

Hardeo Prasad Vs. Damodar Prasad

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Court : Allahabad

Decided On : Nov-16-1922

Reported in : AIR1923All119; 71Ind.Cas.424a

Judge : Piggott and ;Walsh, JJ.

Appellant : Hardeo Prasad

Respondent : Damodar Prasad

Judgement :

1. Two brothers, Hardeo Prasad and Damodar Prasad, brought a suit for profits. They appeared as joint plaintiffs and jointly claimed the profits due on the entire share of which they were the joint owners. The First Court dismissed the suit. For some reason, with which we are not now concerned, Damodar Prasad preferred to submit to this decree. Hardeo Prasad appealed against the whole decree and impleaded Damodar Prasad as a respondent, on the ground that he had declined to join in the appeal. The District Judge reversed the finding of the Trial Court on the merits. The conclusion arrived at in the judgment obviously is that the suit of Hardeo Prasad and Damodar Prasad ought to have been decreed, and the operative portion of the judgment directs that the decree of the Trial Court be set aside and, in lieu thereof, the claim be decreed. We think there can be no doubt the District Judge intended to give a decree to Hardeo Prasad and Damodar Prasad for the amount in question. By some error in the office, when the decree was drawn up, it was so drafted as to appear on the face of it a decree in favour of

Hardeo Prasad alone, and, by a further oversight, the name of Damodar Prasad did not appear at all in the array of parties as shown in the decree. On this Damodar Prasad applied to the District Judge, asking that what was obviously a clerical error or accidental omission in the decree should be set right. The District Judge intended the decree to be in conformity with his judgment. Technically, we think the order passed by him was wrong and that it is questionable whether it really gives effect to the operative portion of the judgment. It is, moreover, unjust to Hardeo Prasad, who was clearly entitled alone to recover the costs of the appeal, seeing that he alone had fought the matter. The order of the District Judge is that the name of Damodar Prasad be entered in the decree as an appellant. Now, apart from what has been stated above, it is obviously wrong for any Court to direct that a person who was never an appellant before it should be shown in the decree as an appellant. We think we must hold that it is outside the jurisdiction of any Court to pass an order thus mis describing in the decree one of the parties to the same. We, therefore, take up this matter in revision and set aside the order complained of. There has been some little argument before us as to the order which we ought to substitute for it. We could, of course, pass an order the only effect of which would be to require the District Judge to look further into the matter. We think, however, that it would be better for us to dispose of this small difficulty by passing the order which the District Judge obviously ought to have passed upon the application of Damodar Prasad. That order will direct that a decree be drawn up so as to decree the money found to be due, and shown in the decree as it at present stands, together with the costs of the Court of first instance, in favour of the appellant, Hardeo Prasad, and the respondent. Damodar Prasad, as against the other respondent who was the defendant in the original suit. It will further direct that the costs of the appeal be paid by the aforesaid defendant-respondent to the appellant, Hardeo Prasad, alone. Under the circumstances, we think we must allow the applicant, Hardeo Prasad, his costs of this application, and we order accordingly.