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are like those of the present case. It is clear, therefore, that the plaintiff's suit was brought without any cause of action and ought to have been dismissed. We, therefore, allow this appeal, set aside the decrees of both the courts below and dismiss the plaintiff's suit with costs in all courts.

Appeal allowed.

FULL BENCH.

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December, 22.

Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

NURI MIAH (DEFENDANT) *v.* THE GANGES SUGAR WORKS, LIMITED, CAWNPORE (PLAINTIFF).*

Civil Procedure Code (1908), *section* 109, *clause* (*a*); *order XLI, rule* 23—*Appeal to His Majesty in Council*—"*Final order*"—*Order of remand which decided finally only one issue out of several.*

Held, that an order of remand made by the High Court which decided finally only one issue out of several which were raised by the proceedings before the court of first instance, which were proceedings under rule 17 of the second schedule to the Code of Civil Procedure, was not a "final order" within the meaning of section 109, clause (*a*) of the Code.

THE facts of this case were as follows:—

The Ganges Sugar Works Company made an application, under schedule II, article 17, of the Code of Civil Procedure, to file an alleged contract to submit to arbitration. The court of first instance dismissed the application on the sole ground that the agreement, not being under the seal of the company, was invalid. No evidence was recorded. There were several other objections to the agreement, *e g.*, fraud, vagueness, misrepresentation, etc. The High Court reversed the decree of the court below and remanded the case for trial of the other issues under order XLI, rule 23, of the Code of Civil Procedure. After the remand the court below tried the case and decided against the objector. An appeal from that decree is pending in the High Court. The objector filed an application for leave to appeal to His Majesty in Council from the order of remand.

Dr. *S. M. Sulaiman*, for the applicants, submitted that the order of this Court was a "final order" within the meaning of clause (*a*) of section 109 of the Code of Civil Procedure. He

* Privy Council Appeal No. 12 of 1915.

relied on the case of *Saiyid Muzhar Hossein* v. *Mussamat Bodha Bibi* (1). This order could not be questioned again in the suit, and it was the cardinal point in the suit. He also relied on *Ananda Gopal Gossain* v. *Nafar Chandra Pal Chowdhry* (2), *Saratmani Debi* v. *Bata Krishna Banerjee* (3), *Chandra Kunwar* v. *Chaudhri Narpat Singh* (4), *Dwarka Nath Sarkar* v. *Haji Mahomed Akbar* (5), *Hafiz Abdul Rahim Khan* v. *Raja Hari Raj Singh* (6) and *Meghraj* v. *Bidyabati Koer* (7). The expression "final order" was defined in several English cases, and the result thereof was summarised in HALSBURY'S LAWS OF ENGLAND, Vol. 18, p. 178. He submitted that the question whether the agreement was not an invalid agreement for want of the seal of the company was decided by this Court against the petitioner and this question could never be re-opened by the petitioner in the appeal against the final decree. Consequently, the case was otherwise fit for appeal within the meaning of section 109 of the Code of Civil Procedure. He also contended that the applicant would be precluded from questioning the correctness of the order of remand when he appealed from the final decree. See, for instance, section 97 of the Code of Civil Procedure.

Pandit *Kailash Nath Katju* (for The Hon'ble Munshi *Gokul Prasad* and Mr. *W. Wallach*), for the opposite party, submitted that in such cases the nature of the suit and also the nature of the order were to be looked at. If an order determined only a part of the case and left other matters still to be determined, it would not be a "final order" within the meaning of section 109 of the Code of Civil Procedure. He relied on *Baij Nath Dass* v. *Sohan Bibi* (8). He submitted that, after the order of this Court, the court below had tried out the case and found against the petitioner on all the points and the petitioner had filed an appeal against that order and it would be inexpedient to grant leave to appeal against a portion of the case. He also relied on *Ahmad Husain* v. *Gobind Krishna Narain* (9) and *Krishna Chandra Ghosh* v. *Maharaja Ram Narain Singh* (10). The case

(1) (1894) I. L. R., 17 All., 112.
(2) (1908) I. L. R., 35 Calc., 618.
(3) (1909) 10 C. L. J., 336.
(4) (1906) I. L. R., 29 All., 184 (188).
(5) (1910) Indian Cases, 622.
(6) (1900) I. L. R., 22 All., 405.
(7) (1914) 21 C. L. J., 279.
(8) (1909) I. L. R., 31 All., 545 (550).
(9) (1911) I. L. R., 33 All., 391.
(10) (1913) 21 Indian Cases, 430.

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reported in Indian Law Reports, 17 Allahabad, at page 26, was considered and explained in *Mujtaba Hussain* v. *Jamaluddin* (1) and the trend of decisions since had been to hold that an order of remand was not a "final order" within the meaning of section 109 of the Code of Civil Procedure.

Dr. *S. M. Sulaiman*, replied.

RICHARDS, C. J., and TUDBALL and MUHAMMAD RAFIQ, JJ. :— This is an application for leave to appeal to His Majesty in Council. The Ganges Sugar Works Company made an application under schedule II, rule 17, of the Code of Civil Procedure to file an alleged contract to submit to arbitration. The court of first instance, without recording any evidence or in any way considering the merits of the case, dismissed the application on the sole ground that the alleged contract not being under the seal of the company was invalid as an agreement to submit to arbitration. The company appealed and this Court held that the agreement to submit to arbitration did not require to be under the seal of the company and made an order remanding the case for decision upon the merits. The decision of this Court will be found reported in I. L. R., 37 Allahadad, at page 273. It is contended on behalf of the applicant that the order of this Court is a "final order" passed on appeal within the meaning of section 109, clause *(a)*, of the Code of Civil Procedure. The meaning of the expression "final order" is by no means very clear. The authorities dealing with a similar expression in other enactments in England are very conflicting. There have been several cases in this Court and in other courts in India where the question as to what is a "final order" has been discussed and decided. Here again there is a considerable conflict of authority. We propose to deal with the present application on its own circumstances.

No doubt, if the only issue between the parties was the validity of the contract (it not being under seal) the decision of this Court would have finally decided the only matter between the parties. The matter in dispute was whether or not this contract should be filed as a submission to arbitration. If this Court held that it was necessary that the contract should be under seal, the application

(1) (1904) 1 A. L. J., 26.

of the company would be finally dismissed. If on the other hand it decided that it was not necessary that the document should be under the seal of the company, it would have ordered the contract to be filed. We find, however, that the alleged contract was challenged on several other grounds. It was challenged on the ground that it was invalid for vagueness, and that the agreement had been obtained by fraud and misrepresentation. The result was that, even if this Court decided in favour of the company on the question of the seal, it would not have finally disposed of the matters in dispute between the parties. It is conceivable that if the order of remand of this Court was appealed to the Privy Council, there might be one or more other appeals arising out of the other pleas in the same matter. No doubt the decision of this Court was upon a very important issue between the parties, but the very same thing might be said if this Court decided (overruling the court of first instance) that the loss of a document was sufficiently proved to admit of secondary evidence of its contents and remanded the case to take that evidence and decide the case upon the merits. The only distinction between such a case and the present would be that in the present case the question was one purely of law, while in the supposed case it would be a question of fact or partly of fact and partly of law. Again we may suppose the case of an objection taken to a deed of mortgage on the ground that it had not been properly registered. If this Court (overruling the decision of the court of first instance) held that the registration was sufficient and remanded the case for decision upon the merits, it could hardly be said that the order of remand was a "final order" within the meaning of section 109, clause *(a)*, of the Code.

We could no doubt grant special leave to appeal under clause *(c)* of section 109. The point of law can hardly be said to be a question of "general importance" in view of the change that has been made in the new Companies Act. Furthermore, it appears that since the order of remand of this Court against which it is sought to appeal was passed, the court below has heard and determined the other issues in the case, and they are the subject matter of a pending appeal to this Court.

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Under these circumstances we do not think that there are sufficient grounds why we should grant the certificate under clause *(c)*.

The application fails and is dismissed with costs.

Application dismissed.

APPELLATE CIVIL.

1915
December, 23.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Walsh.

NARAIN DAS AND ANOTHER (PLAINTIFFS) *v.* MUSAMMAT DHANIA (DEFENDANT.)*

Minor—Purchase of immovable property by minor—Suit by purchaser for possession of property purchased—Act No. IV of 1882 *(Transfer of Property Act), sections* 54 *and* 55.

A minor is capable of purchasing immovable property; and where such a purchase has been completed by execution and registration of a sale-deed, he can sue to recover possession of the property purchased upon tender of the balance of the purchase money. Such a suit is not a suit for specific performance of a contract and no question of mutuality arises. *Mir Sarwarjan* v. *Fakhruddin Mahomed Chowdhuri* (1) and *Mohori Bibee* v. *Dharmodas Ghose* (2) distinguished. *Shib Lal* v. *Bhagwan Das* (3), *Baijnath Singh* v. *Paltu* (4), *Velayutha Chetty* v. *Govindaswami Naiken* (5), *Ulfat Rai* v. *Gauri Shankar* (6), *Munni Kunwar* v. *Madan Gopal* (7), *Bahaluddin* v. *Rafaqat Husain* (8), *Raghunath Bakhsh* v. *Haji Sheikh Mahomed* (9) and *Muniya Konan* v. *Perumal Konan* (10) referred to. *Navakotti Narayana Chetty* v. *Logalinga Chetty* (11) dissented from.

THE facts of this case were as follows:—

A sale-deed of a house was executed by Musammat Radha and others in favour of Suraj Bhan, a minor. The consideration was expressed to be Rs. 1,350. The executants refused to have the deed registered, but it was compulsorily registered by order of the District Registrar. Suraj Bhan then sued for possession of the house. It was stated that out of the consideration of Rs. 1,350

* Second Appeal No. 1359 of 1914, from a decree of O. F. Jenkins, District Judge of Agra, dated the 1st of August, 1914, confirming a decree of Shekhar Nath Banerji, Subordinate Judge of Agra, dated the 5th of May, 1914.

(1) (1911) I. L. R., 39 Calc., 232.
(2) (1902) I. L. R., 30 Calc., 539.
(3) (1888) I. L. R., 11 All., 244.
(4) (1908) I. L. R., 30 All., 125.
(5) (1907) I. L. R., 30 Mad., 524.
(6) (1911) I. L. R., 33 All., 657.
(7) (1915) I. L. R., 38 All., 62.
(8) (1913) 18 Indian Cases, 451.
(9) (1915) 18 Oudh Cases, 115.
(10) (1911) 24 M. L. J., 352.
(11) (1909) I. L. R., 33 Mad., 312.