

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Muttusami Ayyar, Mr. Justice Parker, and Mr. Justice Shephard.

PICHAYEE (PETITIONER),

v.

SIVAGAMI (COUNTER-PETITIONER).*

1890.
October 9.
1891.
January 12.
March 13.

Civil Procedure Code, s. 596—"Value of the subject-matter of the suit"—*Civil Courts Act (Madras)—Act III of 1873*, s. 14.

Civil Courts Act (Madras) III of 1873 does not control the construction of Civil Procedure Code, s. 596, and under that section the real market value of the matter in dispute is the test as to whether or not an appeal lies to the Privy Council.

PETITION under section 595 of the Code of Civil Procedure for the grant of a certificate to appeal to Her Majesty in Council in appeal No. 166 of 1887 on the file of the High Court, Madras.

The case is stated sufficiently for the purposes of this report in the judgment of the High Court.

Subramanya Ayyar and *Pattabhiramayyar* for petitioner.

Bhashyam Ayyangar for counter-petitioner.

The case came on for disposal before MUTTUSAMI AYYAR and WILKINSON, JJ.

JUDGMENT.—The affidavits put in by the petitioner and counter-petitioner will be forwarded to the Subordinate Judge, who will be directed to ascertain and report what is the market value of the subject-matter of the suit. It is argued by the counter-petitioner's pleader that the second clause of section 596, Civil Procedure Code, does not apply to this case. We do not now decide that point, but it will be open to argument on receipt of the report of the Subordinate Judge. Both sides will be at liberty to adduce evidence.

The finding is to be returned within six weeks from the date of receipt of this order, and seven days, after the posting of the finding in this Court, will be allowed for filing objections.

[In compliance with the above order, the Subordinate Judge

* Civil Miscellaneous Petition No. 662 of 1889.

PICHAYEE
v.
SIVAGAMI.

submitted a finding to the effect that the market value of the lands in question exceeds Rs. 10,000.]

This petition coming on again for hearing before MUTTUSAMI AYYAR and BEST, JJ., on receipt of the finding of the Lower Court, the Court referred the matter to the Full Bench as follows :—

ORDER OF REFERENCE TO FULL BENCH.—“ A question is raised in this case as to what is meant by the phrases ‘ value of the subject-matter of the suit in the Court of First Instance ’ and ‘ value of the matter in dispute on appeal ’ occurring in section 596 of the Code of Civil Procedure.

It is contended on one side that the *market* value is meant and reference is made to the decisions of the Privy Council in *Mohun Lall Sookul v. Bebee Doss*(1) and *Baboo Lekraj Roy v. Kanhya Singh*(2) and also to a ruling of the Sadr Court printed at page 5 of Chamier’s Rules of Practice.

On the other hand it is contended that it is the value as calculated in the Court of First Instance under the law now in force.

The question is one of general importance which we think desirable to refer for the opinion of the Full Bench.”

This reference came on for hearing and was argued before a Full Bench, consisting of COLLINS, C.J., MUTTUSAMI AYYAR, PARKER and SHEPHARD, JJ.

COLLINS, C.J.—The point submitted to the Full Bench is what is meant by the phrases “ value of the subject-matter of the suit in the Court of First Instance ” and “ value of the matter in dispute on appeal ” occurring in section 596 of the Code of Civil Procedure relating to appeals to Privy Council.

It is contended on the one side that the market value is meant, and on the other side that it is the value as calculated in the Court of First Instance.

The rules of the Privy Council, dated 1838, declared that no appeal shall lie to the Privy Council unless the value of the matter in dispute in such appeal shall amount to the sum of Rs. 10,000 at least.

In *Mohun Lall Sookul v. Bebee Doss*(1), the Privy Council held, in a case in which the value was laid in the plaint as being under Rs. 10,000, that as the calculation was estimated with

(1) 7 M.I.A., 428.

(2) L.R., 1 I.A., 317.

reference to the stamp duty only, if satisfactory evidence was produced that the real or market value of the property exceeded Rs. 10,000, leave to appeal would be granted; and in *Gour-money Debia v. Khaja Abdool Gunny*(1), the same course was adopted. In *Baboo Lekraj Roy v. Kanhya Singh*(2), Sir James Colville in the judgment of the Privy Council says, "The stamp duties imposed for fiscal purposes are calculated on a certain rule fixed by law, but the right of appeal depends on the value, which is a matter of fact."

In 1874 the Privy Council Appeals Act was passed and section 5 enacts that "the amount or value of the subject-matter of the suit in the Court of First Instance must be Rs. 10,000 or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards," and these words are incorporated in section 596, Code of Civil Procedure.

I do not think that the words "value of the subject-matter in the Court of First Instance" in any way affect the right of appeal when the real value of the subject-matter is Rs. 10,000. If it was intended to bind the applicant to the value indicated by the amount paid as stamp duty, the Legislature would surely have said so, and it ought not to be assumed that the Legislature intended to take away from the subject or limit such an important privilege as the right to appeal to the Privy Council without the words being clear and explicit.

It has been suggested that these words were added in the Act of 1874 to prevent costs being added to the matter in dispute so as to raise the value by the addition of costs to over the sum of Rs. 10,000, but this appears to be mere surmise.

I am of opinion, in answer to the reference, that the real market value of the matter in dispute is the test as to whether an appeal to the Privy Council lies.

MUTTUSAMI AYYAR, J.—I am also of the same opinion. Having regard to section 616, clause b, I do not think that the value of the matter in dispute on appeal to Her Majesty in Council and of the subject-matter of the suit in the Court of First Instance is any other than the market values. The only effect that can reasonably be given to the first part of section 596 is

(1) 8 N.I.A., 268.

(2) L.R., 1 I.A., 317.

PICHAYEE
v.
SIVAGAMI.

that of excluding costs incurred in the Court of First Instance in fixing the value of the matter in dispute on appeal. Otherwise, there would be no necessity for referring to the value of the subject-matter of the suit in the Court of First Instance. I do not consider that Madras Civil Court's Act (Act III of 1873, s. 14) can be permitted to control the construction to be put upon section 596 which is applicable to the whole of British India.

PARKER, J.—I agree.

SHEPHERD, J.—I am of the same opinion and agree with Muttusami Ayyar, J., in thinking that the object of the allusion to the Court of First Instance was to exclude costs.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Shepard.

LAKSHMI NARASIMHA (PLAINTIFF), APPELLANT,

v.

ATCHANNA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code, ss. 373, 647—Application for execution struck off for non-payment of process fees—Subsequent application.

A decree-holder having applied for execution of his decree, notice was issued to the judgment-debtors, and their property was attached, but the applicant failed to pay the process fees, and the application was struck off, and no leave to make a fresh application was obtained under Civil Procedure Code, s. 373 :

Held, that the decree-holder was entitled to apply again for execution of his decree.

APPEAL against the order of M. B. Sundara Row, Subordinate Judge of Ellore, in appeal against order No. 372 of 1890, reversing the order of Vepa Krishnamurti, District Munsif of Ellore, in execution petition No. 1037 of 1890.

Application for the execution of the decree in original suit No. 588 of 1875 on the file of the District Munsif of Ellore. It appeared that an application for execution of this decree had been made on 11th July 1887, and, after notice to the judgment-debtors, their property was attached, but the decree-holder, having failed to pay batta, that application was struck off on 10th August

* Appeal against Appellate Order No. 5 of 1891.