

Gaya Rai And Ors. vs Lalji Rai And Ors. on 19 February, 1953

Equivalent citations: AIR1953ALL579, AIR 1953 ALLAHABAD 579

JUDGMENT

Malik, C.J.

1. A preliminary objection has been raised that this appeal should not have been filed in this Court and should have been filed in the Court of the learned District Judge. The plaintiff filed an application under Section 12, U. P. Agriculturists' Relief Act for redemption of a large number of mortgages. The suit was decreed in part. Under Section 23, U. P. Agriculturists' Relief Act an appeal against such a decree lies to the Court to which original decrees passed by such Courts are ordinarily appealable and where such decrees are appealable to more Courts than one, to the Court of lowest jurisdiction. Section 21, Bengal, Agra and Assam Civil Courts Act (Act 12 of 1887) provides that "an appeal from a decree or order of a Subordinate Judge (in this state Civil Judge) shall lie-

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to the High Court in any other case." It is, therefore, clear that an appeal from a decree of a Civil Judge would lie to the District Judge or to the High Court according to the valuation of the suit. Section 23, U. P. Agriculturists' Relief Act provides that where appeals lie to two Courts, then it is the Court of lowest jurisdiction which will be entitled to entertain the appeal, and it, therefore, appears to us quite clear that the appeal should have been filed in the Court of the learned District Judge.

2. The period of limitation for filing the appeal in the lower Court was only 30 days, but the appeal was filed in this Court beyond 30 days. It is however not necessary for us to consider whether the lower Court would or would not condone the delay. As the appeal was not entertainable by this Court we think the best course would be to direct that the memorandum of appeal be returned to learned counsel and we order accordingly. The respondent is entitled to his costs.

3. Learned Advocate-General has prayed that the memorandum of appeal be returned to him today, but we do not know whether it is possible. The memorandum of appeal shall be returned to him at a very early date.