

(1965) 04 AHC CK 0015

In the Allahabad High Court

Case No : Second Appeal No's. 1590 and 1686 to 1697 of 1957 and 1183 of 1962

Jamuna Das and Another

APPELLANT

Vs

Smt. Gulab and Others

RESPONDENT

Date of Decision : 06-04-1965

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 331(2), 332, 332(4), 341

Citation : AIR 1966 All 196 : (1965) 35 AWR 340

Hon'ble Judges : V.G. Oak, J;D.D. Seth, J

Bench : Division Bench

Advocate : V.K.S. Chaudhary and K.S. Saxena, for the Appellant; N.K. Saxena, R.S. Singh and A.P. Pandey, for the Respondent

Final Decision : Disposed Of

Judgement

Oak, J.—In these 14 connected second appeals a common question of law has been referred to us. That question is in these terms :--

"Does a second appeal lie to the High Court against the appellate decree of a civil Court passed under Sub-section (4) of Section 332 (since deleted) of the U. P. Zamindari Abolition and Land Reforms Act?"

2. In order to understand how this question of law arose in these cases, it will be convenient to outline the facts of one case. Second Appeal No. 1183 of 1962 arises out of a suit filed by Smt. Gulab Rani, against Jamuna Das and others for ejectment u/s 209 of the U. P. Zamindari Abolition and Land Reforms Act (Act No. 1 of 1951), hereafter referred to as the Act. Jamuna Das, defendant No. 1 raised a plea that defendants Nos. 1 and 2 were bhumidhars of the land in dispute. That question was referred to the civil Court. The civil Court decided that defendants are not bhumidhars of the land in dispute. The revenue Court accepted that finding, and decreed the plaintiff's suit. An appeal by Jamuna Das defendant was dismissed by the Temporary Civil Judge, Hamirpur. Jamuna Das and Sia Ram

defendants have come to this Court in second appeal. When the second appeal was argued before a learned single Judge of this Court, it was urged on behalf of the respondents that the second appeal was incompetent. The learned single Judge was of the opinion that maintainability of second appeals in such cases raises a question of importance. He, therefore, referred the question quoted above to a larger Bench.

3. In *Chhotey v. Ghansoley*, (Second Appeal No. 1333 of 1957, dated 1-8-1962 (All)), the Court had to consider whether under similar circumstances a second appeal arising out of proceedings u/s 232 of the Act was maintainable. It was held by Dhavan, J. that, no second appeal lay in such a case.

4. In this reference we have to consider the combined effect of Sections 331 and 332 of the Act. Section 332 was deleted by U. P. Amendment Act No. 37 of 1958. Since we are largely concerned with the true effect of Section 332 of the Act, it will be convenient to refer to the relevant provisions of the Act as it stood before its amendment by U. P. Act No. 37 of 1958.

5. Section 331 deals with cognizance of the suits, etc. Under this Act Section 331 stated:--

"(1) Except as provided by or under this Act no Court other than a Court mentioned in column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.

2. Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid.

3. An appeal shall lie from the final order passed by a Court mentioned in column 4 in the proceedings mentioned in column 3 to the Court or authority mentioned in column 5 thereof.

4. A second appeal shall lie from the final order passed in an appeal under Sub-section (3) to the authority, if any, mentioned against it in column 6 of the schedule aforesaid."

6. It will be noticed that Section 331 contained four sub-sections. Sub-section (1) laid down that suits mentioned in the second schedule had to be tried by revenue Courts. Sub-section (2) laid down that no appeal lay except as hereinafter provided. Sub-section (3) provided for a first appeal. Sub-section (4) of Section 331 provided for a second appeal.

7. Section 332 of the Act ran thus:--"

(1) Notwithstanding anything contained in Section 331, if in any suit or proceedings mentioned in column 3 or Schedule II, a question is raised regarding the title of any party to the land which is the subject-matter of the suit or proceeding and such question is directly and substantially in issue the Court shall, unless the question has already been decided by a competent Court, frame

an issue on the question of the title and submit the record to the competent civil Court for the decision of that issue only.

Explanation--A plea regarding the title to the land which is clearly untenable and intended solely to oust the jurisdiction of the revenue Court shall not be deemed to raise a question regarding the title to the land within the meaning of this section.

2. The civil Court, after refraining the issue, if necessary, shall decide such issue only and return the record together with its finding thereon to the revenue Court which submitted it.

3. The revenue Court shall then proceed to decide the suit, accepting the finding of the civil Court on the issue referred to it.

4. An appeal from a decree of a revenue Court in a suit or proceeding in which an issue regarding title has been decided by a civil Court under Sub-section (2) shall lie to the civil Court which having regard to the valuation of the suit has jurisdiction to hear appeal from the Court to which the issue of title has been referred."

8. According to Sub-section (1) of Section 332, whenever a question of title was raised before the revenue Court, that issue had to be remitted to the competent civil Court. The civil Court decided that question under Sub-section (2). According to Sub-section (3), the revenue Court had to decide the suit in accordance with the opinion of the civil Court on the question of title. Sub-section (4) of Section 332 provided for an appeal from the decree of the revenue Court in such cases. Section 332 contained no provision for a second appeal. The question, therefore, arises whether a second appeal from a decision u/s 332 (4) was maintainable. On the one hand, Section 332 contained no provision for a second appeal. On the other hand, there was no definite indication in Sub-section (4) of 3. 332 that the appellate decision u/s 332 (4) was final.

9. Mr. A. P. Pandey appearing for some of the respondents urged that a decision u/s 332 (4) of the Act was subject to the limitation of Sub-section (2) of Section 331 of the Act. It means that there was no further appeal against such a decision in the absence of any express provision in the Act. On the other hand, Mr. V. K. S. Chaudhry appearing for Jamuna Das appellant contended that, the scope of Sub-section (2) of Section 331 must be confined to appeals specified in Section 331; Section 331 (2) did not control appeals u/s 332 (4) of the Act.

10. Mr. K. C. Saxena appearing for Satya Narain appellant drew our attention to Section 332-B of the Act. Section 332-B laid down procedure when plea of asami or adhivasi right was raised in a civil Court. In such cases the question relating to asami or adhivasi rights had to be remitted to the revenue Court. The civil Court had to decide the suit in accordance with the opinion of the revenue Court on the question of asami and adhivasi rights. Section 332-B did not contain any provision for first appeal or second appeal. Mr. A. P. Pandey conceded that,

although Section 332-B contains no separate provision for appeals, the decision of the civil Court u/s 332-B must be subject to appeal and second appeal, as provided in Sections 96 and 100 of the Code of Civil Procedure. In other words, appeals in cases falling u/s 332-B are not controlled by the limitation of Sub-section (2) of Section 331 of the Act. If cases falling u/s 332-B are not controlled by Section 331 (2) of the Act, it is just possible that cases falling u/s 332 of the Act are also outside the limitation of Sub-section (2) of Section 331 of the Act.

11. Mr. V. K. B. Chaudhry relied upon Section 341 of the Act. Section 341 states:--

"Unless otherwise expressly provided by or under this Act, the provisions or.....Code of Civil Procedure, 1908, shall apply to the proceedings under this Act."

12. It will be seen that, according to Section 341 of the Act, the whole of the CPC is applicable except where there is provision to the contrary in U. P. Act No. 1 of 1951. Mr. Pandey conceded that a decision of the civil Court u/s 332 (4) of the Act may be subject to revision u/s 115, C. P. C. If a decision of a Civil Judge u/s 332 (4) of the Act is subject to revision u/s 115, C. P. C. there is no good reason why it should not be subject to a second appeal under 8. 100, C. P. C.

13. Mr. Pandey pointed out that, if the valuation of the subject-matter is sufficiently high, the appeal u/s 332 (4) of the Act may have to be heard by the High Court. In the reference before us we are considering the maintainability of second appeals from decisions u/s 332 (4) of the Act. A possible appeal from a decision of the High Court cannot be described as a second appeal. We will, therefore, not consider whether a decision of the High Court u/s 332 (4) of the Act is subject to any further appeal. We shall confine the present discussion to those cases, where an appeal u/s 332 (4) of the Act has been deemed either by the District Judge or by a Civil Judge.

14. Sub-section (2) of Section 331 opens with the words:--

"Except as hereinafter provided". It means that there is no absolute bar against appeals. Appeals are maintainable as provided in the subsequent provisions of the Act. Such provisions for appeals are to be found in Sub-sections (3) and (4) of Section 331 and in Sub-section (4) of Section 332. It may further be pointed out that Section 341 is itself a provision subsequent to Section 331 of the Act. Then again, Section 341 opens with these words:--

"Unless otherwise expressly provided by or under this Act".

The question for consideration is which of these two provisions in the Act controls the other.

15. In *Rangoon Botatoung Co. v. Collector, Rangoon* 39 Ind App 197 (PC), it was observed on p. 200 that, a right of appeal from any decision of any tribunal must be given by express enactment. Mr. Pandey pointed out that U. P. Act No. 1 of

1951 does not contain any express provision for second appeals from decisions u/s 332 (4) of the Act. Mr. Pandey further pointed out that, previous statutes relating to tenancy law in Uttar Pradesh contained express provisions about appeals to High Courts. Such provisions were to be found in Act No. 2 of 1901, Agra Tenancy Act of 1926 and U. P. Tenancy Act of 1939. In particular, our attention was drawn to Section 269 of U. P. Tenancy Act. That section provided for second appeals to the High Court and the Chief Court from appellate decrees of the District Judge u/s 100, C. P. C., U. P. Act No. 1 of 1951 does not contain any provision corresponding to Section 269 of U. P. Tenancy Act.

16. In *National Telephone Co. Ltd. v. Postmaster General* 1913 AC 546, Viscount Haldane, L. C. observed on p. 552:--

"When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches."

17. In *Secy, of State v. Rama Rao* AIR 1916 PC 21, the Court had to consider the question whether a decision of the district Court under the Madras Forest Act was subject to an appeal to the High Court. Section 10 of Madras Forest Act provided for an appeal to the district Court from an order rejecting a claim. It was held by their Lordships of the Privy Council that the district Court is appealed to as one of the ordinary Courts of the country, with regard to whose procedure, orders and decrees, the ordinary rules of the CPC apply. The same view was taken in AIR 1934 81 (Privy Council)

18. In *National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd.* AIR 1958 SC 357, their Lordships of the Supreme Court observed on p. 360 thus:

"Section 76, Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and then such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal under Clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act."

19. Mr. Pandey contended that those decisions must be confined to situations, where a District Judge exercises his ordinary civil jurisdiction. That principle will not apply where a district Court exercises special jurisdiction. We do not think that u/s 332 (4) of the Act Civil Court exercises any extra-ordinary jurisdiction. u/s 332 (4) of the Act the Civil Court concerned exercises its ordinary civil Jurisdiction. So the cases referred to above will apply to a decision given by the Civil Court u/s 332 (4) of the Act.

20. The plan of Sections 331 and 332 is this. If no question of title is involved, the matter has to be disposed of in accordance with Section 331 of the Act. Sub-

sections (3) and (4) of Section 331 provided for an appeal and a second appeal. But if the case before the revenue Court raised a question of title, the matter had to be disposed of according to the special procedure laid down in Section 332 of the Act. In Jamuna Das's case we are dealing with a proceeding u/s 209 of the Act. According to the second schedule, a decision u/s 209 of the Act is subject to a decision of the Commissioner in first appeal and the decision of the Board of Revenue in second appeal. According to Mr. A. P. Pandey's contention, if a case fell u/s 332 of the Act, the appellate decision u/s 332 (4) of the Act was final. It would be rather anomalous if in a simple case where the defendant did not raise any question of title, the matter could be carried upto the Board of Revenue in second appeal; but if the defendant raised a bona fide claim of title, the matter could not be taken beyond the stage of first appeal.

No doubt it was open to the legislature to lay down that the appellate decision u/s 332 (4) of the Act should be final. But there was no such indication in Section 332 (4) of the Act. Firstly, it is doubtful whether Section 331 (2) controls Section 332 of the Act. Secondly Section 341 which makes the CPC applicable, is a provision subsequent to Section 331 (2) of the Act. Thirdly, on the principle laid down by the Privy Council in Rama Rao's case AIR 1916 PC 21, there is a presumption that the decision of the Civil Court is subject to further appeal as provided in the Code of Civil Procedure. Fourthly, it looks anomalous that a simple case which does not involve a question of title can be carried up to the Board of Revenue in second appeal, but a case involving a question of title could not be carried beyond the stage of an appeal to the District Judge or the Civil Judge. From all these considerations we have come to the conclusion that, a decision of the Civil Court u/s 332 (4) of the Act was not to be regarded as final. Such a decision was subject to a second appeal, as provided in Section 100, C. P. C.

21. Our answer to the question referred to us is, therefore, as follows:

A second appeal lay to the High Court against the appellate decree of a Civil Court passed under Sub-section (4) of Section 332 (since deleted) of the U. P. Zamindari Abolition and Land Reforms Act.

22. Let the papers be returned to the learned single Judge with this answer.