

Serial No. 1

Suppl list

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

RSA No. 5/2023

CM No. 4165/2023

Caveat No. 1588/2023

Pronounced on : 22.08.2023

Nazir Ahmad Ganie and another

.....Appellant/petitioner(s)

Through: -
Mr. Manzoor Ahmad Ganai, Advocate.

V/s

Mohammad Amin Ganie and others

..... Respondent(s)

Through: -
Mr. N.A.Kouchai, Advocate.

CORAM: HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The learned trial court dismissed the suit filed by the plaintiffs/appellants vide judgment dated 05.04.2016. The decree followed the judgment. The appellants/plaintiffs preferred first appeal against the judgment dated 05.04.2016 passed by the trial court before the court of learned Additional District Judge (Fast Track), Budgam. The appellate court dismissed the appeal filed by the appellants herein on the ground that the plaintiffs/appellants challenged the judgment and not decree before the first appellate court. The decree sheet was also not placed on record nor was there any submission in the memo of appeal regarding non-submission of the decree sheet. The first appellate court has recorded in the judgment that the counsel for the appellants/plaintiffs moved an application on 08.04.2023 for placing on record a copy of the decree sheet dated 05.04.2016 passed by the trial court in

pursuance to the judgment on the ground that the appellants were not conversant with the position of law. The application also sought amendment of memo of appeal. The appellate court rejected the application as well.

2. Learned counsel appearing for the appellants has formulated questions of law in para (c) of the grounds of appeal. The argument of the learned counsel for the appellants is that the appeal was pending disposal for the last seven years and it was never pointed out to the appellants about the deficiency of not filing the decree sheet. The application filed by the appellants was not decided and the appellate court decided the appeal itself. The appellate court fell in error by stating in the judgment that the appellants have only challenged the judgment and not the decree.
3. Learned counsel appearing for the respondents has submitted that the provisions of law do not envisage challenging of the judgment passed by the trial court without challenging the decree. There was neither any decree sheet placed on record within the limitation period or even for a long seven years till the appeal was to be finally considered by the appellate court. It was incumbent upon the appellants to challenge the decree and place the same on record while filing the appeal. The illiteracy so pleaded by the appellants cannot give any room to the appellants not to challenge the decree passed by the trial court or not to keep the decree sheet on record along with the judgment. No substantial question of law arises in the present appeal which may require consideration by this court is the plea of the respondents.
4. Section 96 (1) CPC provides that the person aggrieved of the decree passed by the civil court exercising original jurisdiction can file an

appeal. Section 96 (2) states that an appeal may lie from an original decree passed ex-parte. Section 96 (3) states that no appeal shall lie from a decree passed by the court with the consent of parties. Section 96 (4) speaks of the appeal against a decree passed by the Courts of Small Causes lie only when the amount or value of the subject matter of the original suit does not exceed Rs.10,000/-. All sub-sections of Section 96 embrace of word “decree” passed by court in exercise of original jurisdiction.

5. Order 20 Rule 6 (A) CPC provides that an appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the court shall for the purposes of Rule 1 of Order 41 be treated as the decree. However, a caveat is attached to this provision in sub-rule (2) of Rule 6 (A) as the said clause clearly mentions that as soon as the decree is drawn the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.
6. It may be noted herein that prior to the year 2009 as obtained in the Civil Procedure Code applicable to the State of Jammu and Kashmir the words “Judgment” in Section 96 CPC was conspicuous by its absence meaning thereby that the decree sheet was required to be annexed with the appeal.
7. The provisions stated above amply make out that the appellant is required to challenge the decree and not the judgment passed by the court of original jurisdiction. The legislature has purposely mentioned the word “decree” which is required to be challenged in the appeal and not the judgment. The appellant if waits for a long seven years to

challenge the decree by just filing an application for amendment that cannot be allowed. It would be an easy way to defeat the provisions of law which are mandatory in nature. Infact no appeal can be said to have been filed without challenging the decree passed by the court. It is not the case herein that the decree was not prepared when the appeal was preferred by the appellant before the appellate court. The argument of the learned counsel for the appellant that the first appellate court should have pointed out the deficiency of the decree of the trial court having been not challenged or that the decree sheet having not been placed on record is the argument which prima facie requires outright rejection. It is not for the court to advise the appellant to make necessary incorporation in the appeal.

8. The reliance placed upon the judgment by the appellant in case titled “Maqbool Buhroo & Ors. V. Ahad Buhroo & Ors. in CSA No. 08/2013 decided on 27.09.2021 is misplaced. The judgment only favours the respondents herein and not the appellants as the court allowed to remove the defect of not filing the decree sheet with the appeal only as a matter of concession and not otherwise. Infact the court while relying upon the judgment reported in AIR 1961 SC 832 titled “Jagat Dhish Bhargava v. Jawaharlal” had not agreed with the submission of the counsel for the appellant therein that the decree sheet was not filed as the same was not prepared within the time. This judgment does not deal with the situation where the appeal is filed against the judgment and not the decree passed by the court of original jurisdiction.
9. The other submission of the counsel for the appellants that the appeal has been decided by the first appellate court without deciding the

applications filed for amendment is without any substance. The first appellate court has not erred in taking care of the applications filed by the appellants herein while deciding the appeal. The reliance placed by the first appellate court on judgments is not misplaced.

10. The Court finds no fault in the decision of the first appellate court. No substantial question of law arises in the appeal in hand which may require determination by this Court.
11. The appeal being without merit and is, accordingly, dismissed.

(PUNEET GUPTA)
JUDGE

SRINAGAR
22.08.2023
Pawan Chopra

Whether the order is speaking : Yes
Whether the order is reportable: Yes

