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Court : Himachal Pradesh

Decided On : Jan-03-1972

Reported in : AIR1973HP28

Judge : D.B. Lal, C.J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 20, Rule 4(2)

Appeal No. : Second Appeal No. 65 of 1970

Appellant : Hari Dass

Respondent : Hiroo and ors.

Advocate for Def. : H.S. Thakur, Adv.

Advocate for Pet/Ap. : Inder Singh, Adv.

Judgement :

D.B. Lal, C.J.

1. This second appeal is directed against the decision dated 26th of May, 1970 of the District Judge. Mahasu in a suit for declaration, where in partly disagreeing with the Sub-Judge, Theog, he has decreed the suit to the extent that he has held that the plaintiff along with defendants 2 to 6, is the owner of one-half share in the property. The plaintiff Hari Dass has felt aggrieved of the decision, and has preferred this second appeal having lost the suit in full before the Sub-Judge,

Theog, and in part before the first appellate Judge.

2. It is regrettable that after having laboured for long, the learned counsel for the appellant had to abandon the judgment of the learned District Judge by remarking that the same was totally unintelligible to him. Under Order 20. Rule 4 of fhe Civil P. C., the learned District Judge was required to write a statement of the case, the points for determination, the decision thereon, and the reasons for such decision. His judgment is rather a prolix and involved document of 20 typed pages, but I am constrained to remark that it is totally unintelligible. The learned appellate Judge has made a colourable pretence of having considered evidence, though, in fact, he has not done so. At quite a few places, the judgment has become obscure and it is difficult to understand its meaning. There are even inconsistent findings which cannot be reconciled with each other.

The rulings cited by the learned appellate Judge have not been discussed. In disgust the learned counsel for the appellant had to submit that as it was difficult for him to understand the reasoning of the learned appellate Judge, he would not be in a position to say anything contrary, having not discovered any basis for such reasoning. It was obviously impossible for the counsel for appellant to attack the judgment and similarly it was equally impossible for the counsel for the respondents to defend it He too confessed, that although the decision is in his favour, he would not be in a position to substantiate the findings having not followed the trend of discussion made by the learned appellate Judge. In such a situation, the judgment of the learned District Judge cannot be considered a judgment in the eye of law and has got to be set aside.

3. Since either of the parties was unable to attack or defend the judgment, the only course left to me is to set aside the findings of the learned Dis-trict Judge and to remand the case for redrafting of the judgment in accordance with law. I get support for this front two decisions, one of Lahore High Court (Harbhagwan v. Ahmad, AIR 1922 Lah 122 (1)) and the other of Patna High Court (Brijnandan Roy v. Jadunandan Singh. AIR 1960 Pat 41).

4. The findings of the learned District Judge are therefore, set aside.

It is made clear that along with the find-ings, the operative part of the judgment wherein the decision is recorded is also set aside. The case is remanded for redrafting of the judgment after giving the respective parties an opportunity of arguments. No additional evidence is to be recorded. After the judgment is redrafted, the same shall be sent to this Court and thereafter opportunities shall be given to respective parties to file their objections. After such objections are received, the appeal shall again be listed for hearing.

5. Costs in this appeal shall abide the event.

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