
(1958) 07 AHC CK 0002
In the Allahabad High Court
Case No : S.A. No. 605 of 1951

Mst. Basdei Kuer

APPELLANT

Vs

Deota Din Misir and Another

RESPONDENT

Date of Decision : 22-07-1958

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 290

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 4, 5

Citation : (1958) 28 AWR 734

Hon'ble Judges : M.C. Desai, J

Bench : Single Bench

Advocate : Sri N.R. Sharma and Sri V.K.S. Choudhary, for the Appellant; Sri B.L. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Desai, J.—This is a Defendant's appeal from a decree for permanent injunction granted against her by the courts below. The dispute was about agricultural land which the Respondents claimed to be in their possession. They sued to restrain the Appellant from interfering with their possession, The suit was instituted in a civil court and proceeded there without any objection in respect of jurisdiction and was decreed by it. An appeal was preferred by the Appellant in the court of the District judge and it was dismissed, in that court also no question of jurisdiction of the civil court was raised. It may be conceded that the revenue court had jurisdiction over the matter but as no objection on the ground of jurisdiction was raised in the trial court, this appeal would be disposed of as if the civil court had jurisdiction, vide S. 290 of the UP Tenancy Act.

2. The other point raised in this appeal is based upon Rr. 4 and 5 of the UP ZA and LR Rules, 1952. Under R. 4 "all suits and proceedings whether of the first instance, appeal or revision of the nature as herein below specified.....pending in any court for hearing on the date of vesting.....shall be Stayed....." R. 5 provides that "every suit or proceeding, whether pending in the court of first

instance or in appeal or in revision, stayed under.....R. 4, shall together with appeal or revision if any, be abated by the court....." No suit was pending on the date of vesting, the suit was decreed by the trial court in 1949 and the first appeal was dismissed by the lower appellate court in 1951 before the date of vesting. What was pending on the date of vesting was this second appeal R. 4 deals with two kinds of cases (1) suits and (2) proceedings whether of the first instance or appeals or revisions. The words "whether of the first instance, appeal or revision" govern the words "proceedings" and not also the preceding word "suits." It would be meaningless to qualify the word "suits" by "of the first instance, appeal or revision." These words can go only with the word "proceedings". Since appeals and revisions are thus separately provided for, the word "suits" must refer to suits that are pending, and cannot refer to suits that have been decreed. If a suit was decided before the date of vesting and decreed, it ceased to be pending on the date of the vesting, if an appeal or revision preferred from the decree was pending on the date, it would be the case of a proceeding of appeal or revision pending and not that of a suit pending. If the suit had been dismissed and an appeal by the Plaintiff was pending it could be said that the suit was pending. In the present case the suit was decreed and the first appeal had also been dismissed. What was, therefore pending on the date of vesting was not the suit but a proceeding of second appeal, So only that proceeding, that is the second appeal, was required to be stayed u/R. 4. If a suit was pending on the date of vesting the suit was required to be stayed but if a proceeding other than a suit was pending only that proceeding was required to be stayed. R. 5 is to be read in conjunction with R. 4 and lays down what is to be done by the court in respect of suits and proceedings stayed u/R. 4. If a suit was not required to be stayed u/R. 4, it will not be abated u/R. 5. Only those suits and proceedings that were stayed u/R. 4 are to be abated. If, therefore u/R. 4 an appeal was required to be stayed only that appeal was required to be abated u/R. 5. So according to the objection raised by the Appellant this second appeal may abate but not the suit.

3. There is no substance in this appeal and it is dismissed with costs.

4. Leave to file a special appeal is refused.