

1914

RAM DULARI
v.
BALAR RAM.

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December, 5.

the appeal and make a declaration to this effect. The parties will pay their own costs throughout.

Appeal decreed.

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

MUHAMMAD WALI KHAN (PLAINTIFF) v. MUHAMMAD MOHI-UD-DIN KHAN AND OTHERS (DEFENDANTS) *

Civil Procedure Code (1908), section 109 (c)—Appeal to His Majesty in Council—Practice—Grounds for granting certificate in case of connected appeals.

It is a good ground for granting a certificate of fitness for appeal to His Majesty in Council under section 109 (c) of the Code of Civil Procedure that the case in which leave to appeal is sought is an appeal from the same decree and involving the same questions as another appeal in respect of which the same applicant has a right of appeal under sections 109 and 110 of the Code.

A SUIT was filed in the court of the Subordinate Judge of Cawnpore by one Muhammad Wali Khan for possession of immovable property and mesne profits, the suit being valued at about Rs. 35,000. The claim was partly decreed and partly dismissed. From this decree the plaintiff appealed to the High Court (F. A. No. 156 of 1910) as to the portion of the claim which had been dismissed, and some of the defendants appealed (F. A. No. 186 of 1910) as to the portion decreed.

In the plaintiff's appeal the High Court agreed with the court below and dismissed it. The defendants' appeal on the other hand was allowed.

In each case the plaintiff applied for leave to appeal to the Privy Council; but whereas in First Appeal No. 186 of 1910 the case fulfilled the requirements of section 110 of the Code of Civil Procedure, in First Appeal No. 156 of 1910, although the value was sufficient, the High Court had agreed with the court below.

The Hon'ble Mr. *Abdul Raoof*, for the appellant.

The Hon'ble Dr. *Sundar Lal* (The Hon'ble Dr. *Tej Bahadur Sapru*, with him), for the respondent.

RICHARDS, C. J., and BANERJI, J.—The value of the subject matter of the suit out of which this appeal arises and of the proposed appeal to His Majesty in Council exceeds Rs. 10,000, but this Court affirmed the decree of the court of first instance.

* Privy Council Appeal No. 28 of 1913.

We have, therefore, to see whether the case fulfils the requirements of section 110 of the Code of Civil Procedure, or is otherwise a fit one for appeal to His Majesty in Council.

The question which is involved in Appeal No. 29 is involved in the proposed appeal. Both appeals arise out of the same suit. To a large extent at least the decree of this Court will be wrong in the event of their Lordships of the Privy Council differing from the view taken by this Court in Appeal No. 29. We think, therefore, under the special circumstances of this case, that we are justified in certifying that the case is "otherwise a fit one for appeal to His Majesty in Council" and we so certify.

Leave granted.

FULL BENCH.

Before Justice Sir George Knox, Mr. Justice Raftiq and Mr. Justice Piggott.

STAMP REFERENCE BY THE BOARD OF REVENUE.*

Act No II of 1899 (Indian Stamp Act), section 57 (b).—Reference by Board of Revenue—Document to which reference relates not in existence.

Held that sections 56 and 57 of the Indian Stamp Act empower the High Court to decide questions relating to instruments already in existence and which have been made the subject of action by the Collector acting under sections 31, 40 and 41 of the Act.

They do not empower the Court to give an opinion upon a deed which may or may not come into existence hereafter.

THIS was a reference under section 57 (b) of the Indian Stamp Act, 1899, made by the Board of Revenue for the United Provinces.

The terms of the reference were as follows :—

"Under section 17 of the Bundelkhand Alienation of Land Act (II of 1903), when a Civil Court passes a decree against a member of an agricultural tribe on a mortgage made before the Act came into force, the decree is sent to the Collector who shall offer the decree-holder a mortgage in form (a) or (b) in full satisfaction of the decree. The question for ruling of the High Court is whether such a mortgage requires to be registered and stamped or not. The Board think that neither registration nor stamping is required, because, (a) if the mortgage is executed on behalf of Government it is exempt from stamp duty under section 3 (1) of

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*Civil Miscellaneous No. 382 of 1914.