

NavIn Chander Vs. Mulu

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Court : Allahabad

Decided On : Sep-03-1948

Reported in : AIR1949All175

Appellant : NavIn Chander

Respondent : Mulu

Judgement :

Seth, J.

1. This is a plaintiff's appeal against an order of the District Judge of Farrukhabad dismissing the appeal filed before it on the ground that no appeal lay. The proceedings were initiated by an application under Section 142, U.P. Tenancy Act, in the Court of the Tahsildar. They were subsequently transferred to the Court of an Assistant Collector. The Assistant Collector ultimately dismissed the application under Section 142, It has been held by the lower appellate Court that the dismissal of an application under Section 142, U.P. Tenancy Act, does not amount to a decree and as such is not appealable. Appeals to the District Judge lie only in such cases as have been provided for under Rs.265 and 271, Tenancy Act. The order of the Assistant Collector could be appealed against under Section 265 only if it were a decree. It could not be appealed against as an order under Section 271 of the Act because it is not; one of those orders against which an appeal has been provided for in that section. Section 143 authorises the Assistant Collector to make

an order for the payment of such amount as may be found due according to the procedure provided for in that section. It then provides:

If any amount is found due shall pass an, order for the payment of such amount and costs, if any, and such order shall have the effect of a decree for arrears of rent.

It is, thus, clear that it is only an order for the payment of any amount found due that has been given the effect of a decree. When an application is dismissed, no order for the payment of any amount is made. An order of dismissal, therefore, is not to be deemed to be a decree according to the provisions of Section 149 aforesaid. That being the position, the decision of the lower appellate Court that no appeal lay to it is correct.

2. This appeal is accordingly dismissed with costs. Leave to appeal under the Letters Patent is refused.

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