1871

TATUR KHAWAS v. JAGANNATH PRASAD.

Now the Judge in this way appears to adopt wholesale the decision of the Court below, together with the reasons on which the decision was based. That is not the duty of the Appellate Court. Section 359, Act VIII of 1859, states that the judgment of the Appellate Court shall contain the point or points for determination, the decision thereupon, and the reasons for decision. Now, in some cases, where the facts are extremely simple, and the point for determination is unmistakable, we are not in the habit of requiring an extremely rigorous compliance with the terms of that section; but where the facts of the case are at all complicated the necessity for compliance with them is very obvious as it is in the present case, for it seems to me that the Judge's language indicates an imperfect conception of what the case was which he had to decide. He says:—"It is very clear that the plaintiff (respondent) "purchased the property in good faith; in possession of which therefore he "should be retained." If that was so, the title which the vendor could make would be immaterial, so long as the purchaser bought in good faith. He again says:—"I place no reliance on the transaction between the appellant and the "defendant No. 2, which I look upon as wholly illegal and inadmissible." Now it was not alleged that there was anything illegal or inadmissible, but that the transaction was colorable, fraudulent, and collusive. That was the issue which the Court had to try, and it was an issue, the proof of which lay upon the plaintiff, more especially as the defendant rested upon a judgment which he had obtained upon that transaction from a Court of competent jurisdiction. He again says:—"It is proved that the property had been already 'purchased by the plaintiff (respondent), therefore a second purchase by the 'appellant was impossible." But it was not a question of purchases, but the defendant set up a previous lien, and a decree obtained upon that lien.

The case will be replaced upon the file of the lower Appellate Court. That Court will carry out strictly the terms of section 359, stating the points for decision in the case, and giving his decision upon those points, consecutively.

Before Mr. Justice Kemp and Mr. Justice Glover.

MAHARANI ADHIRANI NARAN KUMARI RAJRANI OF BURDWAN (INTERVENOR) *v.* PARIKHIT RAWTRA (PLAINTIFF) AND ANOTHER (DEFENDANT).* 1871 *April* 20.

Appeal—Judge—Collector—Act XXIII of 1861, s. 35.

When an appeal has been preferred by the plaintiff to the Judge which ought to have been preferred to the Collector, the Court made an order giving the plaintiff thirty days within which to prefer his appeal to the Collector instead.

THIS was a a suit for recovery of Rs. 11-13-11 for rent and interest due from the defendant for the year 1276 (1869).

* Special Appeals, Nos. 2580, 2581, 2582 and 2583 of 1870, from the decrees of the Judge of Cuttack, dated the 8th September 1870, reversing the decree of the Deputy Collector of that district, dated the 16th June 1870.

1871

MAHARANI ADHIRANI NARAN KUMARI, RAJRANI OF BURDWAN v. PARIKHIT RAWTRA.

The defendant (ryot) stated in his written statement that he had paid the balance of his rent for 1276 (1869) to Maharani Adhirani Naran Kumari, having previously made a part payment of Rs. 2-12 to the plaintiff's gomasta.

Maharani Adhirani Naran Kumari intervened, under section 77, Act X of 1859, and claimed the land for which rent was sought as *khalisa* (lands held directly from Government) appertaining to her zémindari Killakujung.

The Deputy Collector held that the intervenor was in the enjoyment of the rent up to the commencement of the suit, and accordingly dismissed the suit.

The plaintiff appealed to the Judge, who passed a decree in favor of the plaintiff.

The intervenor appealed to the High Court, on the ground that the suit being below Rs. 100, the appeal lay to the Collector, and that the Judge had no jurisdiction to entertain the appeal.

Baboo *Chándra Madhab Ghose* for the appellant.

Baboos *Annada Prasad Banerjee, Nilmadhub Sen, Ramesh Chandra Mitter, Mohendra Lal Mitter, and Kalidas Bhunj* for the respondents.

The judgment of the Court was delivered by

GLOVER, J.—These were suits for arrears of rent of the year 1276 (1869). There is no occasion for us to go into particulars, inasmuch as all four cases are for sums under Rs. 100, and the decision in each being under section 77 of Act X of 1859 as to who had been in *bona fide* receipt and enjoyment of the rent previous to the date of the institution of the suit, the appeal lay not to the Judge, but to the Collector. It has been contended that the Deputy Collector's decision is capable of being construed as a *quasi* decision on title, but after reading the judgment we are clear that the only decision the Deputy Collector came to was on the question as to whether or not the plaintiff, or the intervenor previous to the institution of the suit had been in receipt and enjoyment of the rents. The order of the Judge passed in appeal must therefore be set aside as being made without jurisdiction. The question then arises as to whether this Court should exercise the power it possesses under section 35, Act XXIII of 1861, and make an order sending the case to the only Court which could hear it on appeal. It has been argued by the pleader for the special respondent that the wording of the judgment of the lower Court was, to say the least, ambiguous, and sufficient to lead them into the error that a decision had been come to on a question of title and to induce them to prefer their appeal to the Judge on that supposition. He asks the Court, therefore, to send the case of its own motion for trial on appeal to the Collector, inasmuch as the special appellant could not now appeal himself, being barred by lapse of time. Our attention With reference to this point has been called to two decisions of this Court, one in the case

1871

MAHARANI ADHIRANI NARAN KUMARI, RAJRANI OF BURDWAN v. PARIKHIT RAWTRA.

of *Kristo Inder Roy Chowdhry* v. *Roopince Bebee* (1), in which case the learned Judges finding that the appeal had been preferred *bonâ fide* under a mistake to the wrong Court, ordered the case to be transferred to the right Court—that is to say, to the Court of the Collector—for disposal. In the other case—*Erskine* v. *Gholam Khezur* (2)—the learned Judges did not go quite so far, but they gave the parties twenty days from the date of the High Court's judgment to prefer an appeal in the Court having jurisdiction.

We think that under the circumstances of this case the plaintiffs are entitled to some consideration, and following the precedent of the last of the two cases above mentioned, we allow the plaintiffs thirty days from the date of this judgment to prefer an appeal, if they are advised so to do, in the Court of the Collector. With reference to costs we think that each party should pay his own.

Before Mr. Justice Bayley and Mr. Justice Mitter.

MAHARAM SHEIKH (DEFENDANT) *v.* NAKOWRI DÁS MAHALDAR (PLAINTIFF).*

1870 *Nov.* 21.

Special Appeal—Remand—Conclusions not Warranted by Law or Reason—Omission to try Material Issue.

Special appeal allowed and case remanded for re-trial where the lower Appellate Court had drawn conclusions from the evidence not warranted by law or reason and had failed to try a material issue in the case.

THE plaintiff stated that he had held possession of the lands in dispute in this suit as a dar-jotedar, and that the land was situated in the midst of a bazar, on which there had been a shop. He sued to recover possession of this land from the defendant, who, he said, had forcibly dispossessed him of it. The defendant stated that neither the plaintiff nor his lessors, the jotaders, had ever been in possession of the disputed lands, and that therefore the plaintiff's suit was barred by the law of limitation; that the plaintiff never had a shop on his land, but that it had always been used by vegetable-sellers, who paid rent for its use to the zemindar; that he (the defendant) had now obtained a lease of it from the zemindar, who had put him into quiet possession; and that the allegation of forcible ouster was false.

The first Court, on the evidence, found the plaintiff's allegation both as to his and his lessor's title and possession to be wholly false. It also found that the defendant had proved his patta from the zemindar. The plaintiff's suit was therefore dismissed. The plaintiff appealed, and the Subordinate Judge,

*Special Appeal, No. 1354 of 1870, from a decree of the Subordinate Judge of Rajshahye, dated the 26th April 1870, reversing a decree of the Moonsiff of that district, dated the 12th August 1869.

(1) 6 W. R., Act X Rul., 56 (2) 9 W. R., 529.