

APPELLATE CIVIL.

*Before U San Maung, J.*H.C.
1948

May 26.

MAUNG MYAING (APPELLANT)

v.

U PO AUNG (RESPONDENT).*

Judgment of appellate Court—Contents of—Order XLI, Rule 31, Code of Civil Procedure—Requisites.

The District Judge on appeal stated that he had gone through the judgment and the evidence of the witnesses, and agreed that there was real substance in the claim of the plaintiff and confirmed the decree of the trial Court.

Held: That the judgment did not give any reasons for coming to the conclusion. Under Order XLI, Rule 31, the judgment of the appellate Court should state (1) the points for determination, (2) the decision thereon and (3) the reasons for the decision. The judgment did not comply with these conditions and was not judgment as contemplated by the Code of Civil Procedure.

Ma Saw and others v. Ma Bwin Byu, I.L.R. 6 Ran. 66; *Dharam Das v. Shankar Ahir*, I.L.R. 53 All. 528; *Sitarama Sastrulu and others v. Suryanarayana Sastrulu*, I.L.R. 22 Mad. 12; *Sohawan and another v. Babu Nand*, I.L.R. 9 All. 29, followed.

A. N. Basu for the appellant.

Saw Hla Pru for the respondent.

U SAN MAUNG, J.—In Civil Regular Suit No. 15 of 1944 of the Township Court of Thazi, during the Japanese occupation period, the plaintiff-respondent Maung Po Aung sued the defendant-appellant Maung Myaing and one Ma Nge Ma for recovery of possession of the land in suit. His case was that about 20 years ago he had given possession of the land to his sister, the defendant Ma Nge Ma, and that unknown to him the land had gone into the possession of Maung Myaing. The defendant Ma Nge Ma admitted the plaintiff's claim, but Maung Myaing contested the suit

* Civil 2nd Appeal No. 97 of 1947 against the decree of the District Court of Meiktila in Civil Appeal No. 11 of 1947, dated the 12th May 1947.

on the ground that he had obtained possession of the suit land by mortgage from one Maung Chit Paing over 20 years ago and that later Maung Chit Paing's wife and child had made an outright transfer of the same to him. The learned trial Judge framed two issues as to whether the suit land was one given by the plaintiff to Ma Nge Ma as alleged by the plaintiff or whether it belonged to Maung Chit Paing as alleged by the defendant Maung Myaing and whether the suit land was mortgaged to the defendant Maung Myaing and later transferred to him in the manner alleged in his written statement. The plaintiff Maung Po Aung and the defendant Maung Myaing and the witnesses cited by them were examined. However, the case was not concluded as one of the witnesses cited by Maung Myaing was absent; an adjournment was given to the 9th March 1945 for the purpose of examining this witness. On the date fixed, the plaintiff Maung Po Aung appeared but neither the defendant Maung Myaing nor his witness appeared before the Court and another adjournment was given till the 28th March 1945, when the defendant and his witness again failed to appear. Thereupon the trial Judge, purporting to act under Order IX, Rule 11, Civil Procedure Code, read with Order XVII, Rule 2, proceeded to dispose of the suit and passed judgment and decree in favour of the plaintiff.

After re-occupation by the British, an application was made by the defendant Maung Myaing under Order IX, Rule 13, of the Code of Civil Procedure, to set aside the *ex-parte* decree against him. This application was unsuccessful, but the learned Subordinate Judge observed that the then learned Judge of the Township Court who tried Civil Regular Suit No. 15 of 1944 was apparently in error in disposing of the suit under Order XVII, Rule 2; read with Order IX,

H.C.
1948MAUNG
MYAINGv.
U PO AUNGU SAN
MAUNG, J.

H.C.
1948
—
MAUNG
MYAING
v.
U PO AUNG.
—
U SAN
MAUNG, J.

Rule 11, of the Code of Civil Procedure, as Rule 3 of Order XVII of the Code of Civil Procedure was the rule which should have been applied to the case. The defendant Maung Myaing then appealed to the District Court of Meiktila against the judgment and decree of the Township Court of Thazi in Civil Regular Suit No. 15 of 1944. The learned District Judge, after setting out the undisputed facts before him, proceeded as follows

“ However, a perusal of his grounds in his memorandum of appeal will show that he has not given any reason why the judgment and decree should be disturbed. In the grounds, he simply reiterated the same points which he had raised in the application under Order IX, Rule 13, of the Code. I have gone through the judgment and the evidence of the witnesses tendered by both sides and I agree that there was real substance in the claim of the plaintiff to title to this land. In these circumstances, I am bound to uphold the judgment and decree passed by the Court during the occupation period.

Accordingly, I confirm the decree and dismiss the appeal with costs.”

Hence, the appeal to this Court by the defendant Maung Myaing.

One of the grounds raised by the learned advocate for the appellant is that the judgment of the learned Judge of the District Court should be set aside because it failed to comply with the provision of Order XLI, Rule 31, of the Code of Civil Procedure. In my opinion, this ground of appeal should be allowed to prevail. Rule 31 of Order XLI provides that the judgment of the appellate Court should be in writing and should state (1) the points for determination, (2) the decision thereon, and (3) the reasons for the decision. In the judgment of the District Judge appealed against, the learned District Judge has not given any reasons for coming to the conclusion that the judgment and

decree of the trial Court should be upheld. It is not sufficient for the learned Judge to say that he had perused the judgment and the evidence of the witnesses tendered by both sides and that he agreed that there was real substance in the claim of the plaintiff to the land in suit. In the case of *Ma Saw and others v. Ma Bwin Byu* (1) it was held that even when an appellate Court dismisses an appeal under Order XLI, Rule 11, of the Civil Procedure Code, the duty is cast upon an appellate Court to write a judgment in compliance with the requirements of Order XLI, Rule 31, and that failure to conform to the provisions of law would justify the setting aside of the judgment of the appellate Court. The decision in *Dharam Das v. Shankar Ahir* (2) is to the same effect. In *Sitarama Sastrulu and others v. Suryanarayana Sastrulu* (3) a Bench of the Madras High Court held that the judgment of the appellate Court should show on the face of it that the points in dispute were clearly before the mind of the Judge and that he exercised his own discrimination in deciding them. In *Sohawan and another v. Babu Nand* (4), where the judgment of the lower appellate Court, after setting forth the claim, the defence, the nature of the decree of the first Court, and the effect of the pleas in appeal, concluded with the following words, "The point to be determined on appeal is whether or not the decision is consistent with the merits of the case. This Court, having considered the evidence on the record and the judgment of the Munsif, which is explicit enough, concurs with the lower Court. . . . The finding arrived at by the Munsif, that the plaintiff's claim is established, is correct and consistent with the evidence. The pleas urged in appeal are therefore

H.C.
1948
—
MAUNG
MYAING
v.
U PO AUNG.
—
U SAN
MAUNG, J.

(1) 6 Ran. '66.

(2) 53 All. 528.

(3) 22 Mad. 12.

(4) 9 All. 26.

H.C.
1948
—
MAUNG
MYAING
v.
U PO AUNG.
—
U SAN
MAUNG, J.

undeserving of consideration", a Bench of the Allahabad High Court held that there was no judgment according to law inasmuch as the judgment did not satisfy the requirements of section 574 of the Civil Procedure Code (corresponding to Order XLI, Rule 31) and that the decree of the lower appellate Court should be set aside.

I would therefore set aside the judgment and decree of the District Court of Meiktila and remand the case to the District Court to pronounce judgment according to law after hearing the pleaders for both parties. I note that the present District Judge is not the same as the one who wrote the judgment now being set aside. For the guidance of the learned District Judge I would observe that the question as to whether the trial Court was justified in not disposing of the suit under Order XVII, Rule 3, of the Civil Procedure Code, is a point which should be considered by him. Costs of this appeal with advocate's fees at two gold mohurs should follow the final result of the appeal before the District Judge of Meiktila.