

(1933) 07 AHC CK 0019
In the Allahabad High Court

Mt. Hasina Begum and Others

APPELLANT

Vs

Abdul Hafiz

RESPONDENT

Date of Decision : 26-07-1933

Acts Referred:

Citation : AIR 1934 All 100

Hon'ble Judges : Niamatullah, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Niamatullah, J.—This purports to be a first appeal from order. We, however, think that it is an appeal from a "decree" as defined in Section 3(14), Agra Tenancy Act, according to which "decree" means "any order which, so far as the revenue Court is concerned finally disposes of a suit." It will be observed that this definition gives a considerably enlarged meaning to "decree" as compared with "decree" defined in Section 2(2), Civil P.C., according to which that expression means:

the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in suit....

2. The essential difference between the two appears to be that, according to the definition contained in the Agra Tenancy Act, an order may amount to a decree, though it does not adjudicate upon the rights of the parties but disposes of the suit on the preliminary ground, provided the decision finally disposes of the suit, so far as the revenue Court is concerned. In the case before us the learned Subordinate Judge held, in view of a certain family arrangement relied on before him, that no suit for profits could lie in a revenue Court u/s 226 or Section 227, Agra Tenancy Act. Accordingly he ordered the plaint to be returned for presentation to the proper Court, presumably the civil Court, which alone, according to the view of the learned District Judge, could enforce the family

arrangement set up before him. The order of the learned District Judge finally disposed of the suit so far as the revenue Court was concerned, as no further proceedings could be taken in that Court after that order. We hold that the order of the learned District Judge is a "decree" within the meaning of Section 3(14), Agra Tenancy Act. The present appeal should be considered to be one brought u/s 246, Agra Tenancy Act, which gives a right of second appeal to the High Court from every "decree" of a District Judge. A court-fee of Rs. 3 was paid on the memorandum of appeal. The subject matter of the appeal before us is valued at Rs. 481-11-6. Ad valorem Court-fee at that amount comes to Rs. 44. The appellant must, therefore, make good the deficiency of Rs. 41 within two weeks.