

1896

January 6.*Before Mr. Justice Knox and Mr. Justice Blair.*

IN THE MATTER OF THE PETITION OF KHWAJA MUHAMMAD YUSUF.

Civil Procedure Code, section 596—Application for leave to appeal to Her Majesty in Council—Value of property affected by decree.

In an application for leave to appeal to Her Majesty in Council the value of the property ostensibly affected by the decree sought to be appealed was below Rs. 10,000; but it appeared that the suit in appeal in which the said decree had been passed was connected with another suit relating to the same property in which a decree had been passed which was the subject of another similar application and that the aggregate value of the two decrees was much above Rs. 10,000, and that it could not be known which of such decrees would affect which specific portion of the property in question. *Held* that under the above circumstances the application under consideration should be granted under the last paragraph of section 596 of the Code of Civil Procedure.

These were two applications for certificates of leave to appeal to the Privy Council in two First Appeals, which had been disposed of by the High Court on the 17th of June 1895. The suits out of which those appeals arose were brought by different plaintiffs on different causes of action to recover debts from the estate of one Etkad Ali deceased, but in each of the suits the plaintiffs sought as against the defendant Muhammad Yusuf to have two documents said to have been executed by Etkad Ali in favor of Muhammad Yusuf set aside. The first of these documents was a document called an instrument of trust or hypothecation bond executed by Etkad Ali in favor of Muhammad Yusuf on the 25th July 1886. By that deed Etkad Ali, acknowledging a debt of Rs. 15,632-3-9 as due to Muhammad Yusuf, hypothecated certain landed property to him as security for the debt, and other property was also made over to Muhammad Yusuf in trust to pay off certain debts specified in the bond. The second deed which it was sought to set aside was a hypothecation bond for Rs. 7,000 executed in favor of Muhammad Yusuf by Etkad Ali on the 8th of August 1886.

These two suits were heard together by the court of first instance and so far as the claim for the avoidance of the bonds in favor of the present applicant Muhammad Yusuf were concerned, were dismissed.

The plaintiffs appealed to the High Court, again urging that the deeds of the 25th of July 1886 and the 9th of August 1886, were void as against them.

In each case the High Court made a decree declaring that the deeds in question were null and void as against the plaintiffs appellants. The defendant Muhammad Yusuf thereupon applied for leave to appeal to Her Majesty in Council.

Pandit *Sundar Lal*, for the applicant.

Mr. *Amiruddin* for the opposite parties.

KNOX and BLAIR, JJ.—Khwaja Muhammad Yusuf applies for a certificate showing that his case is a fit one for appeal to Her Majesty in Council. The value of the subject matter of the suit and the value of the matter in dispute on appeal to Her Majesty in Council is Rs. 5,769 odd. Upon notice being served upon the opposite parties counsel appeared to show cause, and contended that, as the case was one which did not fulfil the requirements of section 596 of the Code of Civil Procedure, the certificate asked for should not be granted. In reply it was brought to our notice that this application is not the only one to be considered; there are before us in fact two applications, one being Privy Council application No. 17 of 1895 and the other Privy Council application No. 18 of 1895. In the first of these applications the value of the matter in dispute on appeal to Her Majesty in Council exceeds Rs. 5,810. The property affected by both these applications is the same property. No distinction can be drawn as to which part of it will be affected by the application No. 17 and which part by the application No. 18. Khwaja Muhammad Yusuf is petitioner in both the cases. The other parties in each case are, it is true, different persons. They were plaintiffs in the Court of first instance, and they sought to enforce their respective claims upon the property in dispute and to obtain a declaration from the Court that, so far as that property was concerned, certain deeds put forward by Khwaja Muhammad Yusuf setting up claims of Rs. 25,000 and more and of Rs. 7,000 over the same property might be declared null and void. On these grounds it was urged that the case was one in which the decrees already passed and those which would have to be passed by Her Majesty in Council would be decrees which must involve directly or indirectly claims or questions to or

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respecting property the value of which was ten thousand rupees or upwards. In the Court below, and also in appeal in this Court, though there appears no consolidating order in distinct terms, the suits were practically treated as one. Formal and detailed judgment was delivered in one only; in the other all that the judgment set out was that upon the principles treated in the judgment in the first case a similar decree be issued in the second. It seems to us that the case is one which we ought to certify as being a fit one for appeal to Her Majesty in Council on the ground that the decree to be passed is one which must involve directly or indirectly claims or questions to or respecting property exceeding ten thousand rupees in value. We grant the application with costs, and direct that a certificate be issued in these terms.

Application granted.

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January 15.

FULL BENCH.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Know, Mr. Justice Blair, Mr. Justice Banerji, Mr. Justice Burhill and Mr. Justice Aikman.

MUHAMMAD YUSUF (DEFENDANT) v. THE HIMALAYA BANK, LIMITED,
(PLAINTIFF).*

Act No. VI of 1882 (Indian Companies Act), section 144—Suit by Official Liquidator—Description of plaintiff—Civil Procedure Code, section 53—Amendment of plaint—Limitation—Act No. XV of 1877 (Indian Limitation Act), section 22.

In a suit to recover a debt due to a Company which had gone into liquidation the plaintiff was described in the plaint as "The Official Liquidator, Himalaya Bank, Limited, in liquidation," and the plaint was signed and verified in the same terms. On objection taken by the defendant, the plaint was allowed to be amended, but after the period of limitation prescribed for the suit had expired, so as to read "The Himalaya Bank, Limited, in liquidation, plaintiff." *Held* by the Full Bench that the plaint as originally filed was in substantial compliance with the provisions of Act No. VI of 1882; and that even if it might be considered that the amendment made was necessary, such amendment did not introduce a new plaintiff into the suit so as to let in the operation of s. 22 of Act No. XV of 1877. *Ghulam Muhammad v. The Himalaya Bank, Limited* (1) overruled; *In re Winterbottom* (2) distinguished.

*Second appeal No. 558 of 1895, from a decree of H. Bateman, Esq., District Judge of Saharanpur, dated the 8th February 1895, confirming a decree of B. Lindsay, Esq., Subordinate Judge of Dehra Dun, dated the 1st October 1894.

(1) I. L. R., 17 All., 292.

(2) L. R., 18 Q. B. D., 446.