

Ramji Bhagala

Vs

Krishnarao Karirao Bagra and Another

Civil Appeal No. 1718 of 1980

(P. N. Bhagwati, A. P. Sen. JJ)

11.08.1980

ORDER

1. We find from the judgment dated October 5, 1979 given by S. K. Desai, J. that he has admitted the appeal insofar as prayer a (i), a (ii) and (c) are concerned and rejected the appeal so far as prayer (b) and the enquiry for mesne profits are concerned. The learned Judge seems to have proceeded on the assumption that there has been a recent amendment in the Code of Civil Procedure under which he could admit the appeal as to a part and reject it as to the other. We do not find any such amendment in the Code nor has any such amendment been brought to our notice by the learned counsel appearing on behalf of the parties. Our attention is drawn by Mr. Bhandare, learned Advocate appearing on behalf of the respondents, to the fact that there was a proposal to introduce Clause 12-A in Order 41 providing for admission of appeal as to a part but that Clause does not seem to have found its way into the statute. We would, therefore, set aside the order passed by the Division Bench affirming the order of Mr. Justice S. K. Desai as also the order of Mr. Justice S. K. Desai and remand the appeal to the High Court so that the High Court may consider whether the appeal should be admitted wholly. There will be no order as to costs of the present appeal.

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