

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice
Srinivasa Ayyangar.

A. V. SUBRAMANIA AYYAR (DEFENDANT—RESPONDENT),
PETITIONER,

1915,
September 7.

307.L.J.317

v.

SELLAMMAL (PLAINTIFF—APPELLANT), RESPONDENT.*

Civil Procedure Code (Act V of 1908), sec. 110—Right of appeal to His Majesty in Council—Amount or value of the subject matter of the suit, less than ten thousand rupees—Valuation for appeal, mode of—Mesne profits from date of suit to date of petition for certificate to appeal, if can be added—Value with mesne profits, more than ten thousand rupees—"Involve directly" in section 110, Civil Procedure Code, meaning of—Privy Council Appeals Act (VI of 1874).

Where the amount or value of the subject matter of the suit in the Court of First Instance was less than ten thousand rupees, but the amount or value of the subject matter in dispute in the appeal to His Majesty in Council exceeded that sum owing to the addition of the claim for mesne profits for the period between the institution of the suit and the filing of the petition for a certificate to appeal,

Held, that the case did not satisfy the provisions of either the first or the second paragraph of section 110 of the Code of Civil Procedure, and that leave to appeal to His Majesty in Council could not be granted.

Per WALLIS, C.J.—The words "involve directly," contained in the second paragraph of section 110 of the Code, cannot be read as including cases which involve nothing but the actual subject matter in dispute in the appeal.

Moti Chand v. Ganga Prasad Singh (1902) I.L.R., 24 All., 174 (P.C.); s.c., 29 L.A., 40, followed.

Dalgleish v. Ramodar Narain Chowdhry (1906) I.L.R., 33 Calc., 1288, and *Basanta Kumar Roy v. Secretary of State for India in Council* (1910) 8 I.C., 792, dissented from.

Mohideen Hadjiar v. Pitchay (1893) A.C., 193, explained.

Per SRINIVASA AYYANGAR, J.—If the operation of the decision is confined only to the particular object matter, clause (2) of section 110 does not apply, and unless the case satisfies the conditions in clause (1), there is no right of appeal.

If the decision, beyond awarding relief in respect of the particular object matter of the suit, affects rights in other properties, clause (2) would apply; also if the matter in dispute is one which is incapable of valuation as in the case of easements, clause (2) may apply.

* Civil Miscellaneous Petition No. 1682 of 1915.

SUBRAMANIA PETITION praying the High Court to grant leave to appeal to His
 AYYAR Majesty in Council from the decree of the High Court in Appeal
 v. No. 284 of 1912 preferred against the decree of the Court of the
 SELLAMMAL. Subordinate Judge of Madura in Original Suit No. 93 of 1910.

In this case, the original suit was for recovery of possession of a portion of a house with mesne profits from the defendant. The plaintiff alleged that he was in possession of a portion of the house and sued for recovery of the other portion. The market value of the whole house together with the mesne profits claimed in the plaint up to the date of the suit was much less than ten thousand rupees. It was stated by the defendant that the value of the whole house together with the mesne profits claimed by the plaintiff up to the date of the decree in appeal, would amount to over ten thousand rupees. The defendant filed a petition in the High Court for leave being granted to him to appeal to His Majesty in Council against the decree of the High Court. The defendant contended first that the value of the subject matter of the suit should be taken to be over ten thousand rupees on the ground that the subject matter of the suit should be deemed to include mesne profits subsequent to the institution of the suit, and secondly, that whether the value of the subject matter in the suit was above ten thousand rupees or not, the final decree of the High Court involved a claim to property of over ten thousand rupees in value on account of the addition of the value of mesne profits from the date of the suit to the date of the decree of the High Court, that consequently the provisions of the second paragraph of section 110 of the Civil Procedure Code were satisfied and that leave to appeal ought to be granted to him. The plaintiff, who was the respondent in the petition, contended that the case did not satisfy the conditions laid down either in the first or the second paragraph of section 110 of the Code, and that consequently leave to appeal to His Majesty in Council could not be granted to the petitioner.

T. R. Ramachandra Ayyar and *G. S. Ramachandra Ayyar* for petitioner.

R. Kuppuswami Ayyar for respondent.

WALLIS, C.

WALLIS, C.J.—In this case the amount or value of the subject matter of the suit in the Court of First Instance was less than Rs. 10,000 but the amount or value of the subject

matter in dispute in appeal to His Majesty in Council exceeds that sum owing to the claim for mesne profits for the period between the institution of the suit and the petition for a certificate. It is clear that the case does not satisfy the provisions of the first paragraph of section 110, Civil Procedure Code, but we are asked to grant the certificate on the ground that in the circumstances the decree of the High Court involves "directly or indirectly some claim or question to or respecting property of like amount or value" within the meaning of the second paragraph. If this contention be accepted, a certificate must be granted in any case in which the amount or value of the subject matter in dispute on appeal to His Majesty in Council is not less than Rs. 10,000, whether or not the amount or value of the subject matter of the suit in the Court of First Instance fell below Rs. 10,000, and this provision becomes wholly nugatory. In a case where the value of the subject matter was less than Rs. 10,000 in the Court of First Instance but the value of the subject matter on appeal to the Privy Council exceeded that sum owing to the accrual of interest in the meantime their Lordships held that the appellants had not brought themselves within the section—*Moti Chand v. Ganga Prasad Singh*(1), and I do not think it can make any difference whether the original deficiency in value is subsequently made up by the accrual of interest, or by a claim for mesne profits for the intervening period or by costs. The decision in *Dalglish v. Dumodar Narain Chowdhry*(2) proceeded on the authority of *Mohideen Hadjiar v. Pitchay*(3), a case under the Ceylon Ordinance No. 1 of 1889 which does not impose any condition as to the amount or value of the subject matter of the suit in the Court of First Instance. This condition was first imposed in India by the Privy Council Appeals Act of 1874 (Act VI of 1874). The order of 10th April 1888 had prescribed that the amount or value of the subject matter in dispute in appeal to His Majesty in Council must be Rs. 10,000 or upwards. The alternative which now forms the second paragraph of section 110, Civil Procedure Code, was introduced in clause (39) of the Letters Patent which contained a proviso "that the sum or matter at issue is of the amount or value of

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(1) (1902) I.L.R., 24 All., 174 (P.C.); s.c., 29 I.A., 40.

(2) (1906) I.L.R., 33 Calc., 1286.

(3) (1893) A.C., 193.

SUBRAMANIA not less than Rs. 10,000 or that such judgment, decree or
 AYYAR order shall involve directly or indirectly some claim, demand, or
 v. question to or respecting property amounting to or of the value
 SELLAMMAL. of not less than Rs. 10,000." So far the amount or value of
 WALLIS, C.J. the subject matter of the suit in the Court of First Instance did
 not in any way affect the right of appeal, but it is clear to my
 mind that in 1874 the legislature intended to alter this and by the
 new provision inserted in the section to impose an additional
 restriction with reference to the amount or value of the suit when
 filed. It is of course necessary to read the whole section
 together and to give effect to every part of it; and when doing
 so it becomes necessary in my opinion in order to give effect to
 the new provision in the first paragraph to put a restrictive
 construction on the general words of the second paragraph
 which are reproduced from section 39 of the Letters Patent, and
 to read them in their present collocation as applying only to
 cases which involve some claim or question to or respecting
 property additional to the actual subject matter in dispute in the
 appeal and to be taken into account therewith in making up the
 appealable value. Something might be said for this construction
 of the alternative provision as it stood in clause (39) of the
 Letters Patent, and I think that it is imperatively required in the
 present section 110, Civil Procedure Code(1), which first appeared
 as section 5 of the Act of 1874, if the provision in the earlier part
 of the section is not to be rendered nugatory. Some difficulty
 is no doubt occasioned by the retention in the second paragraph
 of the words "involve directly," but I think my learned brother
 in his judgment which I have had the advantage of reading
 has shown how effect may be given to the word "directly"
 consistently with this construction; and in any case I think that
 in the section as it now stands the words "involve directly"
 cannot be read as including cases which involve nothing but the
 actual subject matter in dispute in the appeal. Cases which
 involve nothing else are in my opinion governed exclusively by
 the first paragraph. The petition is dismissed with costs.

SRINIVASA
 AYYANGAR, J. SRINIVASA AYYANGAR, J.—This is an application for leave to
 appeal to His Majesty in Council. The original suit was to
 recover possession of a portion of a house with mesne profits from

(1) Act V of 1908.

the defendant. Though the plaintiff claims the whole house he does not sue for the remaining portion as he is in possession of it. It is however admitted that the market value of the whole house, together with the amount claimed for mesne profits up to the date of the institution of the suit is much less than ten thousand rupees. It is stated that the value of the whole house together with the mesne profits as claimed by the plaintiff up to the date of the decree in appeal would amount to over ten thousand rupees. Two points are taken for the petitioner, first that the value of the subject-matter of the suit in the Court of First Instance should be taken to be above ten thousand rupees, second that whether the subject-matter of the suit in the Court of First Instance was above ten thousand rupees or not, the final decree of this Court involves a claim to property of over ten thousand rupees in value. As regards the first point, petitioner contends that the subject-matter of the suit in the Court of First Instance includes mesne-profits subsequent to the date of the suit. If this contention is right, mesne profits subsequent to the date of the institution of the suit up to the date of the final determination by the Judicial Committee, or even beyond, till the delivery of possession of the property, or three years after the date of the final decree, whichever event first occurs, would be the subject-matter of the suit, and its value would vary with the length of time during which the suit may be pending in the Courts. This construction renders the enactment of this portion of the clause perfectly useless : for there can be no case in which the matter in dispute on appeal to His Majesty in Council would be of the appealable value in which the subject-matter of the suit would not at least be of the same value. Prior to Act VI of 1874, it was well settled that interest on money claims and mesne profits of immoveable property subsequent to the date of the institution of the suit actually awarded by the decree appealed against may be added in computing the value of the matter in dispute in appeal to His Majesty in Council, but not interest accruing subsequent to the decree and if that amount was over Rs. 10,000 or over a party was entitled to appeal though the value of the subject-matter of the suit in the Court of First Instance was less ; *Gooroopersad Khoond v. Juggutchunder*(1) and *Doorga Doss Chowdry v. Ramanauth*

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Chowdry(1), *Goorodoss Roy v. Gholam Mowlah*(2) and *Bank of New South Wales v. Owston*(3). Act VI of 1874 for the first time enacted that the value of the subject-matter of the suit in the Court of First Instance should also be ten thousand rupees or upwards, and imposed an additional restriction on the right of appeal. I think except in British India and Straits Settlements no such restriction is to be found in the laws of the other colonies or British Possessions. In *Moti Chand v. Ganga Prasad Singh*(4) the Judicial Committee expressly decided that when the amount claimed in the suit was less than ten thousand rupees, no appeal lay to His Majesty in Council, though the amount of the matter in dispute in appeal by the addition of interest subsequent to the institution of the suit came to ten thousand rupees or upwards. This decision is conclusive on the question, and I am unable to draw any distinction between interest and mesne profits in this respect. The petitioner relied on *Dalglish v. Damodar Narain Chowahry*(5) and *Basanta Kumar Roy v. Secretary of State for India in Council*(6) in support of his contention. In the first of the above cases it seems to have been assumed that future mesne profits formed part of the subject-matter of the suit and reliance was placed on the judgment of the Judicial Committee in *Mohideen Hadjier v. Pitchay*(7). That was a case from Ceylon and the attention of the learned Judges of the Calcutta High Court was apparently not drawn to the provision of the Ceylon Ordinance which contains no clause similar to the first portion of clause (1) of section 110 of the Code of Civil Procedure. Though *Moti Chand v. Ganga Prasad Singh*(4) was cited in the argument there is no reference to it in the judgment. In the second case it is said that "as the Court could provide in the decree for the payment of mesne profits from the institution of the suit, until the delivery of possession or until the expiration of three years from the date of the decree, such mesne profits can legitimately be regarded as part of the subject-matter of the suit." So also can the Court award interest from the date of the institution of the suit up to the date of payment or realisation. There is no

(1) (1860) 8 M.I.A., 262 at p. 264. (2) (1862) Marshall's Rep., 24.

(3) (1879) 4 A.C., 270 at p. 274.

(4) (1902) I.L.R., 24 All., 174 (P.C.); a.c., 29 I.A., 40.

(5) (1906) I.L.R., 33 Calc., 1286.

(6) (1910) 6 I.C., 792.

(7) (1893) A.C., 198.

reference in the judgment to *Moti Chand v. Gangā Prasad Singh*(1). In the case of future mesne profits, the cause of action, it must be remembered, does not accrue even at the date of the institution of the suit. With the greatest respect to the learned Judges I am unable to follow these decisions. I therefore disallow the first contention. As to the second point, petitioner contends that, inasmuch as the decree of this Court directs him to surrender possession of the house and pay mesne profits, the decree necessarily involved a claim to property of over the appealable value. This construction renders the whole of the first clause nugatory. It must be remembered that provisions similar to these are to be found in the laws of a large majority of the colonies (see the table in Burge's Colonial Laws, volume I, page 362) and it is impossible to construe the second clause of section 110 of the Code of Civil Procedure so as to render the first perfectly useless. If the second clause stood by itself (see Wheeler's Privy Council Practice, page 694) it would be legitimate to construe it in the manner suggested, as the word "involves" is sufficiently wide to cover direct adjudication in respect of the subject matter in dispute. In this case we have to take both the clauses together so as to give a meaning to both. In my judgment the first clause applies to cases where the decree awards a particular sum, or property of a particular value or refuses that relief (i.e.) to cases where the object matter in dispute is of a particular value. In fact the words "objects in dispute" are used in the provisions relating to appeals from Guernsey. If the operation of the decision is confined only to the particular object matter, clause (2) does not apply, and unless the case satisfies the conditions in clause (1) there is no right of appeal. If the decision beyond awarding relief in respect of the particular object matter of the suit affects rights in other properties, clause (2) would apply: also if the matter in dispute is one which is incapable of valuation as in the case of easements, clause (2) may apply. A few illustrations from the decided cases would make the matter plain. In *Sri Mutty Ranee Surnomoyee v. Maharajah Sutteeschunder Roy*(2), the plaintiff sued to establish his right to enhance

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(1) (1902) I.L.R., 24 All., 174 (P.C.); s.c., 29 I.A., 40.

(2) (1860) 8 M.I.A., 165.

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the rent of a holding in the possession of the defendant, which the defendant claimed to hold at a fixed rent of Rs. 65. The plaintiff obtained a decree establishing his right to enhance the rent to Rs. 800 or thereabouts. The question was raised whether the value of the subject matter in appeal to the Privy Council was the capitalised value of this Rs. 800 which would be the amount by which the value of the defendant's estate would be diminished. Their Lordships found it difficult to bring the case within the words of the Order in Council of April 10, 1838, but gave special leave to appeal on the ground that the decision involved a claim to property of more than ten thousand rupees in value. I may draw attention to the fact that this decision was given in the year 1860 and the present second clause was introduced into the Letters Patent in the year 1862.

In *Amar Chandra Kundu v. Shoshi Bhushan Roy*(1) the plaintiff a tenant-in-common sued for a mandatory injunction directing the defendant another tenant-in-common to demolish buildings erected by him on a plot of common land. The subject-matter of the suit was for purposes of Court fees valued at Rs. 1,500. The plaintiff obtained a decree in the High Court the result of which was to oblige the defendant to remove buildings worth more than ten thousand rupees. Leave to appeal to the Privy Council was applied for and granted. In a similar case in Madras, *Sreemuth Derasikamoney Pandarasannadhi v. Paluniappa Chettiar*(2) the plaintiff obtained in the High Court a decree for possession of a piece of land worth at the most Rs. 2,000, the defendant had built on the land and the buildings were valued at over Rs. 20,000 and he had to remove them. Leave to appeal to the Privy Council was applied for by the defendant and granted.

In *Muttusawmy Jagavera Yettapa Naiker v. Vencataswara Yettia*(3) a decree was passed by the Civil Court of Tinnevely in appeal awarding Rs. 2,500 a year for maintenance that being the highest sum which the first Court had jurisdiction to give and this decree was confirmed by the High Court. An application for special leave was made to Her Majesty in Council. In discussing the question whether the application should not have been made to the High Court first, their

(1) (1904) I.L.R., 31 Calc., 305 (P.C.).

(2) (1911) I.L.R., 34 Mad., 535.

(3) (1885) 10 M.L.A., 313.

Lordships came to the conclusion that it could not have been made there on the ground that the matter in dispute was below Rs. 10,000. It must however be noted that the facts of that case were peculiar.

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In *Sauvageau v. Gauthier*(1) *A* who had obtained an assignment of certain choses in action from *B* sued one of the debtors *C* to recover the debt due by him. The assignor had become an insolvent and his assignee in bankruptcy intervened in the suit and claimed the sum as against *A* the private assignee contending that the assignment was void as against him. His contention was disallowed and he applied for leave to appeal to the Privy Council. The Privy Council declined to give leave; but they say this, that if he had instituted a suit against the private assignee for a declaration that that assignment was bad, the subject-matter of the suit would have been over the appealable value, but inasmuch as his claim was limited to only one of the debts, he was not entitled to leave; they declined to grant special leave on the ground that that decision need not necessarily affect the title to the other debts.

In *Ajuas Koor v. Mussamut Luteefu*(2), where the suit was to establish the plaintiff's rights to take water from a channel to irrigate his land, MARKBY, J., held that the value of the subject matter in dispute was the amount by which the value of the land would be diminished if the right to take the water was not granted. The learned Judge drew a distinction between "the value of the relief" and "the value of the subject-matter."

In *Macfarlane v. Leclaire*(3), the plaintiff sued for a sum of money being the debt due to him from *X*. He applied for attachment before judgment and attached certain properties in the hands of *Y* on the ground that *Y* was holding those properties on behalf of *X*. *Y* claimed the properties as his own under a conveyance from one *P* who himself obtained the properties from *X*. Plaintiff replied that the conveyance from *X* to *P* and *P* to *Y* were fraudulent as against the creditors of *X*. The plaintiff succeeded. The amount of debt due to him for which he obtained a decree was less than the appealable value, but as the adjudication was also that the purchase by *Y* was not valid as against the creditors of *X*, the decision involved a question of

(1) (1874) L.R., 5 P.C., 494 at p. 498.

(2) (1872) 18 W.R., 21.

(3) (1862) 15 M.P.C.C., 181.

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title to the property of over the appealable value. The Privy Council in the absence of a clause like the second clause were obliged to bring it within the words "matter in dispute in appeal to the Privy Council."

The above cases except *Amar Chandra Kundu v. Shoshi Bhushan Roy*(1) and *Sreemuth Devasikamoney Pandarasannadhi v. Palaniappa Chettiar*(2), were decided when the order in Council dated 10th April 1888 or provisions similar thereto were in force. They afford instances of cases in which the subject-matter of the suit was incapable of a real or accurate valuation or when the value of the subject-matter of the suit was below the appealable value, but the decision directly involved a claim or question respecting property of over ten thousand rupees in value. Even if the words "subject-matter of the suit" or "matter in dispute in appeal" do not mean the object matter, but connote the jural relationship between the parties—see *Ramaswami Ayyar v. Vythinatha Ayyar*(3) and *Kaveri Ammal v. Sastri Ramier*(4)—the present case would clearly come within the first clause and the second clause would have no application whatsoever. In some cases it may be difficult to determine under which clause a particular case falls—see *Ram Kirpal Shukul v. Rup Kuar*(5), and *Bhagwat Sahai v. Pashupati Nath Bhoose*(6)—but I do not think that this would in any way affect the decision as I think that in all cases in which the final decision involves a claim or question to property of a particular value, the decision of the first Court also would merely involve a claim or question in respect of property of the same value. The following cases are instances in which the decision involves *indirectly* a claim or question to or in respect of property of the appealable value: *Baboo Gopal Lall Thakoor v. Tebuk Chunder Rai*(7), *Ko Khine v. Snadden*(8), *Joogulkishore v. Jotendro Mohun Tagore*(9). *In the matter of the petition of Khwaja Muhammad Yusuff*(10), *Sri Kishan Lal v. Kashmiro*(11), I am supported in the construction which I have adopted by the decision in *De Silva v. DeSilva*(12), and a case

(1) (1904) I.L.R., 31 Calc., 305 (P.C.). (2) (1911) I.L.R., 34 Mad., 535.

(3) (1903) I.L.R., 26 Mad., 760 at p. 763.

(4) (1903) I.L.R., 26 Mad., 104 at p. 109.

(5) (1881) I.L.R., 3 All., 633.

(6) (1906) 3 O.L.J., 257.

(7) (1890) 7 M.L.A., 548.

(8) (1888) L.R., 2 P.C., 50.

(9) (1882) I.L.R., 8 Calc., 210.

(10) (1896) I.L.R., 18 All., 196.

(11) (1913) I.L.R., 35 All., 445.

(12) (1904) 6 Bom. L.R., 408 (O.C.J.).

from the Colonies—*Gardner v. McCulloch*(1)—cited in Wheeler's Privy Council Practice, page 604. In *Dalgleish v. Damodar Narain Chowdhry*(2), already cited a different view was taken, but no reasons were given for the conclusion. I am unable to follow it. On the other hand in *Moti Chand v. Ganga Prasad Singh*(3), already referred to the Judicial Committee proceed on the assumption that the second clause was inapplicable to cases of this sort. I would therefore disallow this contention also.

K.R.

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DAVULURU VIJAYA RAMAYYA (FIRST DEFENDANT),
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v.

DAVULURU VENKATASUBBA RAO AND THREE OTHERS
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Civil Procedure Code (Act V of 1908), O. XXXII, r. 7—Arbitration, reference to—Minors, parties—Guardian ad litem, submission by, without leave of Court—Award—Decree, validity of—Appeal against, if competent—Compromise, decree on—Leave of Court, not obtained—Decree, if voidable—Suit to set aside decree, if competent—Partition Suit—Setting aside of decree, effect of—Suit, if re-opened and against whom.

A suit can be brought on behalf of minors to set aside a decree passed on compromise in another suit or appeal in which the minors were parties, on the ground that leave of Court under Order XXXII, rule 7 of the Civil Procedure Code was not obtained by their guardian *ad litem* to enter into the compromise on their behalf.

Leave of Court under Order XXXII, rule 7 must be obtained by a guardian *ad litem* of minors for agreeing on their behalf to refer through Court the subject-matter of a suit to arbitration; where no such leave was obtained, a decree passed on an award is not binding on the minors and a suit can be instituted on behalf of the minors to obtain a declaration that the decree does not bind them. The avoidance of a decree in a partition suit will have the effect of re-opening the whole suit in respect of all the parties thereto, and on an application being made to the Court, it will proceed with the trial of the suit.

(1) (1876) 2 V.L.R. 128 (Law)

(2) (1906) I.L.R., 33 Calc., 1286.

(3) (1902) I.L.R., 24 All., 174 (P.C.); s.c., 29 L.A., 40.

* Second Appeal No. 1192 of 1913.