

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

AHMEDBHOY HABIBBHOY (ORIGINAL CLAIMANT), APPELLANT, *v.* WAMAN DHONDU AND OTHERS (ORIGINAL COUNTER-CLAIMANTS), RESPONDENTS.*

1913.

November 18.

Land Acquisition Act (I of 1894), section 54—Bombay Civil Courts Act (XIV of 1869), section 16—Civil Procedure Code (Act V of 1908), section 96 (1)—Reference to Assistant Judge—Award not exceeding Rs. 5,000—Appeal to the District Judge—Second appeal to the High Court not maintainable.

A reference having been made in accordance with the provisions of the Bombay Civil Courts Act (XIV of 1869) to the Assistant Judge, he tried the reference and made an award under the Land Acquisition Act (I of 1894) which did not exceed Rs. 5,000. An appeal was presented against the said award to the District Judge and he having decided the appeal, a second appeal was preferred to the High Court.

Held, that under section 16 of the Bombay Civil Courts Act (XIV of 1869) the Court authorized to hear appeals from the Assistant Judge's Court where the value of the subject-matter was less than Rs. 5,000 was the District Court and not the High Court and no second appeal being expressly given by the Act, the (second) appeal to the High Court was not maintainable.

SECOND appeal against decision of C. E. Palmer, District Judge of Thana, confirming the decree of A. W. Varley, Assistant Judge, in the matter of a reference made by the Assistant Collector, Prant Bassein, under section 18 of the Land Acquisition Act (I of 1894).

Certain lands were acquired by Government in the village of Malad in the Thana District for the purposes of the Bombay, Baroda and Central India Railway Company. The Assistant Collector made an award granting compensation to be given to claimants whose lands were thus acquired. Disputes having arisen between Ahmedbhoj Habibbhoj, the khot of the village, and the other claimants, who were *sutidars* (permanent tenants) of the lands, as to who was entitled to the compensation, the khot claiming the whole or at least

* Second Appeal No. 565 of 1911.

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one-third of it and the other claimants claiming the whole for themselves, the Assistant Collector made a reference to the Assistant Judge of Thana under section 18 of the Land Acquisition Act, the amount of the award being less than Rs. 5,000. The Assistant Judge after inquiry held that the khot was entitled to a sum equivalent to twenty-five times of the fixed assessment of the lands acquired and the remainder was to be divided among the tenants.

On appeal by the khot to the District Judge, the decision of the Assistant Judge was confirmed.

The khot preferred a second appeal.

D. G. Dalvi for the appellant (claimant khot).

R. W. Desai for the respondents (counter-claimants tenants):—We raise a preliminary objection. No second appeal lies in this case. The original reference was heard and decided by the Assistant Judge. The amount of the compensation being less than Rs. 5,000 an appeal from the Assistant Judge's decision lay to the District Court and not to High Court: section 16 of the Bombay Civil Courts Act as amended by section 2 of Act I of 1900, *Narayan Ravji v. Gangaram Ratanchand*⁽¹⁾. Accordingly the appellant presented an appeal to the District Court at Thana and from the decision of that Court the present second appeal is filed. No such second appeal is allowed by law. Section 54 of the Land Acquisition Act allows only one appeal. The right of appeal is the creation of the statute and no right to a second appeal being given by that statute, a second appeal cannot lie: *Nathubhai Narandas v. Manordas Laldas*⁽²⁾.

D. G. Dalvi for the appellant (claimant khot):—The objection seems to be correct. There can be no second appeal.

⁽¹⁾ (1909) 33 Bom. 664.

⁽²⁾ (1911) 36 Bom. 360.

SCOTT, C. J. :—In this case an award was made under the Land Acquisition Act which did not exceed Rs. 5,000. The reference to the Court was, in accordance with the provisions of the Bombay Civil Courts Act, to the Assistant Judge, and he tried the reference. Under the same Act an appeal lay to the District Judge as the amount or value of the subject-matter did not exceed Rs. 5,000, and he heard the appeal. That was analogous to an appeal from an original decree.

An appeal is now preferred from the decision of the District Judge to the High Court, and the question is whether such appeal lies. An appeal lies only if it is expressly given by the Act. It does not lie merely by analogy to appeals in Civil suits: see *Rangoon Botatoung Company v. The Collector of Rangoon*⁽¹⁾.

Now, an appeal lies to the High Court in proceedings under the Land Acquisition Act under the conditions specified in section 54 of that Act. That section says: "Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under this Act." The section is there obviously dealing with appeals from original decrees, and impliedly it recognizes that there may be cases in which the appeal from the original decree will not lie to the High Court.

Turning to the provisions of the Civil Procedure Code relating to appeals from original decrees we find that section 96 (1) provides: "Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court." Now, under section 16 of the Bombay Civil Courts Act, the Court authorized

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⁽¹⁾ (1912) L. R. 39 I. A. 197.

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to hear appeals from the Assistant Judge's Court where the value of the subject-matter is less than Rs. 5,000 is the District Court and not the High Court. We are, therefore, of opinion that the preliminary objection is good that the appeal to the High Court is not maintainable. One set of costs.

Appeal dismissed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Shah.

1913.

December 2.

RAMCHANDRA ANANDRAO KULKARNI (ORIGINAL DEFENDANT No. 2),
APPELLANT, v. PANDU WALAD DAGDU TELI AND OTHERS (ORIGINAL
PLAINTIFF AND DEFENDANT No. 1), RESPONDENTS.*

Special appeal—Civil Judge at Vinchur—Appeal to High Court—Regulation IV of 1827, section 99†—Regulation XIII of 1830, section 5‡—Civil Procedure Code (Act V of 1908), sections 4 and 100.

A special appeal, on the grounds mentioned in section 100 of the Civil Procedure Code (Act V of 1908), lies to the High Court, from the decision of the Civil Judge at Vinchur:

* First Appeal No. 296 of 1912.

† The material portion of the section runs as follows :—

99. *First.*—If in a suit or appeal not ordinarily appealable to the Sudder Dewanee Adawlut, a decree is passed in any Zilla Court, which appears on the face of it to be contrary to or unwarranted by the Regulations, which appears to be inconsistent with the general usage of the country, or with the Hindu or Mahomedan law, in questions depending on such law, or if the decree involves some point of general interest or importance not before decided by the Sudder Dewanee Adawlut, or if strong probable grounds of grievance exist, from whatever cause, it shall be competent to the Sudder Dewanee Adawlut to admit a special appeal in the case.

‡ The section runs as follows :—

5. A special appeal is open in all cases to the Sudder Dewanee Adawlut under the rules provided in Chapter XXII, Regulation IV, 1827, for the admission of special appeals.