

**PRIVY COUNCIL.**

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ANNAPURNABAI AND ANOTHER (PETITIONERS)

v.

RUPRAO.

P. C. °  
1924.

July 24

**[ON APPEAL FROM THE COURT OF JUDICIAL COMMISSIONER,  
CENTRAL PROVINCES.]**

*Appeal to Privy Council—Right of appeal—Modification of decree in favour of petitioner—“Affirms the decision”—Civil Procedure Code (Act V of 1908), ss. 109, 110.*

In a suit claiming by adoption property of over Rs. 10,000 in value one of the defendants, while denying the alleged adoption, claimed that to be entitled to Rs. 3,000 per annum as widow's maintenance. The first Court decided in favour of the plaintiff upon the question of adoption, but decreed to the widow Rs. 800 per annum as maintenance charged upon the estate. The Appellate Court increased the maintenance to Rs. 1,200 per annum, but in all other respects affirmed the decree of the first Court. An application by the defendants to the Appellate Court for leave to appeal to the Privy Council was rejected. Upon an application to the Judicial Committee for special leave :

*Held*, that under ss. 109 and 110 of the Code of Civil Procedure, 1908, the defendants had a right of appeal to the Privy Council, and that special leave should be granted, limited, however, to the question of the maintenance allowance.

PETITION for special leave to appeal from a decree of the Court of the Judicial Commissioner of the Central Provinces dated September 26, 1923.

Petitioner No. 1 was the junior widow of Shanker Rao Patel who died childless in February 1905 leaving property of over Rs. 80,000 in value. Petitioner No. 2 was alleged to have been adopted in June 1908 by petitioner No. 1 with the consent of the senior widow.

° *Present* : LORD DUNEDIN, LORD ATKINSON AND SIR JOHN EDGE

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In 1919 the present respondent instituted a suit in the Court of the District Judge of Amraoti against the petitioner for possession of half the property of Shanker Rao Patel; he alleged that he had been adopted by the senior widow in 1912; he denied the alleged adoption of petitioner No. 2.

The petitioners by their written statement denied the adoption alleged by the plaintiff, and with regard to the adoption of defendant (petitioner) No. 2 alleged in the defence relied on the Indian Limitation Act, 1908, Sch. I, Arts. 118, 119. Further, petitioner No. 1 claimed to be entitled to Rs. 3,000 per annum for maintenance out of the estate.

The Additional District Judge held that the plaintiff's adoption was proved, and that the alleged adoption of the defendant No. 2 was not proved; and that the suit was not barred by limitation. He held further that the plaintiff was bound to provide maintenance for defendant No. 1 at the rate of Rs. 800 per annum, which was to be a charge upon the estate.

Upon appeal to the Court of the Judicial Commissioner, the decree was modified by increasing the maintenance from Rs. 800 to Rs. 1,200 per annum; in all other respects the decree was affirmed.

The petitioners (defendants) applied to the Court of the Judicial Commissioner for leave to appeal to the Privy Council but the application was dismissed on the ground that the decree of the first Court had been affirmed except in respect of "a small change" in favour of one of the applicants, and that no question of law was involved.

*Sir George Lowndes, K. C.*, and *Wallach*, for the petitioners. The petitioners had a right of appeal to the Privy Council under ss. 109 and 110 of the Code of Civil Procedure. The recognised practice of the

Board is to apply for special leave and not to appeal from a refusal of leave: *Rāhimbhoy Habibhoy v. Turner* (1). The value of the subject matter of the suit exceeded Rs. 10,000, as also did the subject matter of the proposed appeal; even if the maintenance alone is regarded as in dispute, its value, having regard to the widow's prospects of life, exceeded Rs. 10,000. The Appellate Court did not affirm the decree of the first Court but varied it; consequently it is not material under s. 110 whether any substantial question of law is involved. Having regard to the concurrent findings, the petitioners desire to appeal only with regard to the amount of the maintenance.

The respondent did not appear.

The judgment of their Lordships was delivered by LORD DUNEDIN. In the opinion of their Lordships the contention of the petitioners' counsel as to the effect of s. 110 of the Code is correct. They had therefore a right of appeal. Special leave to appeal should be granted, but should be limited to the question of maintenance. The petitioners' chance of success is not material to their application.

Their Lordships will humbly advise His Majesty that special leave to appeal be granted, but that it should be limited as already stated.

Solicitors for the petitioners: *T. L. Wilson & Co.*

A. M. T.

(1) (1890) L. R. 18 I. A. 6.

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