

1902

SYEDA
BIBI
v.
MUGHAL
JAN.

Reading the deed then in its entirety, it appears to us to be manifest that the executants intended that the deed should take effect and operate only in case and when it was registered.

For these reasons we think that the alleged waqf is invalid, and not binding on the plaintiffs. We therefore allow the appeal, set aside the decree of the Lower Court, so far as the claim of the plaintiffs was partly dismissed, and we declare that the deed of the 27th of August, 1886, in the pleadings mentioned, was ineffectual to create a valid waqf of the property of the late Syed Hasan Ali, and in modification of the decree of the lower Court we give a decree as claimed with future mesne profits and also costs in both Courts.

Appeal decreed.

1902
January 30.

Before Mr. Justice Know and Mr. Justice Blair.

HANUMAN PRASAD AND ANOTHER (APPLICANTS) v. BHAGWATI PRASAD
AND ANOTHER (OPPOSITE PARTIES).*

*Civil Procedure Code, section 596—Appeal to His Majesty in Council—
Decree involving indirectly some question respecting property of the
value of ten thousand rupees or upwards.*

When, as in section 596 of the Code of Civil Procedure, it is laid down that in order that an appeal may lie to His Majesty in Council the decree to be appealed from must involve, directly or indirectly, some claim or question to, or respecting property of ten thousand rupees in value or upwards, the reference is to suits in existence. It is not enough that the question decided by such decree is a question of title which may possibly affect the title of persons who are not parties to the decree to property not the subject-matter of the suit in which the decree was passed, and concerning the title to which property there is no litigation pending. *Radha Krishn Das v. Rai Krishn Chand* (1), *Banarsi Prasad v. Kashi Krishna Narain* (2), *Moofiti Mohummud Uddoollah v. Baboo Mootchund* (3), and *Baboo Gopal Lall Thakoor v. Teluk Chunder Rai* (4), referred to.

THIS was an application presented by the respondents in First Appeal No. 48 of 1898, asking for leave to appeal to His Majesty in Council. The suit out of which the appeal in question arose was brought by the present applicants for the recovery of the village of Kot Kamarhya as next reversioners to the estate of

* Privy Council Appeal No. 1 of 1901.

- (1) (1901) I. L. R., 23 All., 415. (3) (1837) 1 Moo., I. A., 363.
(2) (1901) I. L. R., 23 All., 227. (4) (1860) 7 Moo., I. A., 548.

one Paltan Singh, who had died in 1822. The defendants to the suit were the successors in title of a transferee from Harnam Kunwari, one of the widows of Paltan Singh. The applicants plaintiffs had succeeded in their suit in the Court of first instance, but on appeal their suit had been dismissed by the High Court, hence the present application. With respect to the requirements of section 596 of the Code of Civil Procedure, it was admitted that the value of the subject-matter of the suit was below Rs. 10,000, and that the value of the matter directly in dispute before His Majesty in Council was also below that sum. But it was contended that the appeal involved indirectly questions respecting property of greater value, inasmuch as the title of other persons having an interest in the village of Kot Kamarhya would be governed by the decision in the proposed appeal, as well as the title of other transferees of other villages belonging to the same estate who traced their title through Harnam Kunwari. With the application was filed an affidavit, showing that the aggregate value of the properties which, it was alleged, would be thus affected indirectly by the result of the appeal was about one lakh and half of rupees. The further facts in connection with this application will be found stated in the judgment in *Bhagwati Prasad v. Hanuman Prasad* (1).

Pandit *Sundar Lal* (for whom Pandit *Baldeo Ram Dave*), for the applicants.

Pandit *Madan Mohan Malaviya* (for whom Babu *Satya Chandra Mukerji*), for the opposite parties.

KNOX and BLAIR, JJ.—This is an application for leave to appeal to His Imperial Majesty in Council. The subject-matter of the suit in the Court of first instance was under ten thousand rupees in value, but in an affidavit, which is attached to the application, it is stated that the title to an eight-anna share in mauza Kot Kamarhya of Pandit Hira Nand Chaube and of Pandit Chattardhari Chaube depends on the decision of the same question, and that the title of other purchasers to the rest of the villages mentioned in the schedule annexed to the petition depends on the same question. In this way it is sought to make out that, though the value of the matter directly in dispute is below ten

1902

HANUMAN
PRASAD
v.
BHAGWATI
PRASAD.

1902

HANUMAN
PRASAD
v.
BHAGWATI
PRASAD.

thousand rupees, yet the decree of this Court involves indirectly questions to or respecting the entire property mentioned in the schedule, which is valued at about 1,50,000 rupees. None of the properties which are said to be affected by the decree of this Court, and which are not in dispute before us, are or have been made the matter of any suit yet instituted. They may or may not hereafter be subject-matters of suits. Our decree may or may not involve, directly or indirectly, a claim or question to, or respecting them. At present all this is a matter of pure conjecture. The application is therefore opposed on the ground that as the value of the subject-matter is not ten thousand rupees this application should be rejected. The question of law, too, which is involved, is not a question of great public or private importance, and it is urged that for these reasons it cannot be held to come within the term "a substantial question of law." In support of this contention reference is made to the case of *Radha Krishn Das v. Rai Krishn Chand* (1), and to the case of *Banarsi Prasad v. Kashi Krishna Narain* (2). We have examined the question which is said to be involved, and we determine that it is not a substantial question of law within the meaning of the terms of section 596 of the Code of Civil Procedure. We are also of opinion that when it is laid down that the decree must involve, directly or indirectly, some claim or question to or respecting property of ten thousand rupees in value or upwards, the reference is to suits in existence and not to suits, if we may so term it, *in gremio futuri*. In this view we are supported by what is stated as the unanimous opinion of their Lordships of the Privy Council in the case of *Moofiti Mohummud Ubdoolah v. Baboo Mootechund* (3). We may also refer to the observations made in the case of *Baboo Gopal Lall Thakoor v. Teluk Chunder Rai* (4). We therefore direct that this application stand dismissed with costs.

Application dismissed.

(1) (1901) I. L. R., 23 All., 415. •
(2) (1901) I. L. R., 23 All., 227, p. 231.

(3) (1837) 1 Moo., I. A., 363.
(4) (1860) 7 Moo., I. A., 543.