

Pancham Vs. Rameshwar and ors.

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Court : Allahabad

Decided On : Jan-29-1936

Reported in : AIR1936All376

Appellant : Pancham

Respondent : Rameshwar and ors.

Judgement :

Sulaiman, C.J.

1. A preliminary objection is taken to the hearing of this appeal that no appeal lies. The suit was for profits brought in the revenue Court in which a question of title was raised and an issue was sent to the civil Court for decision and the Assistant Collector accepted the finding of the learned Munsif. He ultimately decided the case and then the matter went up in appeal before the District Judge. The District Judge has set aside the finding of the learned Munsif on the question of title and has remanded the whole case to the revenue Court for the determination of the amount of profits due to the plaintiff. The question is whether an appeal lies from this order.

2. The learned Advocate for the appellant contends before us that the District Judge is not a revenue Court at all and that appeals from the decisions of District Judges are not governed by the Agra Tenancy Act but are governed by the Civil Procedure Code. His contention is that wherever the word 'Court' is used in the

Act it must mean the revenue Court and not the District Judge. The second argument is that the Agra Tenancy Act contains a new definition of the word 'decree' which is much wider than the definition contained in the Civil Procedure Code and that it includes every order passed by a District Judge, no matter whether it is a mere order for remand or otherwise. The third contention is that Section 240 does not apply to appeals from decrees or orders passed by District Judges, nor does Section 249 apply to such a case. Unfortunately for the appellant there are a series of cases of this Court in which the contrary view has been clearly expressed. It is impossible to hold that the word 'Court' used in Section 240 must necessarily mean the 'revenue Court of the first instance, i.e., the Assistant Collector, or the Collector and not a District Judge. Nor is it possible to hold that the word 'decree' as defined in the Agra Tenancy Act must include every order passed by a District Judge by which he disposes of the appeal before him. Before the new Tenancy Act the opinion expressed by a Full Bench of this Court, which was followed in numerous cases, was that under the Tenancy Act there was no provision for a right of appeal from 'orders' of District Judges as distinct from 'decrees' passed by District Judges: *Zohra v. Maugu Lal* (1908) 28 All 753. Of course the law might have been changed by the enactment of the new Act. On the other hand it might well be that the right of appeal in revenue cases has been deliberately restricted by the Legislature. The right of appeal is a creature of statute and it does not follow that in every case there should be a second appeal (allowed by law. Section 240 is quite general and lays down:

No appeal shall lie from any decree or order passed by any Court under this Act except as provided in this Act.' It follows therefore that if any order is passed under the Tenancy Act, then no appeal would lie from it unless it is provided in the Act itself. Now it appears that no appeal is provided in the Tenancy Act from an order of remand passed by a District Judge. On the other hand Section 249 expressly says: 'No appeal shall lie from any order passed in appeal.' Taking the two sections, 240 and 249, together it would seem that if an order is passed under the Tenancy Act, a second appeal is absolutely prohibited. The question however is whether it can be said that an order of remand passed by a District Judge when hearing an appeal in a revenue case is an order passed under the Tenancy Act. The contention of the learned Advocate for the appellant is that inasmuch as there

is no provision for making an order of remand in the Tenancy Act, and such jurisdiction is exercised by virtue of the provisions of the Civil Procedure Code which are incorporated into the Tenancy Act by Section 264, it follows that the order of remand is really passed under the Civil Procedure Code, and that therefore a right of 'appeal exists under Order 43, Civil P.C. In many Acts there are similar provisions for incorporating the rules of the Civil Procedure Code so far as they are not inconsistent with the provisions of the Act, e.g. Section 5, Provincial Insolvency Act, Act 20 of 1920. But it would not necessarily follow that rights of appeal are also incorporated. It has been laid down by their Lordships of the Privy Council, that a right of appeal is a substantive right; and so it must be conferred by statute. The District Judge no doubt can act under the provisions of the Civil Procedure Code but only so far as they are not inconsistent with anything in the Tenancy Act itself. When we find that the Tenancy Act makes elaborate provisions for the rights of appeals and Sections 24(5 and 249 prohibit second appeals, except in certain case it would be difficult to say that a right of appeal allowed under Order 43, Rule 1, Civil P.C., would not be inconsistent with the provisions of the Act. That the legislature did not consider that an order of remand is a 'decree' within the definition of that word as contained in Section 3, is also clear from the provisions of Section 248(3) where Order 43, Rule 1, is expressly referred to in case of orders passed in appeal by a Collector. Had the legislature thought that the word 'decree' was wide enough to cover orders under Order 43, Rule 1, there would have been no need to mention that order specifically in the section.

3. No doubt there is something to be said for the view advocated on behalf of the appellant and there is also a certain amount of anomaly and hardship involved, but following the decisions of this Court prior to this enactment, several Benches of this Court have taken the view that the law has not been materially altered in this respect. In *Sri Sheoji Maharaj v. Beni Madho* 1931 53 All 515, Mukerjee, J., and one of us held that Section 249, Tenancy Act, prohibited an appeal from an order passed in appeal in a suit for profits in which the District Judge had actually remanded the case. On the facts the case is almost parallel to this present case. Similarly there is the case of *Satya Nidhan Banerji v. Muhammad Hazab-bur Ali Khan* 1931 53 All 516, where the same Bench held that no appeal lies from an order of the District Judge refusing to restore a revenue appeal which was

dismissed for default and that Section 249, Tenancy Act was a bar to such an appeal. In *Dwarka Prasad v. Ojha Dariao Singh* 1929 ALJ 863 Banerji and King, JJ. came to the conclusion that the Tenancy Act does not provide for an appeal against an order of remand passed by a District Judge in appeal and that Section 240, Tenancy Act, was against such an appeal being allowed. In *Girwar Singh v. Shah Ram Chander* 1929 ALJ 885, Mukerji and Niamat Ullah, JJ., came to a similar conclusion and considered that no second appeal lay under Section 248(3), Tenancy Act, and that the order of the District Judge was not open even to revision by the High Court. In *Rameshwar Dayal v. Om Prakash* 1931 ALJ 599, one of us sitting with Sen, J., came to a similar conclusion that no appeal from an order of remand passed by a District Judge in a suit for profits under Section 227 lay to the High Court. The matter also was indirectly raised before a Full Bench of this Court in *Gobardhan Das v. Dau Dayal* 1932 ALJ 365, where also it was considered that although under Section 248(3), an appeal lies to the District Judge from an order of the revenue Court passed in execution proceedings, by Section 249 no further appeal is allowed and that no second appeal therefore lies to the High Court from the order passed by the District Judge in the execution appeal before him.

4. It therefore appears that the weight of authority is heavily in favour of the view that although the decree of a District Judge can be appealed against, no appeal is provided from a mere order as distinct from a decree, and that orders of remand passed by a District Judge are not decrees. The word 'order' has not been defined in the Tenancy Act and has come to connote a distinct meaning which is not identical with the meaning attached to decrees' which are capable of execution in themselves. If a case is completely disposed of it results in a decree which can be executed. If findings have been reversed, and the case has been sent back to the trial Court under an order of remand, there is yet no order capable of execution, and the suit can also ultimately fail for non-prosecution or be dismissed for default. In view of the previous decisions of this Court we think it unsafe to allow this point to be re-opened or to refer it to a Full Bench. The preliminary objection succeeds and the appeal is dismissed with costs.

