

## REVISIONAL CIVIL

Before R. S. Narula, J.

ARJAN DASS,—Petitioner.

versus

JAGAN NATH,—Respondent.

Civil Revision No. 694 of 1964.

*Provincial Small Cause Courts Act (IX of 1887)—S. 17—Judgment pronounced by a Court of Small Causes—Whether should contain reasons in support of the decree or order—Mere recording of findings on points for determination—Whether enough.*

1965  
September,  
24th

Held, that the judgment of a Small Cause Court must be intelligible and must in any case convey that the judge has applied his mind thereto. Unless this is done, it will be impossible for the High Court exercising revisional jurisdiction to be satisfied that the judgment is in accordance with law, particularly in a case wherein some points arise which involve mixed questions of law and fact which are not always easy to decide. By virtue of section 17 of the Provincial Small Cause Courts Act, 1887, the procedure prescribed in the Code of Civil Procedure has to be followed by a Court of Small Causes in all suits cognisable by it. According to Order 20 rule 4 and section 2(9) of the Code of Civil Procedure, the judgment must in all eventualities contain a statement by the Judge of the Court of Small Causes of the grounds on which the decree or order is passed by him. Every decree or order which can be revised by the High Court must be supported by some reasons, howsoever, brief they may be.

*Petition under Section 25 of the Provincial Small Cause Courts Act, 9 of 1887, for revision of the order of Shri T. R. Handa; Judge, Small Cause Court, Amritsar, dated the 30th April, 1964 passing a decree for Rs. 220 with costs in favour of the plaintiff against the defendant No. 2, but dismissing the suit as against defendant No. 1.*

J. S. SHAHPURI, ADVOCATE, for the Petitioner.

NEMO, for the Respondent.

## JUDGMENT

NARULA, J.—The only question that arises in this case for decision is as to what should be the contents of a judgment pronounced by a Court of Small Causes deciding a case in exercise of its jurisdiction under the Provincial Small Cause Courts Act?

Narula, J.

Arjan Dass  
 v.  
 Jagan Nath  
 \_\_\_\_\_  
 Narula, J.

In a suit for Rs. 220 filed by the assignee of a pronote against the principal debtor as well as the assignor of the pronote following points for determination were framed by the Court of Shri T. R. Handa, Judge, Small Cause Court, Amritsar:—

- (1) Whether the pronote in dispute was executed by defendant No. 1, without consideration ?
- (2) Whether the assignment of the pronote in favour of the plaintiff is for consideration?
- (3) Whether the pronote was presented to defendant No. 1, before the filing of the suit ?
- (4) Whether the plaintiff is a money-lender, if so, to what effect ?
- (5) To what relief and against whom is the plaintiff entitled?
- (6) Relief.

His judgment on the above-said points may be quoted verbatim:—

*Point No. 1.*—This point is decided in favour of defendant No. 1.

*Point No. 2.*—This point is decided in favour of the plaintiff.

*Point No. 3.*—This point is decided in favour of the plaintiff.

*Point No. 4.*—This point is decided against defendant No. 1.

*Point No. 5.*—In view of my above findings the plaintiff is entitled to decree for the amount in suit against defendant No. 2 only."

In this petition for revision under section 25 of the Provincial Small Cause Courts Act, 9 of 1887 (hereinafter referred to as the Act) Shri Joginder Singh Shahpuri, the learned counsel for the petitioner, has argued that the judgment under revision is not according to law and is, therefore, liable to be set aside. The learned counsel has submitted that in fact the order sought to be set aside in this case is not a "judgment" at all much less a "judgment according to law." By virtue of section 17(1) of the Act the

procedure prescribed in the Code of Civil Procedure, 1908 has to be followed by a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits except to the extent to which it is otherwise provided either by the Code of Civil Procedure or by the Act.

Section 2(9) of the Code of Civil Procedure defines "judgment" as follows:—

"Judgment" means the statement given by the Judge of the grounds of a decree or order."

Order 20, rule 4 of the Code is in the following words:—

"Judgment of a Court of Small Causes need not contain more than the points for determination and the decisions thereon."

The word "judgment" as used in rule 4 of Order 20 of the Code means "judgment" as defined in section 2(9) of the Code and must in all eventualities contain a statement by the Judge of the Court of Small Causes on the grounds on which the decree or order is passed by him. If any Court of Small Causes has ever thought that rule 4 of Order 20 authorises it merely to give a final pronouncement on the points of determination involved in a case in its judgment without anything more i.e., without giving any indication at all of the grounds on which the Judge has come to those findings, the sooner such an impression is removed the better.

Under section 25 of the Act, this Court can call for any case decided by a Judge of a Court of Small Causes for the purpose of satisfying itself that a decree or order made in any such case was according to law or not. In order to enable this Court to exercise jurisdiction vested in it under section 25 of the Act, it has to be presumed that every decree or order which can be revised by this Court, must be supported by some reasons, however brief they may be. To put at the minimum, the judgment of a Small Cause Court must be intelligible and must in any case convey that the judge had applied his mind thereto. Unless this is done it would be impossible for the High Court exercising revisional jurisdiction to be satisfied that the judgment is in accordance with law, particularly in a case of this type where some points arising in the case and noticed by the learned Judge, Small Cause Court, Amritsar involved mixed questions of law and fact which are not always easy to decide. For example, from the judgment under revision it

Arjan Dass  
v.  
Jagan Nath  
Narula, J.

Arjan Dass  
v.  
Jagan Nath  

---

Narula, J.

is impossible to find whether Shri T. R. Handa, the learned Judge, Small Causes, came to a finding on point No. 1 to the effect that the story of the defendant was false or that the story was correct, but the pronote was still to be deemed to be for consideration. Similarly on point No. 3 reproduced above it is impossible to Judge whether the Court below was of the opinion that it was not necessary to present the pronote before filing a suit on its basis or whether it had in fact been presented. Again on point for determination No. 4, the judgment does not disclose if the finding is that the plaintiff was not a money-lender or that he was a money-lender, but it had no effect on the claim. This kind of an order can hardly be called a 'judgment' in the eye of law. In cases where questions of law or mixed questions of law and fact are involved, a Judge of the Court of Small Causes should always set out at least so much of his reasoning on which his findings are based as would throw at least some light on the path by which he had reached those conclusions.

If the Court below thinks that it has used the provisions of rule 4 of Order 20 of the Code for writing a judgment of this type, I would say, it has abused the said rule rather than used it. This kind of a blanket judgment on points of determination involving mixed questions of law and fact is least intelligible. In case of this type the High Court would have to go through the entire record of the case before finding out whether the judgment is in accordance with law or not. Where a point for determination involves a simple question of fact, it may be conceivable that the law allows a judge of the Court of Small Causes to merely record his finding on that point. Even so, the finding should be intelligible enough to enable this Court to find out its basis. As interference in revision under section 25 of the Act is possible even on a question of fact, it is desirable that a Court of Small Causes should at least briefly indicate the reasons for its decision and the process by which it has reached the conclusions recorded in its judgment.

In view of the provisions of rule 4 of Order 20 of the Code authorising a Judge of the Court of Small Causes to give a comparatively brief judgment, a correlative duty is impliedly cast on that Judge to make his judgment sufficiently intelligible to enable this Court to perform its duty in exercise of its revisional jurisdiction. In my opinion the

provisions of rule 4 of Order 20 have to be applied only to something which is first a "judgment" within the meaning of section 2(9) of the Code of Civil Procedure. I hold that the judgment of Shri T. R. Handa, Judge, Small Cause Court, Amritsar, dated 30th April, 1964, in this case is not in accordance with law and is no judgment at all. I, therefore, accept this revision petition, set aside the judgment of the Court below and direct that the case may be heard and decided afresh by the Judge, Small Cause Court, Amritsar in accordance with law. As the respondents have not appeared to contest this petition and to support the Judgment under revision in spite of personal service on them for an actual date, there will be no order as to costs.

**B.R.T.**

REVISIONAL CIVIL  
Before Mehar Singh, J.  
MOHTI SINGH,—Petitioner.

versus

BOGHA SINGH AND OTHERS,—Respondents.  
Civil Revision No. 532 of 1965.

*Transfer of Property Act (IV of 1882)—S. 91—Subsequent mortgagee—Whether can redeem mortgaged property from the prior mortgagee—Court Fees Act (VII of 1870)—S. 7(v) and (ix)—Suit by subsequent mortgagee against the prior mortgagee for possession of the mortgaged property—Court fee payable—Whether under clause (v) or (ix) of S. 7.*

Held, that apart from the mortgagor, a person, who has interest in the property mortgaged or has a charge upon such property or any interest in or upon the right to redeem the same, has also a right to redemption as provided in section 91, clause (a) of the Transfer of Property Act, 1882. A subsequent mortgagee qua the prior mortgagee is a person falling in this category. The reason is that he is an assignee of the equity of redemption, and he, thus, has the right to redeem the prior mortgage. He has, therefore, interest in the right to redeem the property mortgaged with the prior mortgagee. When, therefore, the subsequent mortgagee seeks possession of the property mortgaged, by discharging the mortgage debt, he is then exercising his right of redemption as and assignee of that right from the mortgagor. His suit is not a suit for simple possession of the land but a suit to redeem the mortgage and the court fee payable is under section 7(ix) and not section 7(v) of the Court Fees Act, 1870.

*Petition under Section 115 of the Code of Civil Procedure, for revision of the order of Shri Bhagwan Singh, Sub-Judge 3rd Class, Mansa, dated the 15th April, 1965, holding that the suit being one falling under Clause (v) of Section 7 of the Court Fees Act, the plaint is properly valued for the purposes of court fees, and deciding the point in favour of the plaintiffs.*

DALIP CHAND GUPTA, ADVOCATE, for the Petitioner.  
J. C. VERMA, ADVOCATE, for the Respondent.

Arjan Dass  
v.  
Jagan Nath  
Narula, J.

1965

September,  
27th.