

finding by the trial Court on No. 8 but no claim that such a custom has been proved was made in the lengthy argument addressed to us in support of the lower Court's decree. The signature by several members of the family to a statement of custom appended to a genealogical tree, to which Mr. Justice Zafar Ali has referred could have been at the very most an attempt to create customs and in the circumstances in which the signatures were obtained was not even this. There is no evidence whatsoever of the *existence* of the particular custom propounded in the 8th issue.

As a result, I concur in the order accepting the appeal and decreeing the suit with costs throughout.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Fforde.

NUR DIN, Appellant

versus

THE SECRETARY OF STATE, Respondent.

Civil Appeal No. 2797 of 1922.

Civil Procedure Code, Act V of 1908, Order XLI rule 1—Appeal from award under Land Acquisition Act, accompanied only by a copy of District Judge's note referring to his award in another case—Absence of copy of decree (Award)—Fatal—Land Acquisition Act, I of 1894, section 26.

In dismissing 23 objections to an award by the Land Acquisition Collector, the District Judge made one award and on each of the remaining references (in one of which an appeal was presented to the High Court) he noted "Application dismissed. See my judgment in case No. 16 of 1920, "decided to-day." The appeal to the High Court was accompanied only by a copy of this Note,

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Held, that under section 26 of the Land Acquisition Act, it was only the award attached to "case No. 16 of 1920" which could be deemed to be the decree appealed from and the attaching to the memorandum of appeal of a copy merely of the District Judge's note referring to that award was not a sufficient compliance with Order XLI, rule 1 of the Civil Procedure Code.

Held further, that it is within the powers of the appellate Court to dispense with a copy of the judgment, but not with a copy of the decree, and that such a defect was fatal to the appeal.

Mubarak Ali Shah v. Secretary of State (1), followed, also *Uttam Chand v. Secretary of State* (Civil Appeal No. 2096 of 1923) and *Mushtaq Ahmad v. Secretary of State* (Civil Appeal No. 113 of 1923) (unpublished).

First appeal from the order of Lt.-Col. B. O. Roe, District Judge, Lahore, dated the 11th August 1922, dismissing the application for enhancement of compensation.

D. C. RALLI and GOPAL CHAND, for Appellant.

GOVERNMENT ADVOCATE, and MEHR CHAND MAHAJAN, for Respondent.

JUDGMENT.

BROADWAY J.

BROADWAY J.—The learned Government Advocate has raised a preliminary objection to the effect that as the memorandum of appeal is not accompanied by a copy of the award the provisions of rule 1 of Order XLI of the Civil Procedure Code have not been complied with and the appeal must fail.

Briefly, the facts are these. Certain land was acquired by the Government and the Land Acquisition Collector made an award. To this award there were 23 separate objections, each of which was referred to the District Judge in due course. By the

consent of all concerned the evidence recorded in one reference was to be considered as evidence in all and the learned District Judge made his award.

On each of the separate references he noted as follows :—

“Application dismissed. See my judgment in Land Acquisition case No. 16 of 1920, decided to-day.”

The present appeal is in one of the references where the above appears and a copy of this note alone was filed with the memorandum of appeal.

Order XLI, rule 1, requires that “Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court. The memorandum *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.” Section 26 of the Land Acquisition Act provides that the award of a District Judge shall be “deemed to be a decree”, and the “reasons” for the award to be a “judgment” within the meaning of the Civil Procedure Code. It is clear that the learned District Judge made one award dealing with all the references. This award was attached to the record of Land Acquisition Case No. 16 of 1920 and a reference to it made, as set out above, in each of the others.

It is only this *award* that can be deemed to be the decree and a copy of that was not (and has not yet been) attached to the memorandum of appeal. As was held in *Mubarak Ali Shah v. Secretary of State* (1) such a defect is fatal to the appeal. See also *Uttam Chand etc. v. Secretary of State* (C. A. 2096 of 1923),

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decided on 9-3-1926 and *Mushtaq Ahmad v. Secretary of State*, C. A. No. 113 of 1923, decided on 30-3-25. It was urged that by the use of the words "Application dismissed" the District Judge's note became an "award". I am afraid I am unable to accept this contention as it seems to me clear that the only award was the one to which reference was made in this note. All that the learned District Judge intended to, and did, do was to draw attention to the fact that by an award to be found on the record of Land Acquisition Case No. 16 of 1920 the objection had been disposed of, *i.e.*, had been dismissed. It was this award alone that could be deemed to be the decree and a copy of it should have accompanied the memorandum of appeal.

It is within the powers of the appellate Court to dispense with a copy of the judgment, but not with a copy of the decree. This appeal therefore fails and is dismissed.

FFORDE J.

FFORDE J.—I agree.

N. F. E.

Appeal dismissed.