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(1909) 04 AHC CK 0041

In the Allahabad High Court

Ganga Sahai — APPELLANT

Vs

Musammat Rai Kunwar and Others — RESPONDENT

Date of Decision : 27-04-1909

Acts Referred:
North Western Provinces Tenancy Act, 1901 — Section 177, 58(a)

Citation : 1 Ind. Cas. 902

Hon'ble Judges : Karamat Hussain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Karamat Hussain, J.—The plaintiffs instituted a suit in the Court of the Assistant Collector, first class, u/s 58(a) of the Agra Tenancy Act for the ejectment of Ganga Sahai and his father as their sub-tenants. Ganga Sahai defended the suit and pleaded that he was not the sub-tenant of the plaintiffs and that the Revenue Court had no jurisdiction to encertain the suit. The Court of first instance dismissed the claim. The plaintiffs appealed to the Commissioner on the 17th of September 1907. The office reported on the 18th of September 1907 that the case was within the jurisdiction of the District Judge and not of the Commissioner. The Commissioner fixed the 8th of October 1907 for the determination of that point and came to the conclusion that the appeal lay to the District Judge. He, therefore, returned the memorandum of appeal on the 8th of October 1907 for presentation to the proper Court. The Civil Courts were closed from the 9th of October to the 10th of November 1907, both days inclusive. On there-opening of the Civil Courts on the 11th of November 1907, the memorandum of appeal was presented to the District Judge. The learned District Judge found that the relation of landlord and tenant did not exist between the parties. He also found that the defendant Ganga Sahai was a trespasser and was liable to be ejected as such in the Civil Court. He, therefore, decreed the appeal with costs against Ganga Sahai and dismissed it as regards Tula with costs. The defendant Ganga Sahai comes here in second appeal. It is argued by his learned Vakil that under the provisions of Section 177 of the Agra Tenancy Act no appeal

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lay from the decree of the Assistant Collector, first class, to the District Judge and that, therefore, he could not, under the provisions of Section 196 or 197 of the Agra Tenancy Act, decide the appeal. He also contends that the appeal to the District Judge was barred by limitation. The learned Advocate for the respondent in answer to the first contention points out that under the provisions of Section 177 in all suits in which a question of jurisdiction has been decided an appeal lies to the District Judge. This, in my opinion, is a complete answer to the first contention. The suit is not barred by limitation. The facts which I have stated relating to the presentation of the appeal first to the Commissioner and then to the Civil Court, together with the finding of the lower appellate Court, that there is no doubt there was a bona fide mistake, as stated in the affidavits on the file, save limitation. The learned District Judge on these facts was competent u/s 5 of the Indian Limitation Act, No. XV of 1877, to entertain the appeal and to hold that the appeal was not barred by time. For the above reasons the appeal fails and is dismissed with costs.

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