

State of Assam and ors. Vs. SirajuddIn and ors.

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Court : Guwahati

Decided On : Aug-21-2003

Judge : I.A. Ansari, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 96 - Order 8, Rule 10

Appeal No. : Second Appeal No. 37 of 1995

Appellant : State of Assam and ors.

Respondent : SirajuddIn and ors.

Advocate for Def. : N.M. Lahiri, N. Choudhury, A.K. Goswami and B. Goyal, Adv.

Advocate for Pet/Ap. : D. Goswami, Adv.

Disposition : Appeal allowed

Judgement :

I.A. Ansari, J.

1. The second appeal has arisen out of the judgment and decree, dated 22.8.1994, passed by the learned Assistant District Judge, Karimganj, in Title Appeal No. 27 of 1990, whereby the appeal was dismissed on contest without cost.

2. This second appeal has raised a short, but important question of law, namely, as to whether a decree, which is drawn up following pronouncement of judgment by taking recourse to Order 8 Rule 10 of the Code of Civil Procedure (hereinafter referred to as 'the Code') is appealable.

3. I have perused the materials on record including the impugned judgment and decree. I have heard Mr. D. Goswami, learned Additional Senior Government Advocate, Assam, for the appellants, and Mr. AK Goswami, learned counsel appearing for the respondents.

4. For the sake of brevity, let me quote hereinbelow Order 8 Rule 10 of the Code, which reads as follows :

'10. Procedure when party fails to present written statement called for by Court: where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit, and on the pronouncement of such judgment, a decree shall be drawn up.'

5. From a bare reading of Order 8 Rule 10, it becomes clear that when a party fails to present written statement within the time permitted or fixed by the Court, the Court has the power to pronounce judgment against such a person or make such order as it thinks fit. However, if the Court chooses to pronounce judgment, then, a decree shall be drawn up in accordance with the judgment.

6. In other words, if by taking recourse to Order 8 Rule 10, a trial Court pronounces judgment in the suit, such judgment has to be followed by a decree. The decree, so drawn up, is in no way different from a decree that may be drawn up in a suit in which written statement is filed. Hence, a decree drawn up in a suit following pronouncement of judgment under Order 8 Rule 10 stands on the same footings as does any other decree granted by a Court in exercise of its original jurisdiction.

7. It is important to bear in mind that it is Section 96 of the Code, which governs preferring of appeals against original decree. Section 96 makes it clear that every decree granted by a Court, in exercise of its original jurisdiction, is appealable unless the Code expressly provides otherwise. There is nothing in the language of Section 96 or in any other provisions of the Code to show that a decree, which follows pronouncement of judgment under Order 8 Rule 10, is not appealable. The irresistible conclusion, therefore, is, and I accordingly hold, that a decree drawn up following pronouncement of a judgment in exercise of the powers under Order 8 Rule 10 is an appealable decree under Section 96.

8. In the case at hand, the learned first appellate Court dismissed the appeal on the sole ground that an order passed under Order 8 Rule 10 is not an appealable order under Order 41 of the Code and that only revision will be against such an order. In view of the fact that I have already held that a decree passed following pronouncement of judgment under Order 8 Rule 10 is an appealable decree, the reason so assigned by the learned appellate Court cannot be upheld.

9. In the result and for the reasons discussed above, the impugned judgment and decree, dated 22.8.1994, aforementioned is hereby set aside and the appeal is remanded to the learned appellate Court with direction to dispose of the appeal on merit.

10. This appeal shall stand allowed in terms of the above directions. However, considering the entire facts and circumstances of the case, I make no order as to costs.

11. Send back the LCR alongwith a copy of this judgment and order.

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