
(1931) 02 AHC CK 0017
In the Allahabad High Court

Ali Husain and Another

APPELLANT

Vs

Harhanga Lohar

RESPONDENT

Date of Decision : 26-02-1931

Acts Referred:

Citation : (1931) 02 AHC CK 0017

Hon'ble Judges : Pullan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pullan, J.—This is an appeal from a decision of the Subordinate Judge of Ghazipur who had before him an appeal from a decision of the Munsif of Rasra in a suit between two persons who claimed to be sub tenants of an agricultural holding. One of the points raised in appeal in the lower Court was that the suit was not cognizable by a civil Court. The learned Subordinate Judge without giving any reasons said that that plea had no force, and he decided the appeal on its merits. I cannot agree with the learned Subordinate Judge on the question of jurisdiction. He approached the matter from a wrong standpoint. He held that such a suit could be filed in the civil Court. "What he should have considered was whether this was or was not a suit which could have been decided by the revenue Court. Both in form and substance this is a suit which could have been, and therefore should have been brought u/s 99 (b), Agra Tenancy Act. The civil Court therefore had no jurisdiction.

2. It has been argued on behalf of the respondent that as this plea of jurisdiction was not taken in the Court of first instance it should not be entertained in appeal. There is no provision of the CPC to debar an appellate Court from taking up a question of jurisdiction which was not raised in the Court of first instance except Section 21 of the Code which refers only to an objection made as to the place of suing and not as to the nature of the Court in which the suit has been filed. It was held by a Full Bench of this Court in the case of Ram Kinkar Rai and Another Vs. Tufani Ahir and Others that questions involving jurisdiction can be raised in

appeal even though they have not been raised in the Court below if such questions can be decided on the materials before the Court. There is also a decision of the Judicial Committee reported in *Ramlal Hargopal v. Kishanchand* AIR 1924 P.C. 95 in which their Lordships held that

they were bound to take notice of an objection to the jurisdiction however late in the day it may be raised, if it be that on the facts admitted or proved it is manifest that there is a defect of jurisdiction.

3. In the present case the defect in jurisdiction is manifest, and I consider that I am at liberty to entertain this objection in second appeal.

4. Formerly there was a widespread opinion based on certain decisions of this Court that suits between tenants inter se should be decided by a civil Court. This is not now the law. But possibly the suit was brought in the civil Court under a justifiable misapprehension as to the present state of the law. Under the circumstances I do not consider that the suit should be entirely dismissed, and I direct the plaint to be returned for presentation to the revenue Court. Costs up to date must be borne by the respondents in this appeal.