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Court : Allahabad

Decided On : Oct-19-1927

Reported in : AIR1928All13

Appellant : Mt. Phulbans Kuar and ors.

Respondent : Bhagdat Singh and anr.

Judgement :

1. This case has been referred to a Bench of two Judges. This second appeal arises out of a suit brought by certain zamindars under Section 154, old Agra Tenancy Act. The Assistant Collector hold that the defendants were rent-free grantees and liable to resumption and accordingly assessed the rent. On appeal by the defendants, the District Judge came to a contrary conclusion. He held that the defendants have been in adverse proprietary possession of the lands and declared them to be proprietors under Section 1.58. He went on to hold that the suit ought to be dismissed. But finding that the revenue directed to be assessed under the section had not been determined he passed an order in the following words:

I would allow the appeal and set aside the order and decree of the Assistant Collector.... I would remand the case to the Assistant Collector with instructions to assess revenue on the land; otherwise the plaintiffs' suit stands dismissed with costs on the ground that the defendants are nankardars.

2. By the word otherwise 'he clearly meant' in other respects. He further remarked that he had no objection to the Assistant Collector postponing the assessment of revenue in case the matter was taken up in second appeal.

3. It is from this decree or order that this appeal has been preferred. A preliminary objection was taken before the learned Judge before whom this appeal came up first that no second appeal lay. Having regard to the peculiar circumstances of this case the learned Judge was inclined to the view that it would be very hard on the plaintiffs if they are deprived of all remedy. He, however, felt that he was unable to distinguish the present case from the decision in *Anandgir v. Srinivas* [1918] 40 All. 652.

4. The decree passed by the learned District Judge is couched in unhappy language and it is also clear that it would have been much better and would have saved the parties considerable trouble if the learned Judge had merely sent down an issue to the first Court for the determination of the revenue and not remanded the case. As things, however, stand, it is quite clear that the case was not finally disposed of on the 23rd September 1924. It did go back to the Assistant Collector's Court and had to be restored to its original number in that Court. It seems to us that an order which does not dispose of a case finally for the time being (subject of course to any further appeal) cannot be called a decree which terminates the case. It may be that all the important points have been disposed of and the case has for all practical purposes been decided on the merits, but if something is still left to be done by the Court of first instance before the suit is finally disposed of, the order can only be an order of remand and not a final decree.

5. This was the view expressed by a Bench of this Court in *Anandgir v. Srinivas* [1918] 40 All. 652 referred to above. We agree with Boys, J., that it is very difficult to distinguish the present case from that reported case. The Act has now been amended and the difficulty created by the provisions of the old Act is not likely to arise in future. We are also unable to take a different view from that taken in the reported case which has been followed in numerous cases since then.

6. We must accordingly hold that the order passed by the District Judge was not a decree, but an order of remind, and that no second appeal lies to this Court: vide *Zohra v. Mangu Lal* [1905] 28 All. 753.

7. We prefer to express no opinion as to any future remedy that may be open to the appellants. The appeal is accordingly dismissed, but in view of the peculiar circumstances of this case we do not think that the appeal was a wholly futile one. We direct that the parties should bear their own costs of this appeal.

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