

(1959) 12 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 77D of 1954

Jawhar Lal Bhargava and Others

APPELLANT

Vs

Jagathdhish Bhargava and Others

RESPONDENT

Date of Decision : 15-12-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Punjab Land Revenue Act, 1887 — Section 117(2)

Citation : AIR 1960 P&H 247

Hon'ble Judges : G.L. Chopra, J;D. Falshaw, J

Bench : Division Bench

Judgement

Falshaw, J.

(1) This is an appeal by the plaintiff's against the dismissal of the suit for specific performance of a contract of sale. The preliminary objection that has been raised is that there is no proper appeal since along with the Memorandum of Appeal only a copy of the judgment of the lower Court has been filed and no copy of the decree.

(2) It appears from the record of the lower Court that in fact no decree was ever drawn up in accordance with the provisions of O. XX, R. 6, Civil Procedure Code. All that seems to have been done in this direction at all was that a table of the costs of the parties in the suit was drawn up on the back of the last page of the judgment of the lower Court, and the copy of the judgment which has been filed contained this table on the same sheet as the last part of the judgment.

(3) When the appeal was originally filed on the 29-7-1954 it was returned by the Assistant Registrar on three technical grounds the first of which was that a copy of the decree sheet had not been filed. The notes on the back sheet of the Memorandum of Appeal show that it was re-filed on the 16th of August 1954 with a notice by Mr. Daya Ram Advocate that only a Memo of Costs had been prepared by the Lower Court. It seems that no further objection was raised by the Assistant Registrar and the appeal was put up for admission and was ordered

by Dulat J. to be admitted on 30-8-1954.

(4) It seems that the appeal ultimately came up for hearing on 28-12-1958 but it could not be heard on that date. However, a few days before that the learned counsel for the respondents had notified to the learned counsel for the appellants of his intention of raising the preliminary objection that there was no proper appeal before the Court, and an application was filed on the 29th of December, 1958 in which it was prayed that either the appeal should be treated as a proper appeal or else that the appellants should be allowed time even then to move the lower Court for the drawing up of a proper decree and obtaining a copy thereof. This application was ordered by Bishan Narain J. to be heard by the Bench hearing the appeal.

(5) There can be no doubt about the proposition that there is no proper appeal before the Court unless the Memorandum of Appeal is accompanied by a copy of the decree of the lower Court, which according to the provisions of O. XX is something quite distinct from the judgment. Order 41, R. 1 provides that the Memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded. From this it is clear that although a copy of the judgment may in appropriate circumstances be dispensed with, a copy of the decree is absolutely essential.

(6) In support of his contention that the appeal should be dismissed the learned counsel for the respondents has relied on three cases. The first of these is Gela Ram v. Ganga Ram ILR Lah 223: (AIR 1920 Lah 395). This was an appeal from an order of a Revenue Officer who had tried the suit under the provisions of S. 117(2)(b) of the Punjab Land Revenue Act in which the procedure to be followed was that laid down by the Civil Procedure Code, and it was held that it was the duty of the Lower Court to record a Judgment and a decree. The lower Court had only entered the Memo of Costs in the so-called decree sheet which did not contain the particulars required by Order XX, Rule 6, Civil Procedure Code.

The contention advanced on behalf of the appellants that the final order in the judgment amounted to a decree was overruled and it was held by Scott-Smith and LeRossignol JJ. that there was no decree within the meaning of the provisions of the CPC and therefore no appeal lay. In Mubarak Ali Shah v. Secretary of State AIR 1925 Lah 438, the appeal which was not accompanied by a copy of the decree was dismissed by Scott-Smith and Martineau JJ. In that case there does not appear to have been any question of any proper decree having been prepared by the lower Court. The third case is Banwari Lal v. Amrit Sagar 51 Pun LR 305: (AIR 1949 EP 400). In that case again there was only a Memo of Costs signed by the Lower Court and no proper decree had been prepared and it was held by Harnam Singh J., following the decision in ILR Lah 223: (AIR 1920 Lah 395), that as there was no decree no appeal lay.

(7) On behalf of the appellants reliance was placed primarily on the decision of

Wilberforce and Martineau JJ. in *Manohar Lal v. Nanak Chand* AIR 1919 Lah 53. In that case, in a Regular First Appeal it appears that no decree had been prepared by the lower Court and the preliminary objection was raised that no appeal lay and the argument was advanced that even if no decree had been drawn up by the lower Court it was the duty of the appellant to move the Court to remedy this defect. As against this it was argued that u/s 33, Civil Procedure Code, it was imperative that a decree should follow the judgment and that it was the duty of the Court to comply with the provisions of law.

The learned Judges agreed that a decree should have followed the judgment and that it was the duty of the Court to have it drawn up and they did not consider that such an omission or neglect of duty could deprive the appellant of his right of appeal. They therefore allowed the appellant one month to apply to the lower Court for the drawing up of the decree of which a copy was to be attached with the Memorandum of Appeal. The report shows that this decision was delivered on the 31st of November 1918, and since the decision in ILR Lah 223: (AIR 1920 Lah 395) was delivered on the 29th of October 1919, it is rather surprising that the attention of the learned Judges in that case was not drawn to this earlier decision. This decision was followed by *Harrison J. in Sher Muhammad v. Muhammad Khan* AIR 1924 Lah 352 and it has also been followed in *Debendra Nath Deb v. Hrishipada Purkayastha* AIR 1956 Gau 120.

(8) It certainly does not appear to be at all fair that an appellant should be denied his right of appeal simply on account of the fact that the lower Court has failed to carry out its mandatory function of preparing a decree sheet in accordance with the decision arrived at in the Judgment, and I am of the opinion that the view that in such a case the appellant ought to be allowed the opportunity to move the lower Court to carry out its bounden duty and remedy the defect is preferable to the view that in such circumstances no appeal lies and the appeal must be dismissed. Indeed, with all due respect to the learned Judges who expressed this view, I am surprised that such a view could ever have been taken.

(9) It has, however, been pointed out by the learned counsel for the respondents that in the cases relied on by the appellants it would seem from the judgments that the objection that there was no decree prepared by the lower Court and consequently no copy attached to the Memorandum of Appeal was only raised at the hearing of the appeal. There is certainly nothing in any of the judgments to show that when the appeal was first presented it was returned to the appellant on the ground that there was no copy of the decree sheet.

It is thus contended that it was the duty of the appellants when the appeal was first returned in July 1954 to move the lower Court for the removal of the defect, and there can be no doubt that if this step had been taken at that time it would have saved a lot of trouble. However, the fact remains that when the appeal was represented on the 16th of August 1954 with the remark that the Memo of Costs constituted the only decree drawn up by the lower Court it was accepted by the

Assistant Registrar and placed before a learned Judge for admission and admitted by him.

In the circumstances I do not consider that all the blame can be laid on the appellants since in my opinion it was the duty of the Assistant Registrar to cause these facts to be brought to the notice of the learned Judge. This does not appear to have been done, since otherwise I am quite sure he would then have caused the appeal to be placed before a Division Bench which might then have passed an order which would have the effect of giving the appellant time to remedy the defect, and the mere fact that he did nothing after the appeal had been admitted in these circumstances cannot be held against him.

The delay of four years in the hearing of the appeal has nothing to do with the appellant, and it has been stated on his behalf that at the same time that the application was filed in this Court in the end of December, 1958 after the preliminary objection had been notified to him he applied to the lower Court for the drawing up of a decree with a view to obtaining a copy thereof but the lower Court was not able to perform this task because the record was lying in this Court.

(10) In the circumstances I am of the opinion that the appropriate course to follow is that which was followed in the cases relied on behalf of the appellant and to allow him a month for the purpose of getting a decree drawn up in the proper form by the lower Court and obtaining a copy thereof. The record is accordingly to be sent to the lower Court without delay.

Chopra, J.

(11) I agree.

(12) Order accordingly.