

(1908) 07 CAL CK 0037
In the Calcutta High Court

Shaharulla Mondal

APPELLANT

Vs

Bangoo Mondal and Others

RESPONDENT

Date of Decision : 09-07-1908

Acts Referred:

Citation : 2 Ind. Cas. 404

Hon'ble Judges : Stephen, J;Holmwood, J

Bench : Division Bench

Judgement

1. This is a suit on a mortgage bond which came before the District Judge on appeal. He sets out as briefly as possible that the appellant sued the respondents on a mortgage bond, that the appearing defendant No. 3 contended that the bond was executed by collusion between the plaintiff and defendants Nos. 1 and 2, who did not appear, and that no consideration passed. He recites that the lower Court found that the plaintiff is entitled to no relief and then concludes : The point in dispute is a question of fact and I see no reason to differ from the finding of the lower Court. The appeal is dismissed."

2. The question is whether this is a sufficient judgment u/s 574, C. P.C. It may be contended that the points for determination are set out, although this is done in the most meagre possible way, and the decisions thereon; but we cannot find any ground for saying that the reasons for the decision are stated. On the face of it, therefore, the judgment violates the provisions of Section 574. It is argued before us that this defect is curable u/s 578. This might be so, were it not that we consider that the facts of the case demanded fuller attention than they have received in the judgment before us. The defence to the bond was one of collusion, and the Munsif who tried the case came to the conclusion that collusion existed with that amount of hesitation which must always be present in such a case.

3. Under these circumstances we consider that it was certainly the duty of the lower appellate Court to exercise an independent judgment on the facts of the case, and to express the result of his investigation in his judgment. We,

therefore, consider this not a case to which the provisions of Section 578, Civil Procedure Code, can be properly applied.

4. It is lastly argued before us that the defect of the judgment u/s 574 is no ground for proceedings in second appeal. As authority for this proposition we are referred to the case of Bisvanath Maiti v. Baidyanath Mandul 12 C. 199. There is a dictum which may seem to support this argument in the judgment; but this is founded on a decision of the late Chief Justice Couch under the Code of 1859 and we cannot apply the rule so laid down to this case.

5. Under these circumstances we cannot consider that the judgment before us is at all a proper one, and the case must be remanded to the lower appellate Court to be re-heard.

6. The judgment and decree of the lower appellate Court are set aside and the case is sent back to the Court to be re heard.

7. The appellant is entitled to his costs in this appeal.