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CANDY, J.—Admittedly the decree against the defendant personally was bad and must be reversed.

It is further contended that under the bond the mortgagee had no right to ask that in default the land should be sold. But this is not so. It was not merely a usufructuary mortgage, which would confer no right to have the property sold. There was a distinct covenant to pay the principal, and the land was security for the same; so we cannot infer that the intention of the parties was that the property should not be sold. It was a "simple mortgage usufructuary," carrying the right to have the property sold in default of payment of the principal sum of Rs. 500.

Plaintiff's pleader also asks that the property may be sold in default of payment of interest. That claim is bad. For the plaintiff was entitled to possession in lieu of interest, and, if he never took the trouble to obtain possession, he lost his right to interest. The land was security for the principal. The decree must be amended, and judgment passed for Rs. 500, to be paid within three months; in default the land to be sold. Costs in proportion throughout.

Decree amended.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Tehang.

BHAGVAN, (ORIGINAL PLAINTIFF), APPELLANT, v. KESUR KUPERJI,
(ORIGINAL DEFENDANT), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), Sec. 574—Judgment of Appellate Court—Reasons for the decision to be stated.

Section 574 of the Code of Civil Procedure (Act XIV of 1882) is imperative and under it the Appellate Court is bound to state the reasons for its decision.

A Court of appeal framed certain issues under section 566 of the Code of Civil Procedure (Act XIV of 1882), and remanded them for findings by the original Court. On the return of those findings, as neither party filed any objections, the

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Appellate Court accepted these findings, without giving any reasons for so doing, or even stating in its judgment whether it concurred in them or not, and confirmed the decree of the original Court.

Held, that the judgment of the Appellate Court was not a judgment according to law.

SECOND appeal from the decision of T. Hamilton, Acting District Judge of Surat, in Appeal No. 22 of 1889 of the District File.

The plaintiffs sued to recover one-fifth share of a certain field, alleging that they had purchased this share of the field from one Kalyán Jogi, who had inherited it from Bhula Lálbhái.

The Subordinate Judge rejected the plaintiff's claim.

On appeal the District Judge raised the following issues:—

(1) Had Bhula Lálbhái one-fifth share in the field in question?

(2) Did Kalyán Jogi obtain this one-fifth share from Bhula by inheritance or gift?

The District Judge, being of opinion that the plaintiffs should have been allowed to examine certain witnesses they had already named in their *darkhást*, remanded the case, in order that, after examining those witnesses, the lower Court might record findings on the above issues.

The Subordinate Judge recorded his findings on both the issues in the negative.

On the return of these findings the hearing of the appeal was resumed.

No objections to the findings having been filed on either side, the District Judge confirmed the lower Court's decree, without, however, giving any reasons for his decision.

The plaintiffs thereupon preferred a second appeal to the High Court.

Govardhanrám M. Tripathi for appellants:—The District Judge's judgment is not a judgment according to law. He does not give any reasons for the decision. Under section 574 of the Code of Civil Procedure he is bound to state the reasons for his

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decision—*Umed Ali v. Salima Bibi*⁽¹⁾; *Mumtaz Begam v. Fateh Husain*⁽²⁾.

Motilal M. Munshi for respondent :—Neither party took any objections to the findings of the Court of first instance. The lower Appellate Court was, therefore, right in accepting those findings and confirming the decree.

JARDINE, J. :—The District Judge under section 566 of the Code of Civil Procedure framed issues of fact, and remanded them for findings by the original Court. On return of the findings, the District Judge overruled a contention of the present appellants that the Subordinate Judge had wrongly refused to take the evidence of certain witnesses. It does not appear, however, that any memorandum of objections was filed under section 567, or that any objection was taken orally at the hearing to the findings as not justified by the evidence on record. The District Judge silently accepted these findings, without giving any reasons for so doing, or even stating in his judgment whether he concurred in them or not.

The only point argued before us in support of the appeal is that section 574 of the Code of Civil Procedure is imperative, and required the District Judge to give his own decision, and the reasons for it, upon the issues remanded to the original Court under section 566. In support of this contention, *Umed Ali v. Salima Bibi*⁽¹⁾ and *Mumtaz Begam v. Fateh Husain*⁽²⁾ are cited. The point does not appear to have been decided by this High Court. But we are of opinion that these cases interpret the Code correctly. Section 567 requires the lower Court of appeal to proceed to determine the appeal. Section 571 requires it to pronounce judgment, and section 574 is imperative as to what the judgment is to contain.

We, therefore, set aside the decree of the District Court and remand the appeal to that Court, in order that it may record judgment as required by the law, and pass a decree thereupon. Under the circumstances, we direct that the parties pay their own costs in this Court.

Decree reversed and case remanded.