

(1959) 08 AHC CK 0004
In the Allahabad High Court
Case No : F.A.F.O. No. 29 of 1955

Raja Deo Singh

APPELLANT

Vs

Kr. Shambho Krishna Narain

RESPONDENT

Date of Decision : 28-08-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1960) 30 AWR 111

Hon'ble Judges : V.D. Bhargava, J; R.A. Misra, J

Bench : Division Bench

Advocate : B.K. Dhavan and R.K. Agnihotri, for the Appellant; Suraj Mohan Dayal, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Bhargavam, J.—First Appeal From Order No. 29 of 1955 is connected with Civ. Revision No. 57 of 1955. Both of them arise out of the same suit which is still pending in the trial court and both of them have been filed by the Defendant. The Civil Revision had been filed against an order of the learned Civil Judge, Mohanlal Ganj, Lucknow, dated 4-2-1955. By that order he had decided two of the issues arising in the case. They were:

(1) whether the court had jurisdiction to try the suit and (2) whether the amount of court-fee paid was sufficient. The learned Civil Judge heard arguments on these issues at length and came to the conclusion that the court had jurisdiction and the court-fee paid was sufficient and therefore, he directed the suit to proceed. Against that order this revision application has been filed.

2. Learned Counsel for the Plaintiff opposite party has taken a preliminary objection on the ground that both these orders were interlocutory orders and no revision lies as no case has been decided.

3. For the proposition that no revision lies against the decision on an issue, even if it be the issue of jurisdiction, he placed reliance on the case of Buddhoo Lal

and Another Vs. Mewa Ram, . That was a case in which the question involved was of jurisdiction and three Judges were of the opinion that when the issue was decided no case had been decided within the meaning of Section 115 of CPC and no revision lay. Since 1921 there have been various cases where this authority has been followed. Inter alia, the case of Malkhan Vs. Mahar Chand and Others, is another case of a Bench of this Court, where the same proposition had been laid down. Thus, we are of opinion that no revision lies against an order deciding the issue of jurisdiction. On the question whether a revision lay against an order passed in favour of the Plaintiff on a matter of court-fees, learned Counsel for the opposite party had argued that u/s 6A a specific right of appeal has been given to see party from whom extra court fees is demanded. Right of revision has also been given to the Inspector of Stamps to challenge any finding given by the Court and in these circumstances if no right had been given to the Defendant to challenge the finding of the Court below it should be deemed that the Legislature never intended to give that power. We entirely agree with the argument of the learned Counsel. Besides this there is a decision on this point of this Court reported in the case of S. Mazhir Husain v. Anjuman Islamia AIR 1947 All. 404 in which it was held that:

A Defendant has no locus standi u/s 6A to challenge the order calling upon the Plaintiff to make good the deficiency in Court fee (as for instance by objecting that the amount of Court fee ordered to be paid is not sufficient.

4. We entirely agree with the above decision and in the circumstances we think that no revision lies also against the order of the learned Civil Judge deciding that the Court-fee paid by the Plaintiff was sufficient. We accordingly, see no force in this revision and dismiss it with costs. The stay order is discharged.

5. The first appeal from order has been filed against an ad interim order passed Under Order 39 Rule I restraining the Defendant from taking the delivery of the zamindari abolition compensation bonds from the compensation officer, at Malihabad district Lucknow and of Sandila, district Hardoi and also restraining them from delivering the compensation bonds to the Defendant in respect of the villages mentioned in the schedule attached to the plaint till the disposal of the case. The order passed was actually to issue notice to the Defendant for 12-3 1955 and actually only an ad interim injunction was passed. Against this order this appeal has been filed A preliminary objection has been taken by the learned Counsel for the opposite party that no appeal lies against this order because it was only a preliminary order and not a final order. We think that the appeal provided against an order Under Order 39 is against the final orders. If it is open to a party to have that order corrected by the Court which passed the order itself then the parties should not rush in appeal against those orders. It is only when final orders are passed that the right of appeal will accrue. In the circumstances, we do not think that there was any right of appeal to the Appellant.

6. On the merits of the case the learned Counsel for the Appellant had argued that by virtue of Section 62 of U.P. ZA and LR Act no injunction could be passed

by a civil court. Section 62 reads as follows:

Except a court or authority before whom an appeal under this chapter is pending against an order or decree of the Compensation Officer, no court or authority shall notwithstanding anything contained in any law, issue any injunction against any person in respect of any proceedings pending before the compensation officer under this chapter which has the effect of staying the proceedings.

7. It was contended that by virtue of this section, it was not open to the learned Civil Judge to pass the order to injunction. To our mind this section is not applicable to the facts of the present case. By that order of injunction no proceedings pending before the Compensation Officer had been stayed or were restrained. What was ordered was that the possession of the compensation bonds may not be taken in the meanwhile. This application should really have been u/s 70 of the U.P. ZA and LR Act and if the Appellant had pointed out this to the learned Civil Judge on or before 12-3-1955, which was fixed for the hearing of this application, he would not have had to come to this Court. The learned Civil Judge would have corrected his order and passed his order u/s 70. This appeal was entirely misconceived. In order to make the order proper we direct the Compensation Officers of Tahsils Malihabad and Sandila to place at the disposal of the Civil Judge the amounts payable in respect of the villages mentioned in the schedule attached to the plaint. The appeal is accordingly dismissed with costs.