

ALLAHABAD HIGH COURT

Harakh Narain Singh

Vs

Babban

(Niamatullah and Bennet, JJ.)

12.04.1933

JUDGMENT

Bennet, JJ.

1. The two Judges composing the Bench have arrived at different conclusions as regards the amount for which a decree should be passed in favour of the plaintiffs. The lower Court decreed the plaintiffs' claim in its entirety. One of us would decree it only to the extent of Rs. 2,275-4-0; while the other would uphold the lower Court's decree except as regards Rs. 340. The question is whether the decree appealed from should be varied so far as the Judges composing the Bench agree that it should be varied and the appeal dismissed as regards the rest, or whether the appeal should be dismissed in toto. Section 98, Civil P.C., is so worded as to make it arguable that, unless the majority of the Judges composing a Bench agree in varying or reversing the decree appealed from, it should be maintained. An opinion to this effect was expressed in *Punjab Akhbarat & Press Co. Ltd., v. C.M.G. Ogilive*¹ On the other hand, it was definitely held in *Rajagopal Naidu v. Subbama*² that the decree appealed from should in such a case, be varied in so far as the Judges composing the Bench agree to vary it and should be confirmed as regards the rest. It seems to us that this view is more in accord with justice and common sense and should be adopted if the language of the section makes it permissible to do so. We are of opinion that Sections 98(1) and (2) can be so interpreted as to support the view taken by the Madras High Court. The learned Judges have given their reasons for adopting the same, and we do not consider it necessary to repeat them. We would, however, add some of our own. Section 98(2) provides: Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from such decree shall be confirmed.

2. The word "decree" is defined in Section 2(2) to mean: The formal expression of an adjudication which...conclusively determines the rights of the parties with regard to all or any of the matters in controversy in suit....

3. The word "judgment" is defined in Section 2(9) as "the statement given by the Judge of the

grounds of a decree or order." It seems to us that the word "decree" occurring in Section 98(2), Civil P.C., does not mean the document described by that name, but "the formal expression of an adjudication" as regards "all or any of the matters in controversy in a suit", if there are several matters in controversy in a suit the formal expression of adjudication as regards each of those matters is a "decree" so that in that sense adjudication as regards every item in dispute between the parties is a decree. Where the Judges composing a Bench do not agree in confirming the adjudication made by the lower Court in respect of one item, such decree or adjudication relating to that item shall be confirmed. At the same time, if they agree in reversing the decree or adjudication by the lower Court as regards another item in dispute, the decree in respect of such item shall be varied. In this view where the document described as the. "decree" contains adjudications regarding several items, each adjudication is a decree, as defined in Section 2(2), and the provisions of Section 98, Civil P.C., should be applied with reference to the adjudication of each item. In *Krishen Dayal Gir v. Irshad Ali Khan*³ the same view seems to have been taken though there is no discussion of the reasons on which it proceeds. For the reasons stated above, we allow the appeal so far as to modify the decree appealed from by reducing the plaintiffs' claim to the extent of Rs. 340, besides interest and compound interest. The parties shall receive and pay costs in proportion to success and failure in both Courts.

Cases Referred.

- 1AIR 1926 Lah 65
- 2AIR 1928 Mad 180
- 3(1915) 31 IC 965