

*Abdul Latif v. Nawab Khajeh Habibullah* (1), was a suit in respect of lands subject to alluvion and diluvian. The land had begun to rise above water from ten or twelve years before the suit and had become fit for cultivation seven or eight years before the suit. The land had never been in the physical possession of the plaintiffs themselves or of persons who held under them at any time after the land had reformed. Having regard to the nature of the land in that case it was held that there could be no question of any possession or discontinuance of possession in the case and the suit would be governed by article 144. This case is clearly distinguishable from the facts of the present case.

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*Hamilton,  
 and  
 Radha  
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 J.J.*

In the result we find ourselves in complete agreement with the view of law taken by the single Judge of this Court, who heard the second appeal. The appeal, therefore, fails and is dismissed with costs.

*Appeal dismissed.*

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### FULL BENCH

*Before Mr. Justice G. H. Thomas, Chief Judge, Mr. Justice Ziaul Hasan and Mr. Justice J. R. W. Bennett*

MAHIPAL SINGH, THAKUR (APPLICANT) v. KAMTA PRASAD (OPPOSITE-PARTY)\*

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 October, 10

*United Provinces Agriculturists' Relief Act (XXVII of 1934), section 5(2)—Order of appellate court, refusing instalments under section 5(2)—Revision—High Court's power to interfere in revision.*

The concluding sentence in sub-section (2) of section 5 of the Agriculturists' Relief Act does by necessary implication divest the High Court or the Chief Court of the revisional jurisdiction conferred by section 115, Civil Procedure Code. The provision contained in that sub-section which makes the decision of the appellate court final, not only debars a further appeal

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\*Section 115 Application for revision No. 85 of 1936, against the order of Babu Gopendra Bhushan Chatterji, District Judge of Gonda, dated the 14th April, 1936.

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against it but also prevents interference with it in revision so that no revision lies against an order of the District Judge refusing instalments under section 5 of the Act. *Nihal Singh v. Ganesh Das Ram Gopal* (1), followed. *Shah Chaturbhuj v. Shah Mauji Ram* (2), *Ashraf v. Saith Mal* (3), and *Bal Kavan Rai v. Gobind Nath Tewari* (4), referred to.

Messrs. *Ghulam Hasan* and *Mohammad Hafeez*, for the applicant.  
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Mr. *M. H. Kidwai*, for the opposite-party.

ZIAUL HASAN, J.:—This is an application under section 115, Civil Procedure Code by a judgment-debtor against an appellate order of the learned District Judge of Gonda dismissing his appeal against an order of the Additional Civil Judge of Gonda by which his application under sections 5 and 30 of the Agriculturists' Relief Act was rejected.

The present application came on for hearing before a Bench of this Court when a preliminary objection was raised on behalf of the opposite-party to the effect that no revision lay against the appellate order of the District Judge. In support of this contention reliance was placed on the case of *Nihal Singh v. Ganesh Dass Ram Gopal* (1). As the learned Judges constituting the Bench thought that this decision was in conflict with the Full Bench decision of the Allahabad High Court in *Shah Chaturbhuj v. Shah Mauji Ram* (2) and as it was desirable that the Act should be administered uniformly in the whole of the United Provinces, they referred this application to a Full Bench under section 14(1) of the Oudh Courts Act.

In *Nihal Singh v. Ganesh Dass Ram Gopal* (1) the late Chief Judge, Sir BISHESHWAR NATH SRIVASTAVA and I held that the provision contained in sub-section 2 of section 5 of the U. P. Agriculturists' Relief Act which makes the decision of the appellate court final, not only debars a further appeal against it but also prevents interference with it in revision so that no

(1) (1936) O.W.N., 1158.

(3) (1937) A.L.J., 1101.

(2) (1938) A.L.J., 628.

(4) (1890) I.L.R., 12 All., 129.

revision lies against an order of the District Judge refusing instalments under section 5 of the Act. I have again considered the decision in the light of the arguments advanced on behalf of the present applicant but I am unable to hold that the law was not correctly laid down in that case. In the case before us instalments had been refused to the applicant by the learned Additional Civil Judge on the ground that the decree against the applicant could not be said to have been passed for any money advanced by way of a loan within the meaning of the Agriculturists' Relief Act. The judgment-debtor appealed to the District Judge but the District Judge also agreed with the opinion of the learned Additional Civil Judge and refused to grant instalments. The case therefore falls strictly within sub-section (2) of section 5 of the Act and is fully governed by our decision in *Nihal Singh v. Ganesh Dass Ram Gopal* (1). The facts of the case in *Shah Chaturbhuj v. Shah Mauji Ram* (2) were totally different in that a decree had been converted into an instalment decree by the court which passed it and the revision application was brought against this order by the decree-holder. The Allahabad High Court therefore had not to consider in that case the provisions of sub-section (2) to section 5 though the preliminary objection to the hearing of the application in that court was based on the concluding portion of that sub-section. Our decision in *Nihal Singh v. Ganesh Dass Ram Gopal* (1) was not discussed nor did the learned Judges consider sections 23 and 30(3) of the Agriculturists' Relief Act. Section 23 runs as follows:

"(1) An appeal shall lie to the District Judge from an order of a Collector or Assistant Collector passed under this chapter. An appeal shall lie from the order of a Civil Court passed under this chapter to the court to which original decrees passed by such courts are ordinarily appealable and where such decrees are appealable to more courts than one, to the court of lowest jurisdiction.

(1) (1936) O.W.N., 1158.

(2) (1938) A.L.J., 628.

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(2) No appeal shall lie from an appellate order passed under this section."

Similarly section 30(3) provides that—

"a decree amended in accordance with the provisions of sub-section (2) shall be deemed to bear the date of the original decree, and, notwithstanding any provision in any law to the contrary, no appeal shall lie from any order amending a decree under that sub-section."

F. B.

The language of sub-section (2) to section 5 being quite different, namely, that "the decision of the appellate court shall be final", I think that it can reasonably be inferred that these words preclude not only a second appeal but a revision also. If the intention had only been to provide that no second appeal would lie in a case coming within the purview of sub-section (2) the Legislature would have said as they did in section 23 that "no appeal shall lie from an appellate order" in such a case. The learned Judges of the Allahabad High Court in deciding the case of *Shah Chaturbhuj v. Shah Mauji Ram* (1) said:

"There is nothing in that Act (United Provinces Agriculturists' Relief Act) that can be interpreted to divest this Court either expressly or by necessary implication of the revisional jurisdiction conferred by section 115, Civil Procedure Code."

With the great respect it seems to me that the concluding sentence in sub-section (2) to section 5 does by necessary implication divest the High Court or the Chief Court of the revisional jurisdiction conferred by section 115, Civil Procedure Code.

Reliance was also placed on the case of *Ashraf v. Saith Mal* (2), but that case did not relate to the Agriculturists' Relief Act at all, but to the United Provinces Encumbered Estates Act, so that the learned Judges did not take into consideration at all the provisions of section 5(2) of the Agriculturists' Relief Act. Our decision in *Nihal Singh v. Ganesh Dass Ram Gopal* (3).

(1) (1938) A.L.J., 628.

(2) (1937) A.L.J., 1101.

(3) (1936) O.W.N., 1158.

was brought to the notice of the learned Judges but they preferred to follow the ruling of their own Court in *Bal Karan Rai v. Gobind Nath Tewari* (1).

I am therefore of opinion that nothing has been said in the case of *Shah Chaturbhuj v. Shah Mauji Ram* (2) which should incline us to change the view he had taken of sub-section (2) to section 5 in *Nihal Singh v. Gangesū Dass Ram Gopal* (3).

The present application is barred in view of the decision in *Nihal Singh v. Ganesh Dass Ram Gopal* (3) and I would therefore dismiss it with costs.

THOMAS, C.J.:—I concur.

BENNETT, J.:—I concur.

FULL BENCH:—This application is dismissed with costs.

*Application dismissed.*

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## APPELLATE CIVIL

*Before Mr. Justice Ziaul Hasan and Mr. Justice Radha Krishna Srivastava*

CHANDRIKA PRASAD AND ANOTHER (PLAINTIFFS-APPELLANTS)  
v. BHAGWAN DAS (DEFENDANT-RESPONDENT)\*

1939

October, 11

*Hindu law—Widow executing mortgage-deed to pay off her husband's debt—Second mortgage by widow paying off her first mortgage—Subsequent mortgage by widow to pay off time-barred claim under her prior mortgage, whether binding upon reversioners—Husband's debt, whether can be regarded as subsisting.*

The payment of a husband's debt, though barred, is a pious duty on the part of the widow. The Hindu law does not recognize any bar of limitation. According to the Hindu law leaving a debt unpaid is a sin, the consequences of which follow the debtor into the next world. Therefore, an alienation of property of her husband in order to pay off the debt of her husband, even though barred by statute, is an alienation, which is binding upon the reversioners.

\*Second Civil Appeal No. 289 of 1937, against the order of M. Ziauddin Ahmad, District Judge of Gonda, dated the 18th May, 1937.

(1) (1890) I.L.R., 12 All., 129.

(2) (1938) A.L.J., 628.

(3) (1936) O.W.N., 1158.