

its most essential point by any evidence at all, proved, and so substituted the latter for the former. For these reasons I would concur with the judgment and in the order just pronounced and proposed by my learned brother.

Decrees reversed and suit dismissed.

G. B. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr Justice Hayward.

SITARAM MORAPPA NAWALE (ORIGINAL DEFENDANT), APPELLANT, v. SHRI KHANDOBA AND SHRI YEKVIRA DEVI BY THEIR VAHIVATDAR VISHVANATH DNYANOBA BATHANE (ORIGINAL PLAINTIFF), RESPONDENT.*

1914.

September 4.

Dekkhan Agriculturists' Relief Act (XVII of 1879), sections 3 (w), 10 and 53⁽¹⁾—Suit falling under section 3 (w)—Decision not appealable—Revision by District Judge.

The decision in a suit falling under section 3 (w) of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is not appealable according to the provisions of section 10 of the Act. Under section 53 of the Act, the District Judge alone and not the Subordinate Judge of the First Class is authorized, in such a case, to pass an order in revision.

APPEAL against the order passed by V. N. Rahunkar, First Class Subordinate Judge of Satara with appellate powers, remanding the case to the first Court at Karad for trial of issues.

* Appeal No. 10 of 1914 from order.

⁽¹⁾ Sections 3 (w), 10 and 53 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) are as follows :—

3. The provisions of this Chapter (that is, Chapter II) shall apply to :—

(w) Suits for the recovery of money alleged to be due to the plaintiff—

On account of money lent or advanced to, or paid for, the defendant, or as the price of goods sold, or

On an account stated between the plaintiff and defendant, or

On a written or unwritten engagement for the payment of money not hereinbefore provided for.

1914.

SITARAM
MORAPPA
v.
SHRI
KHANDORA.

The plaintiff sued to recover from the defendant Rs. 60, at the rate of Rs. 20 per year, spent by the plaintiff on behalf of the defendant on account of the expenses of an idol.

The defendant denied *inter alia* his liability to contribute to the expense incurred by the plaintiff.

The Subordinate Judge found that the defendant was not liable and dismissed the suit.

The plaintiff having appealed, the appellate Court remanded the case to the first Court for the determination of the question whether the plaintiff had spent money and the expense was necessary?

The defendant appealed against the order of remand.

M. V. Bhat for the appellant (defendant) :—This was a suit for contribution by one sharer against another. It fell under clause (w) of section 3 of the Dekkhan Agriculturists' Relief Act, and under section 10 of the Act, the decision of the first Court was not appealable. Therefore the proceedings in appeal before the First

10. No appeal shall lie from any decree or order passed in any suit to which this Chapter (that is, Chapter II) applies.

53. The District Judge may, for the purpose of satisfying himself of the legality or propriety of any decree or order passed by the Subordinate Judge in any suit or other matter under Chapter II, Chapter IV or Chapter VI of this Act, and as to the regularity of the proceedings therein, call for and examine the record of such suit or matter, and pass such decree or order thereon as he thinks fit ;

and any Assistant Judge or Subordinate Judge appointed by the Local Government under section 52 may similarly, in any district for which he is appointed, call for and examine the record of any such suit or matter, and, if he see cause therefor, may refer the same, with his remarks thereon, to the District Judge, and the District Judge may pass such decree or order on the case as he thinks fit :

Provided that no decree or order shall be reversed or altered for any error or defect or otherwise, unless a failure of justice appears to have taken place.

Class Subordinate Judge with appellate powers were *ultra vires* and the remand order passed by him was without jurisdiction.

J. R. Gharpure for the respondent (plaintiff) :—Under section 53 of the Dekkhan Agriculturists' Relief Act the First Class Subordinate Judge with appellate powers had power to revise the proceedings before the Court of trial. The appeal Court was approached by a petition of revision but that Court treated the petition as an appeal. This was simply a mistake of form. The First Class Subordinate Judge had jurisdiction to remand the case for trial of the issue left undetermined.

SCOTT, C. J. :—This was a suit falling under section 3 (w) of the Dekkhan Agriculturists' Relief Act. That being so, according to the provisions of section 10 no appeal lay from the decision of the first Court. The appeal, however, has been entertained and disposed of by Mr. Rahurkar, the First Class Subordinate Judge. We think it is clear, having regard to the terms of section 53, that the First Class Subordinate Judge was not authorised to pass any decree or order in a matter which could be entertained under section 53, and if it were necessary to pass any order in revision, such order should have been passed by the District Judge. The most we can do here is to set aside the decree of the First Class Subordinate Judge and remit the application of the appellant from the decision of the first Court to the District Judge, who may, if he thinks fit, treat it as an application in revision under section 53, and pass such order as he thinks necessary under the circumstances. Costs to be dealt with by the District Judge.

Decree set aside and case remitted.

G. B. R.

1914.

SITARAM
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