

PRIVY COUNCIL.

P. C.
1901
November
30.

MOTI CHAND AND OTHERS (PLAINTIFFS) v. GANGA PRASAD SINGH
AND ANOTHER (DEFENDANTS.)

[On petition from the High Court of Judicature at Allahabad.]

Privy Council, Practice of—Case below appealable value in Court of first instance—Civil Procedure Code (Act No. XIV of 1882), sections 596, 600—Addition of interest for purpose of valuation of subject-matter of suit—Special leave to appeal—Substantial question of law—Rule as to applications for special leave to appeal in Indian cases.

Before a case can be certified as a fit one for appeal to His Majesty in Council, the condition prescribed in section 596 of the Civil Procedure Code as to the amount of the subject-matter of the suit in the Court of first instance and the amount in dispute on the appeal must both be fulfilled. The word "and" in that portion of the section cannot be read as "or."

Where a case is otherwise unappealable the rule of the Judicial Committee is not to give special leave to appeal unless there is some substantial question of law of general interest involved.

In this case the Judicial Committee laid down a rule to be followed in future in Indian cases, that where a party applies to the Committee for special leave to appeal, the matter being under the appealable value, he should first have applied to the Court below for a certificate under section 600 of the Code of Civil Procedure that the case is otherwise a fit one for appeal to His Majesty in Council. But this rule will not bind the Judicial Committee not to grant such leave in any special case, although that course has not been followed.

Semle—The amount of the subject-matter of a suit in the Court of first instance for the purpose of an appeal to His Majesty in Council is the amount for which a decree is recovered, including interest up to the date of the decree. Interest subsequent to decree cannot, though ascertainable, be added for the purpose of bringing the value up to the appealable amount of Rs. 10,000.

PETITION by the plaintiffs for special leave to appeal from a decree (10th July 1900) of the High Court at Allahabad by which a decree (16th June 1898) of the Subordinate Judge of Azamgarh was reversed and the suit dismissed with costs.

The suit was brought to recover from the defendants Rs. 8,477 with interest until the date of realization as damages for fraud.

The petition stated that in the plaint the following facts were alleged as constituting the cause of action: "The plaintiffs, who were bankers, had monetary dealings with the defendants, which resulted in decrees obtained against them in 1885, 1886 and 1887 for sums amounting to Rs. 4,400. Pending the litigation the first

Present :—LORD DAYEY, LORD LINDLEY AND SIR FORD NORTH.

defendant executed a fictitious deed of gift of his property in favour of his daughter-in-law Rachhpali, the wife of the second defendant, his son: that during execution of the decrees the defendants induced the plaintiffs to accept in lieu of their claim a registered mortgage of this property by Rachhpali and to strike off the execution claims. When the bond was sued on a defence was set up that it was a forgery and it was found so to be."

The defendants in their written statement asserted that the gift to Rachhpali was valid; that the bond alleged to be executed by her was obtained through the instrumentality of the plaintiffs, and that the defendants did not commit any fraud nor give any inducement to the plaintiffs to have the document executed. The Subordinate Judge found that the plaintiffs were innocent of any fraud in obtaining the bond, and that the defendant had throughout the whole transaction practised fraud upon and deceived the plaintiffs into accepting a forged bond in lieu of their claim under the decrees. As the result of his findings he gave a decree for principal and interest up to the date of the decree, a sum of Rs. 9,496, with further interest at 8 annas per cent. up to date of realization, and costs amounting to Rs. 1,193.

From this decree the defendants appealed to the High Court, and that Court on the 10th of July 1900 reversed it and dismissed the suit with costs. In their judgment the High Court said:—

"We agree with the Subordinate Judge so far that we are satisfied that the bond of 28th November 1887 was a forgery. Rachhpali was no party to it. It was signed by the defendants and registered by them after they had pretended to identify some one behind a pardah as Rachhpali, who was not there. We have no doubt that the defendants were guilty of fraud in all they did in connection with that bond. We find upon the evidence that as the plaintiff, Damodar Das, knew that he was taking a bond which was intended to defraud Rachhpali, and further that he distinctly favoured, if he did not instigate the execution of this bond, he was a party to the fraud by which he finds himself hoisted, and it is not for him to complain that the transaction has now resulted in loss to himself. The execution and registration of the deed were in our opinion false to his knowledge. We cannot assist him in such a case."

Against this decree the plaintiffs applied to the High Court for leave to appeal to the Privy Council, but the High Court

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refused to certify that the case fulfilled the requirements of section 596 of the Code of Civil Procedure because the claim and decree in the original court were for less than Rs. 10,000.*

In the petition for special leave to appeal, the plaintiffs submitted that the order of the High Court refusing to certify the case as a fit one for appeal was wrong, on the following grounds: (1) because the suit in the original court claimed a sum of money consisting, 1st of a defined sum of Rs. 8,477, and, 2ndly, of the further contingent sum of interest thereon until realization; (2) because the decree of the original court had ascertained the interest so as to make the entire sum due at the date of the decree Rs. 9,496, with a further ascertained sum of Rs. 570 payable annually until realization; (3) because before the decree of the High Court the entire sum claimed in the original court had been ascertained as reaching a sum of Rs. 10,636 with further contingent increments.

Mr. *Mayne* for the petitioners contended on the above grounds that the amount of the subject-matter in the suit in the court of first instance was above Rs. 10,000, and that the High Court ought therefore to have certified the case as a fit one for appeal under section 596 of the Code of Civil Procedure. *Ram Kirpal Shukul v. Rup Kuar* (1), and *Joogulkishore v. Jotendro Mohun Tagore* (2) were referred to. The Judicial Committee have a discretion to grant leave to appeal in cases where the specified amount of Rs. 10,000 can only be reached by the addition of interest subsequent to the decree; *Gooroo Persad Khoond v. Juggat Chunder* (3). In the exercise of that discretion special leave might be granted in this case although there is no substantial question of law. [The following cases were referred to by Lord Daye during the argument, with reference to the addition of interest to a decree to bring it up to the appealable amount, and to making an application to the Court below before coming to the Privy Council. *Gooroo Persad Khoond v. Juggat Chander* (3) per Turner, L. J., at page 167 of the report, *Mutusawmy Jagaveru Yettapa Naiker v. Venkatoswara Yettia* (4) per Lord

* See Weekly Notes, 1901, p. 19.

(1) (1881) I. L. R., 3 All., 633.

(2) (1882) I. L. R., 8 Calc., 210.

(3) (1860) 8 Moo., I. A., 166.

(4) (1865) 10 Moo., I. A., 313.

Chelmsford, L. C., at page 319 of the report, and *Bank of New South Wales v. Owston* (1) at page: 274, 275 of the report.]

1901, 30th November:—The Judgment of their Lordships was delivered by LORD DAVEY :—

IN this case their Lordships think that the High Court took a correct view of section 596 of the Civil Procedure Code, and rightly held that the case did not comply with the conditions prescribed in that section. The section is in these terms: “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.” Their Lordships think that the High Court were quite right in saying that the word “and” means “and” and not “or.” In the present case the amount or value of the subject-matter of the suit in the court of first instance, construing that in the manner most favourable to the proposed appellant, was at the outside the amount for which he recovered his decree which was below Rs. 10,000, amounting, in round numbers, I think, to about Rs. 9,500 only. That really disposes of the question, because, it does not fulfil both conditions.

But then Mr. Mayne suggests that their Lordships ought to give special leave to appeal. Now, the practice of this Board in advising His Majesty to exercise His prerogative, and to give special leave to appeal, is well known, and this Board does not advise His Majesty to exercise His prerogative in that manner unless there is some substantial question of law of general interest involved. In the present case there does not appear to be any such question of law involved. It appears to their Lordships that what is decided in the Court below is very fully stated in the petition. It appears to have been a mere question of fact. The Court below thought that the plaintiffs were entitled to a decree. The High Court, not differing from the view of the facts taken by the Court below, thought that it also appeared from evidence that the plaintiffs were so far *participes criminis* in the fraud which was alleged that they could not recover against the other parties to the fraud, and on that ground

(1) (1879) L. R., 4 A. C., 270.

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they allowed the appeal. Their Lordships cannot say, and Mr. Mayne very fairly could not say, that that involved any question of law at all, much less a substantial question of law of general interest. They therefore cannot see their way to advise His Majesty to grant the prayer of the present petition.

Their Lordships desire only to make one further observation, and it is this: that where a party in an Indian case (and this observation is confined to Indian cases) comes to this Board and asks for special leave to appeal, the matter being under the appealable value, their Lordships think that he should first apply to the Court below for a certificate under the second part of section 600, namely, "that it is otherwise a fit one for appeal to Her Majesty in Council." Section 598 prescribes that: "Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition to the Court whose decree is complained of"; and section 600 prescribes what must be stated in the petition, namely, "that the case fulfils the requirements of section 596, or that it is otherwise a fit one for appeal to Her Majesty in Council." Their Lordships think it is a good rule to lay down, that where a party comes for special leave to appeal, the case being under appealable value, and therefore not an appeal as of right, he should in the first instance apply to the High Court for leave to appeal, on the ground that it is otherwise a fit one for appeal to His Majesty in Council. Their Lordships believe that no rule to that effect has been laid down in any previous case, and they, therefore, would not act upon it in the present case; but their Lordships desire it to be considered that in future that rule will be followed, without of course binding this Board not to advise His Majesty to exercise His prerogative in any special case, although that course has not been taken. As a rule, however, they think that that course ought to be followed.

Application for special leave refused.

Solicitor for the petitioners:—Mr. T. C. Summerhays.

J. V. W.