

**Saqib Husaln and anr. Vs. Nand Kishore Alias Anandi Pershad**

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**Court :** Allahabad

**Decided On :** Apr-18-1921

**Reported in :** AIR1921All236; 63Ind.Cas.891

**Judge :** Ryves, J.

**Appellant :** Saqib Husaln and anr.

**Respondent :** Nand Kishore Alias Anandi Pershad

**Judgement :**

**Ryves, J.**

1. This revision arises out of the following facts. The plaintiff Nand Kishore brought a suit in the Revenue Court under Section 58(b) of the Agra Tenancy Act against Saqib Husain and Musammam Aman Khatun. The Trial Court dismissed the suit, holding that it was not maintainable in the Revenue Court. The plaintiff appealed to the District Judge and he reversed the decree of the Assistant Collector and remanded the case for trial of the remaining issues. The defendants come here in revision, and the first ground they put forward is that no appeal lay to the District Judge. The argument is this. The suit being one under Sections 58 and 63 of the Agra Tenancy Act, is included in group in the Fourth Schedule, serial number 29. That group deals with suits triable by the Assistant Collector of the first class, in which appeal lies to the Revenue Court. The argument is that the District Judge had no jurisdiction whatsoever to hear the appeal and that therefore, revision lies under

the express terms of Section 115 of the Code of Civil Procedure. The application was admitted by a learned Judge of this Court on the question of jurisdiction and on the assumption that no appeal lies. On its coming up for hearing before me, a preliminary objection was taken that no revision lies under Section 115 of the Code of Civil Procedure and I have been referred to the case of Gai Kumar Chander v. Salamat Ali 52 Ind. Cas. 756 : 42 A. 83 : 17 A.L.J. 1057 : 1 U.P.L.R. (A.) 142. I was also referred to Jamna Prasad v. Karon Singh 46 Ind. Cas. 388 : 41 A. 28 : 16 A.L.J. 859 and Mohammad Ehtisham Ali v. Lalji Singh 49 Ind. Cas. 362 : 41 A. 226 : 17 A.L.J. 123. The case in Gai Kumar Chander v. Salamat Ali 52 Ind. Cas. 756 : 42 A. 83 : 17 A.L.J. 1057 : 1 U.P.L.R. (A.) 142 was referred to a Bench of two Judges in consequence of the difference of opinion of the Judges who constituted the Court hearing Parbhu Narain Singh v. Harbans Lal 35 Ind. Cas. 279 : 14 A.L.J. 281. The difference there was expressed in general terms and in Gai Kumar Chander v. Salamat Ah 52 Ind. Cas. 756 : 42 A. 83 : 17 A.L.J. 1057 : 1 U.P.L.R. (A.) 142 the Judges accepted the view of Piggott, J., in the former case. The precise point which arises in this case has not been discussed either in Parbhu Narain Singh v. Harbant Lal 52 Ind. Cas. 756 : 42 A. 83 : 17 A.L.J. 1057 : 1 U.P.L.R. (A.) 142 or in Gaj Kmar Chander v. Salamat Ali 52 Ind. Cas. 756 : 42 A. 83 : 17 A.L.J. 1057 : 1 U.P.L.R. (A.) 142, but I find it impossible to distinguish it from the case of Jamna Prasad v. Karan Singh 46 Ind. Cas. 362 : 41 A. 226 : 17 A.L.J. 123, which was exactly the converse. That also was a suit under Sections 512 and 63 of the Tenancy Act. There was an appeal to the District Judge who held that no appeal to him lay and who, therefore, returned the memorandum of appeal for presentation to the proper Court. A revision was brought in that case, on the ground that the District Judge had failed to exercise the jurisdiction vested in him inasmuch as he refused to hear the appeal. The point taken here is that the learned Judge entertained an appeal when, as a matter of fact, no appeal lay to him and he had no jurisdiction to hear the appeal. In that case Mr. Justice Abdul Raof held that revision did not lie. He does not have any particular reason for coming to that decision beyond holding that generally he agrees with the view of Mr. Justice Piggott in the case of Parbhu Narain Singh v. Harbans Lal 35 Ind. Cas. 279 : 14 A.L.J. 281. However, this judgment as cited with approval by Mr. Justice Tudball in Mohammad Ehtisham Ali v. Lalji Singh 49 Ind. Cas. 362 : 41 A. 226 : 17

A.L.J. 123, although the facts of that particular case were quite distinguishable from the facts here. This case of Jamna Prasad v. Karan Singh 46 Ind. Cas. 338 : 41 A. 28 : 16 A.L.J. 859 was also cited before the learned Judges who decided Gai Kumar Chander v. Salamat Ali 52 Ind. Cas. 756 : 42 A. 83 : 17 A.L.J. 1057 : 1 U.P.L.R. (A.) 142 and although it is not referred to specifically in the judgment, Mr. Justice Tuball's decision was quoted with approval which decision, as I have already said, approved of Mr. Justice Abdul Raof's view. In this view of the authorities it seems to me that I am bound to uphold the preliminary objection. The result is that I reject the application with costs, including in this Court fees on the higher scale.

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