

APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra.

1926
March, 3.

ANANDPAL SINGH (PLAINTIFF-APPELLANT) v. MAHABAL SINGH (DEFENDANT-RESPONDENT).*

Civil Procedure Code, order XLI, rule 31, compliance of—Judgments in first appeal—Courts of first appeal, duties of—Findings of fact when binding on a High Court.

Held, that a lower appellate court must always bear in mind that the provisions laid down in order XLI, rule 31 of the Code of Civil Procedure, regarding the judgment in appeal, must be strictly followed.

A High Court, before it can consider a finding of fact to be conclusive and binding upon it in second appeal, must be satisfied that such a finding of fact was arrived at by the lower appellate court upon a due consideration of all the evidence, oral and documentary, produced by the parties in the case. The duty of a lower appellate court in this matter is an important one and must be discharged with a full sense of responsibility. The litigant public must be satisfied that their case has been properly dealt with and that they have received justice at the hands of the court. [8 O. C., 290; (1894) 2 S. C., 268; 3 O. L. J., 620; 21 O. C., 309 and 2 Pat., L. J., 8, relied upon.]

Mr. *Raj Narain Shukla*, for the appellant.

Mr. *Girja Shankar*, for the respondent.

MISRA, J. :—This is a plaintiff's appeal arising out of a suit for possession of certain grove plots with damages. The plaintiff alleged that he was a transferee of those plots and remained in possession till July, 1918, but the defendant wrongfully dispossessed him in August, 1918, and hence the suit for possession. The defendant denied the plaintiff's possession within limitation and contended that he (the defendant) had been in possession of the plots in suit for more than twelve years.

* Second Civil Appeal No. 447 of 1924, against the decree of Ganga Shankar, Subordinate Judge of Unao, dated the 24th of July, 1924, upholding the decree of Pratap Shankar, Munsif of Purwa, at Unao, dated the 30th of January, 1924.

The trial court, the Munsif of Purwa, district Unao, held that the plaintiff's possession within limitation had not been proved and that the defendant had been in possession of the property adversely to the plaintiff, for more than twelve years and dismissed the suit.

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The plaintiff appealed against the said decision and the appeal was heard by the learned Subordinate Judge of Unao, who observed as below :—

“ I have gone through the record and heard the arguments of the learned Pleaders but I find no reason to differ from the findings of the lower court. Oral and documentary evidence both on the record prove beyond all doubt that the plaintiff has not been in possession of the property in suit within limitation and that the defendant No. 1 has been in possession of the same adversely to the plaintiff. The evidence has been well discussed by the lower court and I need not repeat the same. It is all a question of fact of a very simple nature and the lower court, which had the advantage of watching the demeanour of the witnesses examined in the case, was the best judge to give this finding of fact with which, on perusal of the evidence, I entirely agree.”

Being of that opinion the learned Subordinate Judge dismissed the appeal of the plaintiff.

The plaintiff has now come up to this Court in second appeal and the main point argued by the learned Pleader for the appellant is that the judgment of the lower appellate court is no judgment in law, and that the case must be sent down to that court for writing a proper judgment.

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I have heard the parties at great length and have come to the conclusion that the contention raised on behalf of the appellant must prevail. Order XLI, rule 31 of the Code of Civil Procedure (Act V of 1908) (section 574 of the Code of Civil Procedure, 1882), lays down that the judgment of the appellate court shall be in writing and shall state (a) the point for determination; (b) the decision thereon; (c), the reasons for the decision and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. It has been held in various cases decided by the late Court of the Judicial Commissioner of Oudh and by other High Courts in this country that the provisions of order XLI, rule 31, must be strictly followed by the appellate courts. In *Suraj Singh v. Kunwar Durga Pershad* (1), a Bench of the late Court of the Judicial Commissioner of Oudh, decided in the year 1905 that an appellate court must follow the provisions of section 574 of the Code of Civil Procedure, in disposing of the appeal and that a substantial compliance with the provisions of the section was imperative. It was held in that case that the judgment should be self-contained and that it was not enough for the lower appellate court merely to say that it agreed or disagreed with the lower court. A previous case reported in Select Case No. 268, was considered and overruled. The ruling in the above Oudh case has been constantly followed in the province of Oudh. In *Jagannath v. Bindeshwari Prasad* (2), Mr. Justice LINDSAY held that in writing a judgment the court should not quote the judgment of some other court and refer to the opinion of that other court as its own, but ought to give its own reasons for its finding and to set out in its judgment its appreciation of the

(1) 8 O.C., p. 290.

(2) 3 O.L.J., 620.

evidence which it was bound to consider. The learned Judge expressed in strong language his disapproval of such a method of writing a judgment. In *Baij Nath v. Kayastha Pathshala* (1) Pandit *Kanhaiya LAL*, A. J. C., took the same view. In *Mubarak Husain v. Syed Shah Hamid Husain* (2) *MULLICK and ATKINSON*, JJ. of the Patna High Court also took the same view and laid down that before they could hold certain findings of fact to be binding on them in second appeal they must be satisfied that the lower appellate court had applied its mind to the evidence before it and that a mere general statement that on a perusal of all the evidence in the case it was satisfied as to certain conclusion, was not a sufficient judgment within the meaning of the law.

It, therefore, appears to me to be clear that a lower appellate court must always bear in mind that the provisions laid down in the code regarding the judgment in appeal must be strictly followed. A High Court, before it can consider a finding of fact to be conclusive and binding upon it in second appeal, must be satisfied that such a finding of fact was arrived at by the lower appellate court upon a due consideration of all the evidence, oral and documentary, produced by the parties in the case. The duty of a lower appellate court in this matter is an important one and must be discharged with a full sense of responsibility. The litigant public must be satisfied that their cases have been properly dealt with and that they have received justice at the hands of the court.

In my opinion, therefore, the learned Subordinate Judge who heard the appeal has not written a judgment which may enable this Court to consider that he has gone through the whole of the oral and documentary evidence and that he has appreciated it from his

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(1) 21 O.C., 309.

(2) 2 Pat. L. J., 8.

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own point of view. A mere general statement in his judgment that oral and documentary evidence prove beyond all doubt that the plaintiff has not been in possession of the property in suit within limitation and that the defendant has been in possession of the same adversely to the plaintiff, is, in my opinion, not a decision of the case. Such a judgment can be written in every case and is not what is contemplated by the rule of law laid down in order XLI, rule 31.

I, therefore, remanded the case for fresh findings on the two main issues involved in the case, namely, the plaintiff's possession within limitation, and the adverse possession of the defendant. The learned Subordinate Judge should fix a date, hear the parties again and send his findings after due consideration of the evidence on the record within two months from this date. Parties will be allowed ten days' time from the date when findings are notified to them for filing objections.

Case remanded.

APPELLATE CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge, and Mr. Justice Wazir Hasan.

1926
April, 19.

SUMER SINGH (PLAINTIFF-APPELLANT) v. AMAR SINGH
AND OTHERS (DEFENDANTS-RESPONDENTS).*

Pre-emption—Minor, suit on behalf of—Suit by next friend to acquire property for himself and not for benefit of minor, maintainability of.

Where in a suit for pre-emption filed by a next friend on behalf of a minor it was found that the suit was instituted by the next friend in his own interest to acquire the property for himself and was not for the benefit of the minor, held, that the suit was not maintainable and was liable to be dismissed on that ground. [(1835) Simons, 234; Revised reports,

* First Civil Appeal No. 18 of 1925, against the decree, dated the 21st of October, 1924, of Khurshed Husain, Subordinate Judge of Sitapur, dismissing the plaintiff's suit.