

Bikram Singh Vs. Dip Singh

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Court : Allahabad

Decided On : Mar-18-1932

Reported in : AIR1932All502

Appellant : Bikram Singh

Respondent : Dip Singh

Judgement :

Sen, J.

1. This and the connected appeal arise out of two suits instituted by Thakur Dip Singh in the Court of the Munisif of Moradabad against Bikram Singh, Raghubir and Others, and against Kallu Singh others, for a declaration that certain she-buffaloes and a calf were not liable to attachment and sale in execution of decrees Nos. 512 and 515 of 1927 obtained by Bikram Sungh against Raghubir Singh and others for arrears of rent from the Court of an Assistant Collector, Second Class. Bikram Singh in execution of his decrees attached these buffaloes as the property of his judgment-debtors. Dip Singh, plaintiff, intervened with the objection that the buffaloes in question belonged to him and did not belong to the judgment-debtors. His objections were allowel by the Assistant Collector, Second Class. Bikram Singh appealed to the Collector under Section 247, Agra Tenancy-Act (Act 3 of 1926). His appeals were allowed and the appellate Court held that the buffaloes were the property of the judgment-debtors. This led to the institution of the present

suits. The Court of first instance decreed both the suits. The defendant appealed and the lower appellate Court has affirmed both the decisions. The finding of the lower appellate Court, in concurrence with the trial Court, is that the buffaloes are the property of Thakur Dip Singh, plaintiff-respondent.

2. Bikram Singh appeals and the sole point urged is that having regard to the provisions of Section 264, Agra Tenancy Act, the suit in the civil Court is misconceived and that no suit lies. It has been argued that an order under Order 21, Rule 58, Civil P.C., passed by an Assistant Collector of the Second Class was open to appeal to the Collector under Section 247, Agra Tenancy Act and that in such a case the appellate order of the Collector is final and that it is not within the competence of the civil Court to entertain a suit under Order 21, Rule 63, Civil P.C., with a view to upset the appellate order of the Collector. Reliance has been placed upon Section 264, Agra Tenancy Act, in support of this contention. Section 264 provides that

the provisions of the Civil Procedure Code of 1908, except, (a) provisions inconsistent with anything in this Act so far as the inconsistency extends..., shall apply to all suits and other proceedings under this Act, subject to the modifications contained in list 2, Schedule 2.

3. The suits instituted by Thakur Dip Singh for a declaration of title to the buffaloes in controversy are not suits or proceedings under Act 3 of 1926 (local) but are suits instituted under Order 21, Rule 63, Civil P.C. Section 264, Agra Tenancy Act does not provide that the right of suit which a party has under Order 21, Rule 63, Civil P.C. is not exercisable in cases where the orders of the Collector, Second Class, in proceedings under Order 21, Rule 58 are appealable to the Collector and have been taken in appeal before that officer and disposed of by him. The policy of the legislature was not to give conclusiveness to orders passed in summary proceedings under Order 21, Rule 58, Civil P.C. There is nothing in the text of Act 3 of 1926 to indicate that the legislature intended to invest the appellate order of the Collector with finality. Moreover the right of suit given under Order 21, Rule 63, Civil P.C., is in no way inconsistent with Section 247, Agra Tenancy Act, or any other section of that Act.

4. Where therefore on an objection raised by a party in suit or proceeding cognizable by the Revenue Court, the Assistant; Collector, Second Class, has decided the objections in a particular way and his order has been affirmed or reversed by the Collector under Section 247, Agra Tenancy Act, the appellate order of the Collector is not a final and the party aggrieved; thereby has a right of suit under Order 21,, Rule 63, Civil P.C. I therefore overrule the contention of the appellant and hold that the suit which has given rise to the present appeal was maintainable. I accordingly dismiss this appeal with costs including in this court-fees on the higher scale.

Sulaiman, J.

5. The facts of the case, and the reasons for holding that a civil suit lies are fully set forth in the order of the learned single Judge of this Court with whose view we agree. By virtue of Section 104(1) and Order 43, Civil P.C., no appeal would have originally lain from an order made under Order 21, Rule 58. Civil P.C., dismissing the objection of a party to the execution proceedings Section 247, Agra Tenancy Act, however allows an appeal from every order of an Assistant Collector of the Second Class. In this way an appeal has been provided for where there will be no appeal under the Civil Procedure Code.

6. Order 21, Rule 63 lays down that:

where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims, to the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive.

7. Even if it be assumed the revision of a, right to appeal from an order of an Assistant Collector, Second Class, is somewhat inconsistent with the provisions of Rule 63 that rule will be inapplicable only so far as the inconsistency extends. That is to say an appeal would be entertained where no appeal would otherwise have lain. But there is no inconsistency between the right to file a civil suit and : a right to appeal under the Tenancy Act. It is to be noted that Order 21, Civil P.C., has been made applicable with two exceptions to execution proceedings under the Agra Tenancy Act (Schedule 2, List 2, Serial Nos. 12 and 13).

8. It is obvious that a very large property may well be attached in execution of a very small amount. The policy of the legislature could not have been to make an order passed by an Assistant Collector or by a Collector in appeal final in such matters. Agreeing with the view explained by the learned single Judge of this Court, we dismiss this appeal with costs.

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