

1911.

TUKARAM
v.
NARAYAN
RAM-
CHANDRA.

The same principle underlies the rule as to succession to a maiden. Her brothers come in first as heirs to her *stridhan*, because she is their *bhagini*—"she who shares with her brothers." In default of brothers, come the parents, the original state of dependence is revived, and she sinks into her parents.

For these reasons, I am of opinion that the lower Courts have rightly held the sister of the father of the maiden in the present case to be heir to the maiden's *stridhan*, in preference to his *gotraja sapindas* five or six degrees removed. The decree under appeal must, therefore, be confirmed with costs.

SCOTT, C. J. :—I agree.

BATCHELOR, J. :—I agree.

HEATON, J. :—I concur.

Decree confirmed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Russell and Mr. Justice Chandavarkar.

1911.
November 30.

NATHUBHAI NARANDAS (ORIGINAL OPPONENT No. 2), APPELLANT, v. MANORDAS LALDAS AND ANOTHER (ORIGINAL OPPONENT No. 1 AND APPLICANT), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), sections 96, 100—Land Acquisition Act (I of 1894), sections 53, 54—Land—Compulsory acquisition—Compensation—Award by Assistant Judge—Appeal to the District Judge—Second appeal—Practice and procedure.

Where an award is made by the Assistant Judge under the provisions of the Land Acquisition Act, 1894, and there has been an appeal to the District Judge, no second appeal can lie from the appellate decision.

SECOND appeal from the decision of P. J. Talyarkhan, District Judge of Thana, confirming the awards made by A. W. Varley, Assistant Judge of Thana.

Proceedings under the Land Acquisition Act, 1894.

* Second Appeal No. 916 of 1910.

Certain lands were compulsorily acquired by Government, for which the District Deputy Collector of Bassein awarded Rs. 2,005-0-5. A dispute having arisen as to the right to receive it between the opponents, Manordas and Nathubhai, he referred the question under section 30 of the Land Acquisition Act, 1894, to the Assistant Judge of Thana. The learned Judge awarded the whole sum to Manordas; and this award was on appeal confirmed by the District Judge.

Nathubhai preferred a second appeal.

At the hearing a preliminary objection was raised that the second appeal did not lie.

G. S. Rao, Government Pleader, for the respondent.—I take a preliminary objection. The Land Acquisition Act contemplates only *one* appeal. In this case, an appeal was filed in the District Court and there the right of appealing was exhausted. Hence a second appeal cannot lie. Moreover there is no decree in this case. The proceedings are a kind of award: see *Nilkanth v. Collector of Thana*⁽¹⁾; *Laddha Ebrahim & Co. v. Assistant Collector, Poona*⁽²⁾.

P. B. Shingne, for the appellant.—Section 54 of the Land Acquisition Act contemplates an appeal to the High Court and therefore nothing in the Bombay Civil Courts Act can deprive a party of his right of appealing to the High Court. If section 54 is read along with section 118 of Civil Procedure Code, even in a case where a first appeal is preferred to the District Court, an appeal will lie to the High Court and the appeal will have to be considered even on facts. When the lower Court passed a decree in the case, the matter ceased to be an award. Compare the case of *Balaram Bhramaratar Ray v. Sham Sunder Narendra*⁽³⁾; *Zamindars of Dhar v. Rana*⁽⁴⁾.

RUSSELL, J. :—This case raises an important and difficult question. Two references Nos. 5 and 7 of 1904, under the Land Acquisition Act I of 1894, were decided by the Assistant Judge of Thana, who in No. 5 ordered that the whole amount of the award, *viz.*, Rs. 2,005-0-5, should be paid to the mort-

1911.

NATHUBHAI
NARANDAS
v.
MANORDAS
LALDAS.

(1) (1897) 22 Bom. 802.

(3) (1896) 23 Cal. 526.

(2) (1910) 35 Bom. 146.

(4) [1906] P. R. No. 53 of 1906 (Civ.).

1911.

NATHUBHAI
NARANDAS
v.
MANORDAS
LALDAS.

gagee Manordas Laldas, each party bearing his own costs, and in No. 7 confirmed the Collector's award, Manordas having objected that the amount awarded by the acquiring officer was too little.

Appeal No. 328 of 1909, of the District File, was decided by the Acting District Judge of Thanā who dismissed it with costs.

The above second appeal has been filed in this Court and the preliminary objection is raised by Mr. Rao, for the respondent No. 1, that no second appeal lies, and he relies in the first place upon section 54 of the Land Acquisition Act. That provides that :—

Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under this Act.

Now section 96 of the Code of Civil Procedure (V of 1908), 1st clause, is as follows :—

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 authorized to hear appeals from the decisions of such Court.

The extreme difficulty in this case arises in consequence of two decisions of the Bombay High Court, first, *Nilkanth v. Collector of Thanā*⁽¹⁾, decided under the former Land Acquisition Act X of 1870, where it was held that that Act did not provide for or contemplate an award for compensation being enforced against the Collector by execution proceedings, and there is no general law which enables a Civil Court to enforce such a statutory liability, when imposed upon a Collector or other civil officer by means of execution proceedings without a suit. And Farran, C. J., at p. 808, says :—

“ In the above view it is unnecessary for me to consider whether an award made under the provisions of Act I of 1894 can be enforced against the Collector by execution proceedings. That is a complex problem which has been set by the Legislature for solution by the Judges. Such problems often arise when the provisions of one Act are introduced by reference into another and incorporated with it.”

We may mention in passing that we entirely agree with that remark, and this is the second occasion within a short time on

(1) (1897) 22 Bom. 802.

which we have had to animadvert upon this mode of Legislation.

That case was expressly followed in the case of *Laddha Ebrahim & Co. v. The Assistant Collector of Poona*⁽¹⁾ where Scott, C. J., says :—" With regard to the first question we think the reasoning of the majority of the Court in *Nilkanth v. Collector of Thana*⁽²⁾ sufficiently establishes that an award under the Land Acquisition Act of 1894 is not a decree or order capable of execution under the Civil Procedure Code and is therefore not within the purview of the section." But in *Zamindars of Dhar v. Rana*⁽³⁾, it was decided that an adjudication made by a Court under either sections 26 or 30 of the Land Acquisition Act, 1894, or on appeal under section 54 by the Chief Court as to compensation or apportionment of compensation is tantamount to a decree within the meaning of section 2 of the Code of Civil Procedure and capable of execution, and that a party entitled to any benefit under a decree passed in an appeal under section 54 is entitled to recover the same by process of execution through the Court which passed the original decree or award.

In that case the Punjab Chief Court distinguished *Nilkanth v. Collector of Thana*⁽²⁾ upon the ground that the effect of the provisions of the Act of 1894 on the question before the Court was not decided, and they quote the words which we have above set out from the judgment of Farran, C. J.

We must now refer to section 53 of the Land Acquisition Act which provides that :—

Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

The following passage from the judgment of the Punjab Chief Court in *Zamindars of Dhar v. Rana*⁽³⁾ is so important to this present case that we set it out at length :—

" A comparison of the provisions of the previous Act X of 1870, with those of the present Land Acquisition Act, appears to show that proceedings in Court have now

(1) (1910) 35 Bom. 146 at p. 152.

(2) (1897) 22 Bom. 802.

(3) [1906] P. R. No. 53 of 1906 at pp 205-06 (Civ.).

1911.

NATHUBHAI
NARANDAS
v.
MANORDAS
LALDAS.

1911.

NATHUBHAI
NARANDAS
v.
MANORDAS
LALDAS.

been almost entirely assimilated to those of an ordinary civil suit. The former Act prescribed a special procedure which had to be followed by the Court, and in the matter of appeal the provisions of the Code of Civil Procedure for regular appeals had to be followed, *vide* sections 35 and 39. By section 36 the provisions of the Code as to adding parties, adjournments, death, marriage and insolvency of parties, summoning of witnesses and their attendance, examination of parties and witnesses, production of documents and commission to examine witness and to make local inquiry were made applicable so far as they could be. The present Act, section 53, makes the Code applicable generally to all proceedings under the Act, except where inconsistent with anything in the Act itself. This would appear to be a notable departure from the policy of the previous Act. In our opinion therefore adjudication as to compensation or apportionment of compensation is tantamount to a decree within the meaning of section 2 of the Code of Civil Procedure, though called an award in the Act. There is an overwhelming mass of authority for treating the award of the Court as a decree for purposes of appeal: see *Sheo Rattan Rai v. Mohri*⁽¹⁾, *Mahomed Ali Anjad Khan v. Secretary of State for India*⁽²⁾. The memorandum of appeal is stamped as one from an original decree. As far as we know there is no authority to the contrary. The judgment of Their Lordships of the Privy Council in *Rajah Nilmoni Singh v. Ram Bhundhoo Roy*⁽³⁾ to the effect that the settling of the amount or of the distributing of the compensation by the Court is final and conclusive, supports the same conclusion.

There is no good ground whatever for holding such a decree to be merely a declaratory one. Not only is there nothing in the Act to support the contention, but the whole scheme of the Act seems to negative any such conclusion. Under the Act when a reference is made to the Court the Collector is required by section 31 to deposit the amount of compensation under his award in the Court, and the remaining sections of Part V of the Act show that the Court is vested with plenary authority in dealing with the money. It is not reasonable to infer under the circumstances that the Court's adjudication is merely declaratory, and that it is incompetent to take any action in respect of its award or decree. The provisions aforesaid clearly require it to take action in various ways. A statute framed for a particular object ought to be deemed sufficient in itself, in the absence of clear indications to the contrary, to carry out that object. Moreover, the Legislature cannot be presumed to favour multiplicity of proceedings.

We therefore hold on the first point that the award is a decree which is capable of execution."

This decision was not referred to in *Laddha Ebrahim's case*⁽⁴⁾. But it appears to us that reading together sections 53 and 54 of the Land Acquisition Act with section 96 of the Code of Civil Procedure, it must be taken to have been the intention of the Legislature to put awards under the Land Acquisition Act on

(1) (1899) 21 All. 354.

(2) (1903) 30 Cal. 501.

(3) (1881) L R 8 I. A. 90.

(4) (1910) 35 Bom. 146.

the footing of decrees. Otherwise we cannot understand how the procedure applicable to appeals from original decrees can be made applicable to what are not decrees.

It is perfectly true, as Mr. Rao argued, that by section 2 of the Code of Civil Procedure "decree" is defined as "the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit". The word "suit" has not been defined in the Code of Civil Procedure, and the latter half of section 582 of the former Code of Civil Procedure, in which it was declared to include an appeal in certain cases has not been reproduced in the new Code of Civil Procedure. But it has been held in Calcutta, with reference to the Bengal Court of Wards Act IX of 1879, that the term "suit" includes all contentious proceedings of an ordinary civil kind, whether they arise in a suit or proceedings: see *Bhoopendro Narain Dutt v. Baroda Prosad Roy Chowdhry*⁽¹⁾ and *Hurro Chunder Roy Chowdhry v. Sooradhonee Debia*⁽²⁾. In a later case, however, a less certain view seems to have been taken, and it was said that a "suit" ought to be confined to such proceedings as, under that description are directly dealt with by the Code of Civil Procedure, or such as by the operation of the particular Acts which regulate them are treated as suits. See *Watkins v. Fox*⁽³⁾.

We do not find anything in the Land Acquisition Act inconsistent with the view we are putting forward; and section 53 of that Act has the operation of putting proceedings before the Court on the same footing as proceedings in a suit, it seems to us.

If we are right in saying that the award is a decree, then section 93 of the Code of Civil Procedure lays down that an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(1) (1891) 18 Cal. 500 at p. 504.

(2) (1868) Ben. L. R. Sup. Vol. 985

(3) (1895) 22 Cal. 943 at p. 948,

at pp. 988, 990.

1911.

NATHUBHAI
NARANDAS
v.
MANORDAS
LALDAS.

1911.

NATHUBHAI
NARANDAS
v.
MANORDAS
LALDAS.

Now, the amount in dispute being less than Rs. 5,000, by Bombay Civil Courts Act XIV of 1869, section 16, the appeal lies to the District Judge, which by that section "is the Court authorized to hear appeals from the Subordinate Judge". See section 96 of the new Civil Procedure Code. And this has been expressly so held in *Ranchhodbhai Valavbhai v. The Collector of Kaira*⁽¹⁾, where the learned Judges Chandavarkar and Heaton, JJ., apply the reasoning in *Laxmi v. Aba*⁽²⁾. With regard to this decision, however, it is to be observed that in the case of *Balaram Bhramaratar Ray v. Sham Sunder Narendra*⁽³⁾, where the amount in dispute was less than Rs. 5,000, the Calcutta High Court held that the appeal lay to the High Court. There at p. 529 the learned Judges say as follows:—

"Upon the question raised in the rule, namely, whether the District Judge was right in holding that the appeals in these cases lay not to his Court, but to the High Court, we are of opinion that the answer ought to be in the affirmative. It is true that by section 39 of Act X of 1870, it was provided that the appeal shall lie to the High Court, unless the judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge; but that Act has been repealed by Act I of 1894, and the only saving clause is that in sub-section (2) of section 2, which provides that all proceedings commenced under the Land Acquisition Act (X of 1870) shall, as far as may be, be deemed to have been commenced under the Act of 1894. We must therefore look to the provisions of Act I of 1894 to see whether an appeal lies or not, and if any appeal lies, to what Court.

"Now section 54 of Act I of 1894 enacts: 'Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under this Act.' The proceedings in these cases, though commenced under the old Act, must, by virtue of the provisions of sub-section (2) of section 2 of Act I of 1894, be deemed to be proceedings under the latter Act. That being so, section 54 would apply to the case, and under that section the appeals lie to the High Court."

But in accordance with the usual practice in these cases we must follow the judgment in *Ranchhodbhai v. Collector of Kaira*⁽¹⁾ above referred to, and hold that no appeal lies in this case to this Court.

(1) (1909) 33 Bom. 371.

(2) (1908) 32 Bom. 634.

(3) (1896) 23 Cal. 526.

But the question remains whether a second appeal lies to this Court from the decision of the District Court sitting in appeal from an award of the Assistant Judge's Court made under the Land Acquisition Act.

Under section 100 of the Code of Civil Procedure a second appeal lies to this Court from any *decree* passed in appeal by a Court subordinate to it. In the Punjab case above cited it was held that an award made by a District Court under the Land Acquisition Act is a decree, because section 53 of the Act directed that the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under the former Act. A decision of the District Court under the Land Acquisition Act is called in the Act itself an "award" and the question of appeal is dealt with in section 54. Only one appeal is allowed by that section; the right to appeal is a creature of Statute. Had it been the intention of the Legislature to allow a right to a second appeal also in such cases, it would have said so. We cannot infer such a right merely from the language of section 53, because had the general words of that section been intended by the Legislature to apply not only to the provisions of the Code relating to appeals but also to second appeals, section 54 would have become unnecessary. The irresistible inference is that no second appeal lies to this Court from an award made by a District Court in appeal from an award made by an Assistant Judge's Court, whether the award is treated as a decree or not.

This second appeal must, therefore, be dismissed with costs on the ground that it does not lie.

Appeal dismissed.

R. R.

1911.

NATHUBHAI
NARANDAS
v.
MANOJDAS
LALDAS.