

## APPELLATE CIVIL—FULL BENCH.

*Before Sir Arnold White, Chief Justice, Mr. Justice Wallis  
and Mr. Justice Miller.*

SARAVANA PILLAI AND OTHERS (DEFENDANTS NOS. 1 TO 3),  
APPELLANTS,

v.

SESHA REDDI (FIRST PLAINTIFF), RESPONDENT.\*

1907  
October 10,  
21.  
November  
29.  
1908  
March 16.

*Civil Procedure Code, Act XIV of 1882, s. 574—Judgment of lower  
Appellate Court not complying with the requirements of section—  
Order to be made on second appeal.*

Where, on second appeal, it is found that the judgment of the lower Appellate does not fulfil the requirements of section 574 of the Code of Civil Procedure, the proper order to be made on second appeal is one setting aside the decree and remanding the case to the lower Appellate Court to be disposed of according to law.

*Krishna Reddi v. Srinivasa Reddi, (4 M.H.C.R., 174), not followed.*

If the Judge of the Court to which the case is remanded is the Judge who heard the appeal in the first instance, he is not bound to re-hear the appeal if he considers that the case might be properly disposed of without so doing. In such a case, his writing a judgment satisfying the requirements of section 574 will be a sufficient compliance with the order to dispose of the case according to law. But where the Judge of the Court to which the case is remanded is not the Judge who heard the appeal in the first instance, as also in cases where the Judge, though the same, considers such a course necessary for a proper disposal of the case, a re-hearing is necessary for a disposal of the case according to law.

SUIT for possession of land.

The District Munsif framed issues and examined witnesses and finally passed a decree for the plaintiff.

The defendants appealed, impugning the findings of the lower Court on questions of law and fact, and questioning the appreciation of evidence, oral and documentary, by the lower Court.

The Appellate Court passed the following judgment :—

I entirely concur with lower Court's findings and its reasons for those findings and I dismiss this appeal with costs.

The defendants Nos. 1 to 3 appealed to the High Court.

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\* Second Appeal No. 958 of 1905, presented against the decree of F. H. Hamnett, Esq., District Judge of Chingleput, in Appeal Suit No. 533 of 1904, presented against the decree of K. S. Lakshminarasa Aiyar, District Munsif of Chingleput, in Original Suit No. 252 of 1902.

SARAVANA  
PILLAI  
v.  
SESHA  
REDDI.

The three main grounds of appeal were—

(1) That the District Judge had not recorded any judgment in the case.

(2) That the District Judge had not stated what the points for decision were and his decision thereon.

(3) That there has been no attempt on the part of the District Judge to discuss the evidence in the case.

The appeal was heard by BODDAM and SANKARAN-NAIR, JJ., who made the following Order of Reference to the Full Bench.

“When in second appeal it appears that the judgment of the lower Appellate Court does not substantially comply with the requirements of section 574 of the Civil Procedure Code, the question arises whether the judgment must be reversed and the case sent back for disposal according to law as in *Sitarama Sastrulu v. Suryanarayana Sastrulu*(1), or whether the case should only be sent back to the Judge who decided the case in order that he may comply with the requirements of the section, as decided in *Kristna Reddi v. Srinivasa Reddi*(2) with which we agree. Having regard to the conflict in the decisions we refer the above question to the Full Bench.”

The case came on for hearing in due course before the Full Bench constituted as above.

*T. Rangachariar* for appellants.

*T. R. Krishnaswami Ayyar* for respondent.

The Court expressed the following.

OPINION.—We are unable to agree with the judgment in *Kristna Reddi v. Srinivasa Reddi*(2) if it is to be regarded, as would seem to have been the view of the learned Judges by whom the present order of reference was made, as a decision to the effect that, when there has been a failure by the lower Appellate Court to comply with the requirements of section 574 of the Code of Civil Procedure, the only course open to this Court in second appeal is to send back the case to the Judge who heard the appeal, and that, when this is impracticable, no further action can be taken.

We are of opinion that the proper form of order is that which, in recent years, has, we believe, been almost invariably adopted

(1) I. L. R., 23 Mad., 12.

(2) 5 M. H. C. R., 174.

by this Court, namely, an order setting aside the decree and remanding the case to the lower Appellate Court to be disposed of according to law. See, for instance, the orders in *Kunhi Marakkar Haji v. Kutti Unma* (1), and *Sitarama Sastrulu v. Suryanarayana Sastrulu* (2). This would seem to be in accordance with the present practice of the Calcutta and Bombay High Courts. See *Rami Deka v. Brojo Nath Saikia* (3), *Bhagvan v. Kesur Kuverji* (4) and *Ramohandra Govind Manik v. Sono Sadashiv Sarkhot* (5), although, in the last-mentioned case, there was no formal order setting aside the decree.

SARAVANA  
PILLAI  
v.  
SRESHA  
REDDI.

If the Judge of the Court to which the case is remanded is the Judge who heard the appeal in the first instance, and if he considers that he can properly dispose of the remanded case without a re-hearing of the appeal, the writing of a judgment which satisfies the requirements of section 574, without re-hearing the appeal, would, in our opinion, be a compliance with the order that the case be disposed of according to law. But in all cases where the Judge of the Court to which the case is remanded is not the Judge who heard the appeal in the first instance, and in all cases where the Judge of the Court is the Judge who heard the appeal in the first instance, but he does not consider that he can properly dispose of the remanded case without a re-hearing of the appeal, a re-hearing is necessary in order that there may be a compliance with the order of this Court that the case be disposed of according to law.

The case came on for final hearing before (BODDAM and SANKARAN-NAIR, JJ.), when the Court delivered the following.

JUDGMENT.—In accordance with the decision of the Full Bench, the case is remanded to the lower Appellate Court for hearing, and disposal in accordance with law. Costs hitherto incurred will abide the result.

(1) I. L. R. 20 Mad., 496.

(3) I. L. R., 25 Calc., 97.

(2) I. L. R. 22 Mad., 12.

(4) I. L. R., 17 Bom., 428.

(5) I. L. R., 19 Bom., 551.