Before Mr. Justice L. S. Jackson and Mr. Justice Glover.

1871
Jany. 5.

TATUR KHAWAS AND OTHERS (DEFENDANTS) *v.* JAGANNATH PRASAD AND OTHERS (PLAINTIFFS.) *

Act VIII of 1859, s. 359—Judgment of Appellate Court not properly recorded.

The Judge of the lower appellate Court not having recorded his judgment, as, required by section 359 of Act VIII of 1859, the case was sent back to the lower Court for the Judge to state the points for decision, and to give his decision upon those points consecutively (1).

Baboo *Bhawani Charan Dutt* for the appellants.

Mr. *Gregory* for the res pondents.

THE facts are fully stated in the judgment of the Court, which was delivered by

JACKSON, J.—It appears to me that the judgment of the lower Appellate Court in this case must be reversed, and that there must be a new trial.

The plaintiff brought his suit to set aside a judgment obtained by one of the defendants, impugning it and the mortgage transaction on which it was based, on the ground of fraud. The plaintiff also desired to have his right to 10 bigas of land declared, and his possession thereof confirmed, notwithstanding the decree and sale which had taken place under the circumstances first stated

The Subordinate Judge who tried the suit, considered the plaintiff to have made out his case, and gave him judgment. The case coming before the Additional Judge of Tirhoot, on appeal, the Judge sets out at some lenth what he understands to be the facts of the case, interspersed here and there with a few words of comment. Having given what he calls a brief outline of the case, he gives the following judgement:—" I am of opinion, after hearing the " arguments on both sides, that the Subordinate Judge has arrived at a just " decision on the subject with which I see no reason whatever to interfere. It " is very clear that the plaintiff (respondent) purchased the property in good " faith, in possession of which therefore he should be retained. I place no re- " liance on the transaction between the appellant and the defendant No. 2, which " I look upon as wholly illegal and in admissible. It is proved that the pro- " perty had already been purchased by the plaintiff (respondent), therefore a " second purchase by the appellant was impossible. The orders of the lower " Court are confirmed, and the appeal dismissed with costs."

* Special Appeals, Nos. 1408, 1409, and 1410 of 1870, from the decrees of the Additional Judge of Tirhoot, dated the 23rd April 1870, affirming the decrees of the Subordinate Judge of that district, dated the 14th August 1869.

(1) See *Hem Chunder* v. *Syed Ahmed Reza*, Marsh., 332.

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 350, 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.