

In England where the transaction of *bai-bil-wa*,^a or conditional sale, is not known, and where the drafting of documents is in the hands of trained and skilled men, it is easy to find out whether two or more documents evidenced one or separate transactions. In this country where documents are drawn up by patwaris and petition-writers, they are written in stereotyped phraseology. The word '*katawi*,' for example, on which great stress was laid by the defence, (which means 'absolute') is really used by the petition-writers and patwaris who are the usual scribes of such deeds of sale, as a matter of form without understanding what it means. However, in the present case, as we have pointed out, a comparison of the language of the two deeds distinctly shows that the sale was subject to the conditions of the agreement, and the two deeds read together leave no doubt that the transaction of the 21st of July, 1883, entered into between the two ladies and the two Lalas was that of a mortgage.

For these reasons we allow the appeal, set aside the decree of the court below and remand the case to the lower court for trial on the merits as to the remaining issues. As to costs, we allow to the appellant the costs in this Court. The costs in the court below will be costs in the cause.

Appeal allowed and cause remanded.

Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Muhammad Rafiq.

RAM KUMAR (PLAINTIFF) v. MUHAMMAD YAKUB AND ANOTHER
(DEFENDANTS). *

Civil Procedure Code (1908), section 110—Appeal to His Majesty in Council—Valuation of appeal—Attempt to raise valuation by adding interest to the amount decreed by the court of first instance.

A plaintiff claimed a sum which, principal and interest, amounted to more than Rs. 10,000. He obtained in the court of first instance a decree for less than Rs. 10,000 with interest. The defendants, however, appealed to the High Court, and the plaintiff's suit was dismissed. The plaintiff applied for leave to appeal to His Majesty in Council.

Held that the plaintiff could not bring his appeal above the statutory limit by adding to the amount decreed to him by the court of first instance

* Application No 29 of 1919, for leave to appeal to His Majesty in Council.

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interest at the rate given by that court. *Bank of New South Wales v. Ouston* (1) distinguished.

THE facts of this case were as follows:—The plaintiff sued to recover Rs. 9,562-11-5 principal and Rs. 1,243-2-7 interest. The court of first instance passed a decree for Rs. 8,281-10-10 with interest thereon at 6 per cent., per annum from the date of suit till the date of realization. The defendants appealed to the High Court, and that Court decreed the appeal and dismissed the plaintiff's suit *in toto*. In the meantime certain materials which had been directed by the first court to be sold were sold and thereby the plaintiff realized Rs. 1,821 in part satisfaction of his decree. After the decision of the appeal by the High Court, the plaintiff applied for leave to appeal to His Majesty in Council. He claimed that the value of the subject matter in dispute on the proposed appeal was Rs. 10,055-5-4, inclusive of interest, at the rate decreed by the first court, up to the date of the decision of the appeal by the High Court.

The Hon'ble Dr. *Tej Bahadur Sapru* and *Munshi Panna Lal* for the appellants.

The Hon'ble *Saiyid Raza Ali*, for the respondents.

MEARS, C.J., and MUHAMMAD RAFIQ, J. :—This is an application under section 110 of the Code of Civil Procedure for permission to appeal to his Majesty in Council. The parties to the application are a contractor and a person who employed the contractor to build a house for him. The valuation of the dispute between the parties was over Rs. 10,000 in the court of first instance. It came up in appeal before a Bench of this Court and the contractor succeeded. The building owner now files this application for leave to appeal to the Privy Council. For the contractor the objection is taken that the value of the subject matter in dispute before the Privy Council would be less than Rs. 10,000 and no substantial point of law is involved in the case and therefore no leave should be given. The learned counsel for the applicant replies that the value of the subject matter in dispute before the Privy Council would be over Rs. 10,000, if to the original amount decreed by this Court is added interest at the rate of 6 per cent., per annum, in which case

the amount will be Rs. 10,055 ; moreover, it is urged that dispute is of a nature that is not to be found in any reported case and has never been up in appeal to the Privy Council, and therefore it is a matter of general interest that permission should be allowed. We may dispose of this latter contention at once by saying that we find no question of substantial law or of general public interest involved in the appeal. The dispute between the parties is of the ordinary nature, arising between a contractor and a building owner. The point in issue between the parties in the case depends upon the evidence. As to the valuation of the subject matter in dispute, we may observe in the first instance that out of the decretal amount of Rs. 8,000, Rs. 1,821 have to be deducted, which the applicant took out of court. The balance of Rs. 6,000, *plus* interest at 6 per cent. per annum would not bring up the total amount to Rs. 10,000. But, apart from the sum of Rs. 1,821, the applicant has not, in our opinion, the right to add interest to the decretal amount in order to show that the valuation of the proposed appeal to the Privy Council would be Rs. 10,000 or more. The applicant relies on the case of the *Bank of New South Wales v. Owston* (1). In that case interest was allowed to be added to the decretal amount for the purpose of following the subject matter in dispute before the Privy Council. But there is one point of difference between that case and the present, namely, that by the law of New South Wales, by Statute, interest was added to the decretal amount. In this country there is no Statute giving the right to the decree-holder to add interest to the decretal amount. The grant of interest is discretionary to the court. We, therefore, think that the case relied upon by the applicant does not help his contention.

We disallow the application with costs.

Application dismissed.

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

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