

(1945) 01 AHC CK 0035
In the Allahabad High Court
Case No : S.A. No. 265 of 1941

Mst. Hijabun-Nisa Bibi and another	Vs	APPELLANT
Mst. Salamun-Nisa Bibi and others		RESPONDENT

Date of Decision : 29-01-1945

Acts Referred:

Agra Tenancy Act, 1926 — Section 44
United Provinces Tenancy Act, 1939 — Section 296

Citation : (1945) 01 AHC CK 0035

Hon'ble Judges : Allsop, J

Bench : Single Bench

Advocate : Ishaq Ahmad, for the Appellant; Ihsanul Hag and S.N.A. Jafri for Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Allsop, J.—The suit out of which this appeal arises was instituted u/s 44 of the Agra Tenancy Act, 1926, but it was decided in accordance with the provisions of the United Provinces Tenancy ;Act, 1939, because of the provisions of Section 296 of that Act. The defence taken was that two of the defendants, the daughters of the original owners, were co-sharers in the property which was the subject of the suit. The point was decided by the trial Court and they appealed together with other defendants. They raised a question of proprietary title in the trial.Court and again in the appellate Court, that is, the Court oi the District Judge. The learned District Judge held that no appeal lay to him under the provisions of the United Provinces Tenancy Act, The question, therefore, is .whether the provisions governing appeals in these circumstances are those of the United Provinces Tenancy Act, 1939 or the Agra Tenancy, 1926. It has been decided by two single Judge"s of this Court in the cases of Bindraban Katiar v. Ganga Ram 1940 A W R (H C) 383, and Mahmud Husain v. Radha Kishan 1943 A W R (H C) 262, that the provisions of the Act of 1926 govern the right to appeal. Whatever the view I might have taken if the matter had been res integra, I see no reason why I should not act upon the principle of Stare decisis when the

question is of mere procedure. I, therefore, follow these two decisions and apply the provisions of the old Act. Under that Act where a question of proprietary title was raised in the Revenue Court and again in the appellate Court the appeal lay to the District Judge. I, therefore, set aside the order of the District Judge and remand the appeal to him for decision upon its merits. The costs of this appeal will abide the result and will be included in the costs of the lower appellate Court. The Court fees may be returned under the provisions of Order XLI, rule 23 of the Code of Civil Procedure.