

(2008) 08 AHC CK 0202
In the Allahabad High Court
Case No : Special Appeal No. 471 of 2008

Abdul Kareem and others

APPELLANT

Vs

Abdul Sabbir and others

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Allahabad High Court Rules, 1952 — Chapter 8 Rule 5

Citation : (2008) 08 AHC CK 0202

Hon'ble Judges : A.N.Varma, J and Ved Pal, J

Final Decision : Dismissed

Judgement

A.N. Verma and Vedpal, JJ.—In a suit filed by the respondent No. 1 for cancellation of the saledeed dated 12th May, 1958, an application was preferred by him for summoning the original saledeed from its vendees. The said application was rejected by the Trial Court against which he filed a revision which was dismissed by the District Judge at the admission stage. Being aggrieved, respondent No. 1 approached this Court in W.P. No. 3467 (M/S) of 2008. Vide judgment and order dated 22.7.2008 the writ petition was allowed, the impugned orders were quashed and the Trial Court was directed to summon the original saledeed from the vendees. It is said order passed by Hon"ble Single Judge that is being assailed by the appellants in the instant special appeal.

2. A preliminary objection has been raised by Mrs. Sangita Chandra on the question of maintainability of appeal. According to her since the order assailed in the special appeal has not been passed by Hon"ble Single Judge in exercise of original jurisdiction but is against the order passed by the District Judge under revisional jurisdiction, therefore, the instant appeal is not maintainable under the provisions of Rule 5 of Chapter VIII of Allahabad High Court Rules.

3. Rule 5 of Chapter VIII of the High Court Rules reads as follows:

"5. Special Appeal. An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or

order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of criminal jurisdiction (or in the exercise of jurisdiction) conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a Tribunal Court or statutory arbitrator made or purported to be made in the exercise or any Central Act, with respect to any of the matters enumerated in the State list or the concurrent list in the seventh schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise of purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

4. As would appear from the perusal of the aforesaid provision, an appeal shall line from a judgment (not being a judgment passed in exercise of appellate jurisdiction or revisional jurisdiction). Rule 5 of the Chapter VIII of the High Court Rules provides for special appeal from the judgment of a Single Judge passed in exercise of original civil jurisdiction.

5. In the case at hand, the petitioner had approached this Court in writ petition against the order passed by the District Judge under revisional jurisdiction and not under original civil jurisdiction. This being so, the special appeal is clearly barred. Since the order under challenge is not under original civil jurisdiction, therefore, the special appeal is not maintainable. The objection raised by the learned Standing Counsel, thus, on this score has force and is sustained.

6. In view of the aforesaid, the special appeal is hereby dismissed.

Special Appeal Dismissed.