

Jai Singh vs Mam Chand And Ors. on 25 November, 1955

Equivalent citations: AIR1956ALL337

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. The question referred to the Full Bench In these appeals is:

"Whether appeals under Section 23, U.P. Agriculturists' Relief Act from the orders of a civil Court would lie to the appellate Court of the lowest jurisdiction where the original decrees from such Court be appealable to more Courts than one, regardless of the valuation of the proceedings before the trial Court".

2. Sub-section (1) of Section 23, U.P. Agriculturists' Relief Act is:--

"An appeal shall lie to the District Judge from an order of a Collector or Assistant Collector passed under this chapter. An appeal shall lie from the order of a civil Court passed under this chapter to the Court to which original decrees passed by such Court are ordinarily appealable, and where such decrees are appealable to more Courts than one, to the Court of lowest jurisdiction".

3. Different interpretations of the relevant portion of Section 23 were put by this Court in the two cases of 'Tajpal Singh v. Ganga Sahai', AIR 1952 All 808 (A) and 'Gaya Rai v. Lalji Rai', AIR 1953 All 579 (B). The view taken in the first case was that appeals from the orders of a civil Court under Chap III, U.P. Agriculturists' Relief Act would lie to the Court to which original decrees from that Court would have lain according to the valuation of the decrees as laid down in Section 21, Bengal, Agra and Assam Civil Courts Act (12 of 1887). The view expressed in the latter case was that all appeals, irrespective of the valuation of the suits, would lie to the Court of the lowest Jurisdiction.

4. We have heard the learned counsel for the appellants in both the appeals and are of opinion that the view taken in the latter case is correct, that is, all appeals against the orders of a civil Court under Section 23, U.P. Agriculturists' Relief Act will lie to the appellate Court of the lowest jurisdiction, irrespective of the valuation of proceedings before the trial Court.

5. The contention for the appellants is based on two considerations. One is that in Section 5, U.P. Agriculturists' Relief Act the language used is different from that of Sub-section(1) of Section 23, the language used in Sub-section(2) of Section 5 being that the order shall be appealable to the Court to which the Court passing the order is immediately subordinate.

It is not for us to say why the Legislature has used different language in the two Sections. But merely because a different language is used in connection with appeals against orders-refusing instalments, it does not necessarily follow that the different language used in Section 23 would mean that in cases where appeals against original decrees lie to Courts more than one, the appeals would not lie to the lowest Court in case the valuation of the proceedings be such that original decrees in suits of that valuation would have lain to the higher Court.

6. The contention is that the latter part of Sub-section(1) of Section 23, U.P. Agriculturists Relief Act would apply to those cases where appeals could lie to two different Courts against the same decree. It is conceded that at present no law provides two different forums for filing an appeal against one and the same decree. It is contended that such a procedure may be prescribed and the legislature had provided for such a contingency.

We do, not think so, and the language used is not liable to such an interpretation. What the language simply means is that when original decrees of a particular civil Court can, according to the provisions of law, be appealable to more Courts than one, an appeal against a particular order under Chap. III, U.P. Agriculturists' Relief Act, in spite of the existence of those conditions on account of which ordinarily appeal would have lain to a different Court would lie to the Court of lowest jurisdiction.

7. Our answer to the question referred to the Full Bench is in the affirmative.