

She raises the same pleas, and the question before me is whether she is liable to pay court fee on the sum of Rs. 80,000, which she claims as the amount of her dower debt. The question is what is the value or amount of the subject-matter in dispute in this appeal. It is suggested that it is not only the property in dispute but also the dower debt claimed by the appellant. It is perfectly true that it is open to this Court to grant a decree to the plaintiff conditional on payment of whatever may be found due to the defendant as her dower debt. But even in that case it will not be a decree which the defendant appellant would be able to put into execution, so as to enable her to recover her debt. It would be merely an attachment of a condition to the decree for possession. Of course it may also be that the Court might dismiss the claim of the plaintiff *in toto* or it might uphold the decree of the court below. In any view it seems to me impossible to hold that the amount or value of the subject-matter of this appeal is anything more than the value of the property which the plaintiff is seeking to recover and possession of which the defendant is seeking to retain. The same considerations do not operate in this instance as would operate if the plaintiff had appealed against a decree for possession conditional on payment of a large sum. I am, therefore, of opinion that the court fee already paid is sufficient.

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 HAIDARI
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 v.
 GULZAR
 BANO.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

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MUHAMMAD ABDUL GHAFUR KHAN (PLAINTIFF) v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS (DEFENDANTS).*

Civil Procedure Code (1908), sections 109 and 110; order XLI, rule 10—Dismissal of appeal for default in furnishing security for costs—Application for leave to appeal to His Majesty in Council—“Substantial question of law.”

Held that an order dismissing an appeal for default in furnishing security for costs under order XLI, rule 10, of the Code of Civil Procedure, 1908, is not a fit subject for the grant of a certificate under section 109 (c) of the Code.

THE facts of this case were as follows :—

The plaintiff instituted a suit in the Court of the Subordinate Judge of Cawnpore claiming a declaration of his title to certain property. The suit was dismissed by the court of first instance upon various grounds. The applicant presented an appeal to the High Court which was admitted. Subsequently an application

* Privy Council Appeal No. 2 of 1914.

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was made on behalf of one of the respondents that the appellant should be ordered to give security for the costs of the appeal and also of the court below. By an order, dated the 28th of June, 1913, the High Court ordered that the plaintiff should furnish security within one month. Security not having been furnished, the Court, on the 30th of July, 1913, dismissed the appeal on the ground that security had not been furnished in compliance with its order. This order was passed under the provisions of order XLI, rule 10, sub-rule (2).

The appellant thereupon applied for leave to appeal to His Majesty in Council.

The appellant appeared in person.

Mr. *A. E. Ryves*, for the respondents

RICHARDS, C. J., and BANERJI, J.—This is an application for leave to appeal to His Majesty in Council. The facts are these. The plaintiff instituted a suit in the Court of the Subordinate Judge of Cawnpore, claiming a declaration of his title to certain property. The suit was dismissed by the court of first instance upon various grounds. The applicant presented an appeal to this Court which was admitted. Subsequently an application was made on behalf of one of the respondents that the appellant should be ordered to give security for the costs of the appeal and also of the court below. By an order, dated the 28th of June, 1913, this Court was pleased to order that the plaintiff should furnish security within one month. Security not having been furnished, this Court, on the 30th of July, 1913, dismissed the the appeal on the ground that security had not been furnished in compliance with its order. This order was passed under the provisions of order XLI, rule 10, sub-rule (2). The applicant now seeks to obtain leave to appeal from this order.

We will assume for the purposes of our order that the order is a final order. We will also assume (although it is not very clear from the plaint or memorandum of appeal) that the suit out of which the proposed appeal arises related to property of the value of Rs. 10,000 or upwards. As the order of this Court had the effect of affirming the decree of the court below, we have to see whether or not the appeal involves a substantial question of law. The only question involved in the appeal is whether or not this

Court was justified under the circumstances of the case in ordering the appellant to give security for costs. If the Court was justified in ordering security for costs to be given, it had no option but to reject the appeal when the order for security was not complied with. We find it quite impossible to certify that the proposed appeal involves a substantial question of law. We, therefore, dismiss the application but make no order as to costs.

Application dismissed.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

MUNNA LAL AND OTHERS (DEFENDANTS) v. MUNUN LAL

AND OTHERS (PLAINTIFFS.)*

Mortgage by conditional sale—Foreclosure—Sale by mortgagee after foreclosure—Rights of purchaser—Suit for sale by puisne mortgagees—Act No. IX of 1908 (Indian Limitation Act), schedule article 134—Limitation.

A mortgagee under a mortgage by conditional sale foreclosed, and after foreclosure sold the mortgaged property as unincumbered. Subsequently to this, certain puisne mortgagees who had not been made parties to the foreclosure proceedings brought a suit for sale on their mortgage. *Held* (1) that the purchasers could not hold up as a shield the mortgage by conditional sale of their vendor, for that had become extinct on foreclosure, and (2) that article 134 of the first schedule to the Indian Limitation Act, 1908, had no application to the suit.

THIS was a suit for sale on a second mortgage. The first mortgage had been a mortgage by conditional sale, but the mortgagee had foreclosed and had thereafter sold the mortgaged property to the answering defendants. The court of first instance decreed the plaintiffs' claim and the lower appellate court dismissed the defendants' appeal. The defendants thereupon appealed to the High Court urging two main contentions, first, that they were entitled to set up as a shield against the suit the mortgage by conditional sale held by their vendor, and, secondly, that article 134 of the first schedule to the Indian Limitation Act, 1908, applied and the suit was barred by limitation.

Dr. *Satish Chandra Banerji*, for the appellant.

The respondents were not represented.

MUHAMMAD RAFIQ and PIGGOTT, JJ.—This was a suit for sale upon a mortgage. It is now being contested by three

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* Second Appeal No. 225 of 1913 from a decree of Austin Kondal, District Judge of Cawnpore, dated the 18th of November, 1912, confirming a decree of Munari Lal, Subordinate Judge of Cawnpore, dated the 18th of December, 1911.