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in the matter. It can only suggest that the matter should receive the further consideration of the appellants and in the interests of good feeling between the two communities we trust that it will.

The decree of the District Munsif will be varied by the omission of the injunction, but the declaration in favour of the respondents will stand. The appellants having succeeded with regard to the injunction are entitled to their costs in this Court and in the District Court. So far as the first Court is concerned the parties will bear their own costs.

A.S.V.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Somayya.

1939, March 31.

KUPPAINETHU GURUVAPPA NAICKER (RESPONDENT), PETITIONER,

v.

M. MOUNAGURUSWAMI NAICKER (APPELLANT), RESPONDENT.*

Code of Civil Procedure (Act V of 1908), sec. 110, paragraph 2 —Irrigation right—Decision negativing—Appeal to Privy Council from—Right of—Land actually involved less than Rs. 10,000 in value—Decision depending upon construction of agreement embodied in compromise decree—Property of far greater value than Rs. 10,000 affected by decision.

Through the lands of a village of which the petitioner and the respondent were co-owners ran two water channels A and B. In 1908 the petitioner brought under wet cultivation by means of channel B fourteen kulis in addition to the area of

* Civil Miscellaneous Petition No. 5450 of 1938.

his lands under wet cultivation previously; whereupon the respondent sued the petitioner for an injunction restraining him from using the channel for that purpose. That suit was compromised and the agreement arrived at was embodied in a decree under which the petitioner was allowed to cultivate the fourteen kulis. Subsequently the petitioner brought under wet cultivation a further five kulis obtaining the water from stream A. Thereupon the respondent filed an application in execution proceedings to restrain him, contending that by reason of the injunction which had been granted the petitioner was not entitled to bring under wet cultivation any additional land, either by means of the water from channel A or from channel B. The petitioner contended, on the other hand, that the injunction which had been granted only referred to channel B. The High Court, on appeal, upheld the respondent's contention and allowed his application. On an application by the petitioner for a certificate permitting an appeal to His Majesty in Council against the said decision of the High Court,

held that though the value of the additional five kulis which the petitioner brought under cultivation and which resulted in the proceedings out of which the application arose was admittedly under Rs. 10,000, yet as the value of the land belonging to the petitioner which was affected by the judgment of the High Court was far more than Rs. 10,000, the petitioner was entitled to the certificate under the second clause of section 110 of the Code of Civil Procedure.

The construction of the agreement embodied in the compromise decree was what was in dispute. If the decision of the High Court stood it would mean that the petitioner would not be able to bring any further portion of his land under wet cultivation and his interest in the village was of far greater value than Rs. 10,000.

Musst. Aliman v. *Musst. Hasiba*(1) followed.

Radhakrishna Ayyar v. *Sundaraswamier*(2) relied upon.

PETITION under sections 109 and 110 and Order XLV, rule 1, of the Code of Civil Procedure praying that in the circumstances stated in the affidavit filed

(1) (1897) 1 C.W.N. LCIII (Short Notes).
(2) (1922) I.L.R. 45 Mad. 475 (P.C.).

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therewith the High Court will be pleased to grant a certificate to the petitioner therein to enable him to appeal to His Majesty in Council against the order of the High Court in Appeal Against Order No. 460 of 1936 preferred against the order of the District Court of Madura dated 17th July 1936 and made in Execution Petition No. 20 of 1935 in Original Suit No. 81 of 1909.

T. R. Venkatrama Sastri and *T. M. Krishnaswami Ayyar* for petitioner.

K. Rajah Ayyar and *V. Ramaswami Ayyar* for respondent.

The ORDER of the Court was pronounced by

LEACH C.J.

LEACH C.J.—This is an application for a certificate permitting an appeal to His Majesty in Council. The facts as stated at the Bar are shortly these. The petitioner and the respondent are co-owners of a village in the Madura District, the petitioner owning one-third and the respondent two-thirds of the property. Through the village lands run two water channels, which have been referred to as A and B. Originally the wet cultivation of the village lands covered two hundred kulis, roughly one hundred and ten acres. Of the two hundred kulis the petitioner had fifty kulis and the respondent one hundred and fifty kulis. In 1908 the petitioner brought under wet cultivation by means of channel B an additional fourteen kulis, which resulted in a suit being filed against him by the respondent for an injunction restraining him from using the channel for this purpose. The suit was compromised and the agreement arrived at was embodied in the decree. Under the decree the petitioner was allowed to cultivate the fourteen kulis, but according to the respondent he was to be restrained from cultivating any further

area. The petitioner subsequently brought under wet cultivation a further five kulis obtaining the water from stream A. This resulted in an application being filed by the respondent in execution proceedings to restrain him. The contention was that by reason of the injunction which had been granted the petitioner was not entitled to bring under wet cultivation any additional land, either by means of the water from channel A or from channel B. The reply was that the injunction which had been granted only referred to channel B. The District Judge of Madura dismissed the petition, being of the opinion that the petitioner was entitled to use the water from channel A, notwithstanding the decree. An appeal followed to this Court. The appeal was allowed, this Court holding that the petitioner was not entitled to draw further water from either channel. The petitioner desires to appeal to His Majesty in Council against this decision.

The application for leave is opposed on the ground that the subject-matter is not of the value of Rs. 10,000. The application came before this Court in the first instance on 9th February 1939 and a report on the value of the property was called for from the District Judge. Before the District Judge it was conceded by the respondent that the value of the land belonging to the petitioner which is affected by the judgment of this Court is far more than Rs. 10,000. The value of the additional five kulis which the petitioner brought under cultivation and which resulted in the present proceedings is admittedly under Rs. 10,000. The petitioner says that inasmuch as the property affected by the decree is of the value of Rs. 10,000, he is entitled to the certificate under the second clause of section 110 of the Code of Civil Procedure.

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We consider that this contention is well founded. In *Radhakrishna Ayyar* v. *Sundaraswamier*(1) the Judicial Committee observed :

"In the first place, the sum of money actually at stake may not represent the true value. The proceedings may, in many cases, such as a suit for an instalment of rent or under a contract, raise the entire question of the contract relations between the parties and that question may, settled one way or the other, affect a much greater *value, and its determination may govern rights and* liabilities of a value beyond the limit."

That is the position here. This is not a case of a person claiming a right in a property where the value of the property is over Rs. 10,000—and the value of the right is less than that amount. It is the construction of the agreement embodied in the compromise decree which is in dispute. If the decision of this Court stands, it will mean that the petitioner will not be able to bring any further portion of his land under wet cultivation and his interest in the village is of far greater value than Rs. 10,000. The case reported as *Musst. Aliman* v. *Musst. Hasiba*(2) is directly in point.

The application will be allowed on the usual conditions. The costs of this application will be made costs in the appeal.

A.S.V.

(1) (1922) I.L.R. 45 Mad. 475 (P.C.).
(2) (1897) 1 C.W.N. XCIII (Short Notes).