

Damber Singh Vs. Srikrishn Dass

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Court : Allahabad

Decided On : May-04-1909

Reported in : (1909)ILR31All445

Judge : Richards and; Alston, JJ.

Appellant : Damber Singh

Respondent : Srikrishn Dass

Judgement :

Richards and Alston, JJ.

1. The facts out of which this application in revision arises are shortly as follows: The plaintiffs instituted a suit in the Revenue Court. That court was of opinion that the suit was not cognizable by it and accordingly dismissed the suit. The plaintiff appealed to the District Judge who seems to have been of opinion that the decision of the court of first instance was correct and that the suit was not a suit cognizable by a Revenue Court. However, under the provisions of Sections 196 and 197 of the Agra Tenancy Act he made a decree in favour of the plaintiff. The plaintiff applied to the Assistant Collector of the first class for execution of the decree. The Assistant Collector refused the application. The present application in revision to us is against such refusal. The reason that the application is made by way of revision is because no appeal lies. Section 177 of the Agra Tenancy Act deals with appeals to the District Judge. That section certainly does not give an

appeal against the order of an Assistant Collector of the first class refusing to execute a decree. It would appear as if there was an omission from the Act, for it is hardly conceivable that it could have been intended that no appeal should lie on the very important matters which often arise in the course of execution of decrees. The question came up before a Judge of this Court in S.A. No. 690 of 1903. In that case an order had been made by the Assistant Collector allowing execution of the decree. There was an appeal to the Civil Court which held that no appeal lay. The learned Judge of this Court held that an appeal did lie. He called to his aid the provisions of Section 193 of the Agra Tenancy Act, which makes the provisions of the Code of Civil Procedure (Act No. XIV of 1832) applicable, and he then held that the order was an order coming under Section 244 of the Code of Civil Procedure and that an appeal lay to the District Judge. This ruling was followed by a Bench of this Court in *Kharag Singh v. Pola Ram* (1904) I.L.R. 27 All. 31. The same question arose in the case of *Musammat Naraini v. Musammat Parsanni* (1905) 2 A.L.J.R. 331 in which a Bench of this Court held that a Revenue Court had no power under Section 185 of the Tenancy Act to set aside the order of an Assistant Collector refusing an application for execution, the ground of the decision being that an appeal lay to the District Judge. However the decisions above referred to may be criticised, their results at least provided a way out of the difficulty which arises by reason of the fact that no appeal is expressly permitted by Section 177 of the Tenancy Act. It would certainly appear that there ought to be some means of testing an order of an Assistant Collector of the first class in such an important matter. Revision either to the Board of Revenue or to the High Court is certainly not a satisfactory remedy. The question again came up before this Court in the case of *Zohra v. Mangu Lal* (1906) I.L.R. 28 All. 753. It was there held by a full Bench of this Court that no appeal lay, and the decisions which we have mentioned above must accordingly be taken to have been overruled. As the result of this decision it must now be taken as settled law that no appeal lies in a case like the present. The simple question remains--does an application in revision lie to this Court? (We have not in any way considered the merits of the case.) There is an express provision in Section 167 of the Act that all suits and applications of the nature specified in the fourth schedule of the Act shall be heard and determined by the Revenue Courts; and except in the way of appeal, no other court other than a

Revenue Court shall take cognizance of any dispute or matter in respect of which a suit or application might be brought or made. This clearly shows that prima facie revision does not lie to the High Court from an order of the Revenue Court. The remedy in the Civil Court is by appeal only, in cases in which an appeal is given. The applicant however contends that the decree in the present case was a decree of a Civil Court and not of a Revenue Court. Possibly his remedy was to apply to the District Judge for execution of the decree. He did not do so. He applied to an Assistant Collector of the first class. Having gone to that court and got an order from that court, we must treat the order which is sought to be set aside as the order of a Revenue Court and not of any other court. It may be that this works some hardship. We cannot help this; and after all if the application went to the wrong court in the first instance, and then appealed, he has to some extent at least only himself to blame in the matter. We reject. We reject the application with costs.