
(1898) 07 CAL CK 0003

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 844 of 1897

Haimabati Dasi

APPELLANT

Vs

Govinda Chandra alias Sham Ghosh

RESPONDENT

Date of Decision : 15-07-1898

Acts Referred:

Citation : (1898) 07 CAL CK 0003

Judgement

Banerjee, J.—In this appeal which arises out of a suit brought by the Plaintiff-Appellant for setting aside a pattah, the only question for consideration is, whether the judgment of the lower Appellate Court is a proper judgment, according to law. Sec. 574 of the CPC requires that the judgment of the Appellate Court shall state the points for determination, the decision thereupon the reasons for the decision, and when the decree appealed against is reversed, or varied, the relief to which the Appellant is entitled.

2. The judgment of the lower Appellate Court in this case, which, in the first place, is not quite intelligible, no doubt states the point for determination. It says, "Plaintiff is the Appellant, and her contention is, that upon the facts she was entitled to have the pattah cancelled and delivered up." That states the point for determination, in substance, though expressed in very general terms.

3. Then it may be said to contain the decision thereupon by implication, when the learned Subordinate Judge in the last paragraph of his judgment says : "That being so, I must reject the appeal with costs." But the reasons for the decision which form a very material part of the judgment, are nowhere to be found in this judgment. There is nothing said as to why the Plaintiff is not entitled, upon the facts, to have the pattah cancelled.

4. It is true that a certain contention of the Appellant which is introduced in the judgment by the learned Subordinate Judge with the words, "I am further informed," is disposed of with the reasons for the decision thereon; but the reasons do not relate to the rest of the case; and so far as they relate to the point under consideration in the second paragraph of the judgment, they are in

our opinion, not quite sound. The learned Subordinate Judge says the point which is noticed in the second paragraph " was not taken in the lower Court and is not in the memorandum of appeal, and as it is not a pure point of law," it should not be entertained for the first time in appeal But the point that the pattah was not genuine was taken in the first Court and was, in fact, the basis of the suit; and that being so, any ground in support of the contention of the Plaintiff that the pottah was not genuine, it was open to him to take.

5. It would not be enough to say that the judgment, being one of affirmance, need not have gone very fully into the reasons. In the first place, the judgment of the lower Appellate Court in this case does not even so much as state that the learned Subordinate Judge accepts, as correct, the reasons given by the first Court; and, in the second place, as has been observed in the case of *Radha Gobind Kur v. Ramkishore Dutt* 8 W.R. 340, it is very desirable that the Appellate Court should state with as much fulness as the nature of the case may require the reasons for its affirming the decision of the first Court. The judgment and decree of the lower Appellate Court, therefore, must be set aside and the case sent back to that Court in order that it may be disposed of according to law. The costs of this appeal will abide the result.