

**APPELLATE CIVIL.**

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*Before Mr. Justice Fforde and Mr. Justice Addison.*

IMAM-UD-DIN AND ANOTHER (DEFENDANTS)

Appellants

*versus*

SRI RAM-PERBHU DIAL (PLAINTIFF)

Respondent.

**Civil Appeal No. 2996 of 1922.**

*Civil Procedure Code, Act V of 1908, Order XIII, rules 4, 5—Documents—admission of, in evidence—Court's endorsement—duty of Counsel.*

*Held*, that it is the duty of the counsel engaged in a case to see that the documentary evidence which he relies upon is properly tendered in Court and proved, and he should also see that when admitted in evidence the Judge places upon it the endorsement required by Order XIII, rules 4 and 5 of the Code of Civil Procedure.

*First appeal from the decree of Lala Achhru Ram, Senior Subordinate Judge, Ferozepore, dated the 26th August 1922.*

KISHAN DIAL and BISHAN NARAIN, for Appellants.

FAKIR CHAND and JAGAN NATH, AGGARWAL, for Repondent.

The judgment of the Court was delivered by—

FFORDE J.—After this appeal had been opened by counsel for the appellants it became apparent that none of the documents upon the strength of which the plaintiff's claim has been decreed had been legally tendered in evidence. Not a single document bears the endorsement which is required by Order XIII, rules 4 and 5 of the Civil Procedure Code. Some of the documents bear an endorsement to the effect that they were admitted in evidence, but the date shows that

they were so admitted before the case proceeded to trial. Other documents bear an exhibit number and the initials of the Judge, but none of the other requirements of Order XIII, rule 4, have been complied with. Other documents bear exhibit numbers only, and a fourth class bear neither an exhibit number nor any endorsement of any kind whatsoever. The plaintiff's case depends almost entirely upon documentary evidence, but in no instance does he appear to have even attempted to produce the documents in question in Court at the proper time, and the Judge who tried the case has omitted to comply in any way whatsoever, with the requirements of law, laid down in Order XIII, rules 4 and 5. It is true that the appellants did not raise this objection in their grounds of appeal; but the difficulty that we are confronted with is a substantial one, inasmuch as it is impossible for us to say what documents the trial Court has admitted in evidence, and what documents or portions of documents have been taken into consideration by the trial Judge in arriving at his conclusions. In almost every instance in which we have been asked to examine a document a controversy has arisen at the Bar as to whether or not that particular piece of evidence was ever produced or considered. Under these circumstances it is obvious that this appeal could not possibly be decided upon the material which is before us. The Judge, who wrote the judgment in this case, has not attempted to weigh the evidence in a manner which will enable us to see how he has come to his conclusions. He has set out the names of a number of witnesses and stated the effect of their testimony without attempting to show what their evidence is, or what is the documentary matter which is supposed to have supported the

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statements which they made in Court. Counsel are not prepared to agree that we should deal with the whole of the documents before us as though such documents had been properly admitted in evidence: and, indeed, it would be hard for any such agreement to be arrived at in view of the extremely confused manner in which this material has been placed upon the record.

Under these circumstances we most reluctantly feel coerced to send this case back for a proper trial and for a proper judgment. It is unfortunate that a case, which was instituted so far back as the 21st of August, 1920, should have to be remanded for a fresh trial simply because the trial Judge has failed to comply with the most material requirements of the Civil Procedure Code.

For the above reasons we must accept this appeal and under our inherent powers remand the case to the trial Court for a proper trial. In doing so we desire to draw the trial Judge's attention to the necessity for strictly complying with the provisions of Order XIII, rules 4 and 5 of the Civil Procedure Code, in dealing with the documentary evidence. We might also point out that it is the duty of the counsel engaged in a case to see that the documentary evidence which he relies upon is properly tendered in Court and proved, and he should also see that, when admitted in evidence, the Judge places upon it the endorsement required by Order XIII, rules 4 and 5 of the Civil Procedure Code. Costs in the trial Court up to date and in this Court shall abide the event.

A. N. C.

*Appeal accepted.  
Case remanded.*