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UPPER
INDIA
BANK

v.

AJODHIA
SINGH
AND OTHERS

on points which he did not raise before the Judge against whose decree he has appealed. Our view is supported by the following decisions of this Court:

Ramzani v. Bansidhar, Chaudhri (1), *Rajana, Musammat v. Musaheb Ali* (2), *Ziauddin Ahmad, Qazi v. Mohammad Abdul Haseeb*, (3), and *Janka Kuer, Mst. v. Anant Singh, Thakur* (4).

The result is that the appeals fail and are dismissed with costs.

Appeals dismissed.

MISCELLANEOUS CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge, and Mr. Justice Ziaul Hasan

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January, 18

GAYA PRASAD AND ANOTHER (DEFENDANTS-APPELLANTS) v
BADAL AND OTHERS (PLAINTIFFS-RESPONDENTS)*

Oudh Courts Act (IV of 1925), section 12(1)—Civil Procedure Code (Act V of 1908), section 151 and Order 41, rule 23, and Order 43, rule 1(u)—Order of remand by single Judge—Remand not under Order 41, rule 23, but under inherent power of court—Appeal under section 12(1), Oudh Courts Act, whether lies against such orders of remand.

Where a Judge of the Chief Court sitting singly passed an order of remand and the remand was ordered not under order 41, rule 23, Civil Procedure Code but under the inherent powers of the court on account of the fact that the trial of the case was considered to have been unsatisfactory due to the looseness of the pleadings of the parties, *held*, that no appeal lies under section 12(1) of the Oudh Courts Act, against such an order of remand. *Umrai v. Rahim Bux* (5), relied on.

Mr. *Siraj Husain*, for the appellants.

THOMAS, C.J. and ZIAUL HASAN, J.:—This is an appeal purporting to be under section 12(1) of the Oudh

*Miscellaneous Appeal No. 90 of 1939 against the order of the Hon'ble Mr. Justice Radha Krishna Srivastava, Chief Court Judge, Lucknow, dated 4th September, 1939.

(1) (1937) I.L.R., 13 Luck., 76.

(2) (1937) I.L.R., 13 Luck., 178.

(3) (1937) O.W.N., 241.

(4) (1937) I.L.R., 13 Luck., 270.

(5) (1939) O.W.N., 246.

Courts Act read with order 43, rule 1(u), Civil Procedure Code, against an order of remand passed by a learned Judge of this Court sitting singly.

We are of opinion that in view of the nature of the order of remand passed by the learned Judge no appeal lies. The remand was ordered not under order 41, rule 23, Civil Procedure Code, but under the inherent powers of the Court on account of the fact that the trial of the case was considered to have been unsatisfactory due to the looseness of the pleadings of the parties. The learned Judge said—

“ On the whole I think in view of what I have said before. that this case should be tried afresh after allowing the parties to amend their pleadings and after framing proper issues arising out of the amended pleadings.”

So far as section 12(1) of the Oudh Courts Act is concerned, it allows an appeal from any original decree or from any order against which an appeal is permitted by any law for the time being in force, made by a single Judge of the Chief Court to a Bench consisting of two Judges. The appeal is not against any original decree but is from an order and under the aforesaid section it is necessary to see whether an appeal against that order is permitted by any law for the time being in force. For this the learned counsel for the appellant relied on order 43, rule 1(u) which allows an appeal against an order under rule 23 of order 41 remanding a case where an appeal would lie from the decree of the appellate court. His argument is that in view of the amendment made by this Court in rule 23 of order 41 the order in question must be deemed to be one under that rule. Order 41, rule 23 as amended by this Court runs thus—

“ Where an appellate court has reversed a decree and all questions arising in the case have not been decided, it may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded and shall send a copy of its judgment and order to the court from whose decree the appeal is preferred, with directions to readmit the suit under its

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original number in the register of civil suits and proceed to determine the suit; and the evidence (if any) recorded during the original suit shall, subject to all just exceptions, be evidence during the trial after remand."

It so happens that in the present case some of the issues arising in the case were not decided by the lower court and this has given the learned counsel an opportunity of arguing that the case is covered by rule 23 as amended by this Court. We do not think however that the mere fact that all questions arising in the case have not been decided, the order in question necessarily falls under rule 23. An order of remand would we consider fall under rule 23 only when it is necessitated by some questions arising in the case not having been decided but this is not the reason for remand in the present case. The remand has been ordered as noted before because the entire trial of the case was considered unsatisfactory and the pleadings of the parties were found to be vague and indefinite. It is clearly a remand under the inherent powers of the Court and not one falling under rule 23. In the case of *Umrai v. Rahim Bux* (1), it was held by a Bench this Court that where on appeal from an order, an appellate court reverses the order and remands the case to the trial court not on the basis that the lower court had left something undecided but in the exercise of the inherent powers of the court, the order is not appealable. The present case is in our opinion fully covered by this decision.

The appeal is therefore rejected.

Appeal rejected.

(1) (1939) O.W.N., 246.