriculturists' Relief Act, under which he could make the decree payable by instalments, does not apply to a decree under section 33 of the Act. The plaintiff appealed against the order refusing instalments but the learned District Judge dismissed the appeal. He did not decide the question whether a decree passed under section 33 of the Agriculturists' Relief Act could be made payable by instalments under section 3 of the Act as he thought that the point was immaterial. He was of opinion that the order of the trial court was not appealable, because section 3 of the Act does not provide for an appeal as section 5 does. The plaintiff has brought this second appeal and the points for decision are—

(1) Whether a decree passed in favour of the defendant to a suit for accounts under section 33 of the Agriculturists' Relief Act can be made payable by instalments under section 3 of the Act, and

(2) whether an order under section 3 refusing to grant instalments is appealable or not.

I am of opinion that both the points must be decided in favour of the appellant.

As regards the first point, the learned Munsif has relied on the first two lines of section 33(2) which run as follows:

“In such suit the court shall follow the provisions of Chapter IV of this Act and the provisions of the Usurious Loans Act, 1918.”

He has argued that in dealing with a suit under section 33 the court should take into consideration the provisions of Chapter IV of the Act and of the Usurious Loans Act only but that as section 3 of the Act is in Chapter II of the Act, it cannot be followed in a suit

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under section 33. Both Chapter IV of the Act and the Usurious Loans Act deal with the rate at which interest is to be allowed and have nothing to do with the question of instalments, but it is not to my mind good logic to argue that because nothing has been said in section 33 as to the grant of instalments, the provisions of the Act relating to them cannot be followed in a suit under that section. The wording of section 3(1) is wide enough to cover all "decrees for money" and when there is no specific provision excluding the application of section 3 to suits under section 33, there is no reason to exclude decrees passed under section 33 from the purview of section 3. Moreover, even if it be regarded for a moment that section 3 of the Agriculturists' Relief Act was not applicable to the decree in question, instalments could be granted under the ordinary law as contained in Order XX, rule 11(1), Civil Procedure Code which runs as follows :

"Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments with or without interest, notwithstanding anything contained in the contract under which the money is payable,"

and the fact that the plaintiff was an agriculturist was to my mind a sufficient reason to proceed under this provision of the law.

In holding that because there is no specific provision for an appeal in section 3 of the Agriculturists' Relief Act, no appeal lay to him against the trial court's order under that section, the learned District Judge appears to me to have committed an error similar to that in which the learned trial court had fallen. Suits under the Agriculturists' Relief Act are tried by the ordinary Civil Courts and unless there is a specific provision in any part of the Act with regard to appeals, the question must be governed by the ordinary law as contained in

the Code of Civil Procedure. Section 33 of the Agriculturists' Relief Act too does not make any provision in the matter of appeals yet in *Mahadeo Prasad v. Lal Bakhsh Singh* (1), it was held in the case of a suit under section 33 of the Agriculturists' Relief Act, that an appeal would lie under section 96 of the Code of Civil Procedure, against a decree passed in the suit, to the District Judge. In the course of the judgment it was said:

"The reason for no express provision being made for appeals against decrees passed under this section seems to have been that it was assumed that the decrees would be appealable under the general provisions of the Code of Civil Procedure. Section 96 of the Code of Civil Procedure lays down that save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorised to hear appeals from the decisions of such court. Admittedly there is no provision in the Agriculturists' Relief Act prohibiting appeals against decrees under section 33 of that Act. We are therefore of opinion that the present appeals are maintainable under section 96 of the Code of Civil Procedure."

In the case of *Ram Narain v. Chandrika Prasad* (2), it was remarked at page 538:

"The Act (Agriculturists Relief Act) does not provide for the creation of any special courts as does the Encumbered Estates Act and section 2(5) defines 'Court' as a Civil Court so that it is the ordinary jurisdiction which deals with matters under the Agriculturists' Relief Act."

In the case of *Sundar Lal v. Kaushi Ram* (3), though the question was not specifically raised, yet an appeal was entertained in a suit under section 33 of the Agriculturists' Relief Act though there is no provision in that section with regard to appeal.

I am therefore of opinion that the learned District Judge was in error in thinking that because there is no provision in section 3 of the Agriculturists' Relief Act

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with regard to appeals no appeal lies against an order passed under that section.

The appeal is decreed with costs and the case remanded to the lower appellate court for being restored to its original number in the register of appeals and heard and decided in the light of the above remarks.

Appeal allowed.

MISCELLANEOUS CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice R. L. Yorke

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AZIZUR RAHMAN, MOULVI, MOHAMMAD (APPLICANT-APPELLANT) v. RAM PIARI, MUSAMMAT, AND OTHERS (OPPOSITE-PARTY RESPONDENTS)*

United Provinces Encumbered Estates Act (XXV of 1934), sections 4 and 9(5)(a) and 45—Appeal validly filed under old section 45—No retrospective effect given to amended section 45—Appeal whether entertainable—Parties added after publication of notices—Notices under sections 9 and 11, whether to be published again.

Where an appeal was validly brought under the law as it stood at that time it would not be fair to hold that it should not be entertained on account of a subsequent amendment of law which does not specifically give retrospective effect to the amendment. *Nuralhaqshah v. Emperor* (1), *Haidar Husain v. Puran Mal* (2), *Kundan Lal v. Faqir Bakhsh* (3), and *A. T. Pannirselvam v. A. Veeriah Vandayar* (4), referred to.

Where certain necessary parties were added under section 9(5)(a) to the application under section 4 of the Encumbered Estates Act after notices under sections 9 and 11 had been published, *held*, that it was not necessary to publish notices under sections 9 and 11, again.

Mr. *Haidar Husain*, for the appellant.

Mr. *B. K. Dhaon*, for the respondents.

*Miscellaneous Appeal No. 14 of 1937, against the order of Mr. Shiva Charan, Special Judge of First grade, Unao, dated the 28th of January, 1937.

(1) (1937) A.I.R., Sind, 129.

(2) (1935) A.I.R., All., 706.

(3) (1938) I.L.R., 14 Luck., 71.

(4) (1931) A.I.R., Mad., 83.