

## APPEAL FROM ORIGINAL CIVIL.

*Before Mr. Justice Scott-Smith and Mr. Justice LeRoussignol.*

GELA RAM AND OTHERS (DEFENDANTS);—  
*Appellants*  
*versus*

GANGA RAM, ETC., (PLAINTIFFS) AND OTHERS  
(DEFENDANTS)—*Respondents.*

Civil Appeal No. 3067 of 1915.

*Punjab Land Revenue Act, XVII of 1887, section 117 (2) (b)—decree by Revenue Officer trying case as a Civil Court—what it must contain—appeal where there is no legal decree—Civil Procedure Code, Act V of 1908, section 33, order 20 rules 1-6 and order 41 rule 1.*

*Held*, that a Revenue Officer who tries a suit under the procedure laid down in section 117 (2) (b) of the Land Revenue Act must record a judgment and a decree containing the particulars required by the Code of Civil Procedure to be specified therein, and that a decree sheet signed by the Court, in which only the amount of costs incurred by each party is specified but which otherwise has been left blank, is no decree at all, and that a paragraph in the judgment not drawn up in the form of a decree and not embodied in a separate form is not a decree, and therefore no appeal is competent.

*Dulhin Golab Koer v. Radha Dulari Koer*, per Pigot, J. (1), approved.

*First appeal from the decree of Hafiz Ghulam Rasul Khan, Munsif, 1st Class, Jhang, dated the 29th July 1915.*

MOTI SAGAR, for Appellants.

SHEO NARAIN, for Respondents.

The judgment of the Court was delivered by—

SCOTT-SMITH, J.—This is a first appeal from the order of a Revenue Officer who tried the suit under the procedure laid down in section 117 (2) (b) of the Punjab Land Revenue Act, XVII of 1887, which lays down that the procedure of the Revenue Officer shall be that applicable to the trial of an original suit by a Civil Court, and that he shall record a judgment and decree containing the particulars required by the Code of Civil Procedure to be specified therein.

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Pandit Sheo Narain on behalf of the plaintiffs-respondents raises a preliminary objection that no decree has been drawn up by the Lower Court in the form and manner prescribed by the Code of Civil Procedure. On the record there is a decree-sheet signed by the Court in which the amount of costs incurred by each party is specified, but otherwise the form has been left blank and does not contain the particulars specified in Order XX, rule 6, Civil Procedure Code.

Mr. Moti Sagar on behalf of the appellants urges that the concluding paragraph of the judgment is a decree and appealable as such. It is, however, quite clear from the Code of Civil Procedure that in the case of a civil suit it is contemplated that the judgment and decree should be quite distinct. Section 33 of the Code lays down that the Court, after a case has been heard, shall pronounce judgment and on such judgment the decree shall follow. Order XX, rules 1 to 5, Civil Procedure Code, deal with judgments in original civil suits and rule 6 gives the particulars which are to be entered in the decree. Specified forms are prescribed for decrees in different classes of suits by Appendix D of the first schedule to the Code. It is therefore quite clear that in the case of an original civil suit the decree must be quite distinct from the judgment. Order XLI rule 1 of the Code lays down that a memorandum of appeal shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded. Again section 117 (2) (b) of the Punjab Land Revenue Act lays down that the Revenue Officer shall record a judgment and decree containing the particulars required by the Code of Civil Procedure to be specified therein. In *Dulhin Golab Koer v. Radha Dulari Koer* (1), Pigot, J., said "I must add that had the point been raised, I should have felt a difficulty in holding that a paragraph in the judgment, not drawn up in the form of a decree, and not embodied in a separate form, is, within the terms of the Code of Civil Procedure, a decree at all."

We agree with this view and have no hesitation in holding that there is no decree in the present case

within the meaning of the portions of the Civil Procedure Code above referred to, and therefore no appeal lies.

We therefore dismiss the appeal, but as we consider that the plaintiffs were to blame for not moving the Court to draw up a formal decree, we leave the parties to bear their own costs in this Court. Pandit Sheo Narain says that he will advise his clients to move the Lower Court now to draw up a proper decree.

*Appeal dismissed.*

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### APPEAL FROM ORIGINAL CIVIL.

*Before Mr. Justice Broadway and Mr. Justice Bevan-Petman.*

SARDARI LAL, ETC. (DEFENDANTS)—*Appellants,*

*versus*

RAM LAL, ETC. (PLAINTIFFS)—*Respondents.*

Civil Appeal No. 2523 of 1915.

*Abatement of appeal in toto where one of the respondents in whose favour a decree was passed jointly with others had died and her legal representatives had not been brought on the record—Civil Procedure Code, Act V of 1908, order 22 rule 4.*

In the present case the three plaintiffs claimed to be the heirs and in possession of the property of one D. M. who was the original mortgagee. The plaintiffs claimed jointly a sum of Rs. 7,284 as due under the mortgage. The defendant admitted that plaintiffs were the heirs of the mortgagor. The Lower Court passed a joint decree in favour of the plaintiffs for Rs. 6,670. Against this decree the defendant preferred this appeal on 1st October 1915. It was admitted that *Mussamat H.*, one of the three plaintiff-respondents, died in 1915 and that appellant knew of it but took no steps to bring her legal representatives, *i.e.*, her daughters, on the record.

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*v.*

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Oct. 29.