1920

A. CURLENDER v. ABDUL HAMID

remaining grounds taken in appeal nor have the respondents addressed any arguments to us in support of their cross objection. We, therefore, dismiss it with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL.

Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Gokul Prasad.

BHAGWAN SINGH (DEFENDANT) *v.* THE ALLAHABAD BANK, LIMITED (PLAINTIFF.)*

1920
August, 12.

Civil Procedure Code, 1908, *section* 110—*Appeal to His Majesty in Council—Decree which modifies the decree of the lower court not a decree affirming the decision of that court.*

Held on a construction of section 110 of the Code of Civil Procedure, 1908, that a decree which modifies the decree of the lower court (except perhaps in the matter of costs only) cannot be said to be a decree of affirmance. *Raja Sree Nath Roy Bahadur* v. *The Secretary of State for India in Council* (1) dissented from. *Narpat Singh* v. *Kalka Bux Singh* (2) and *Thakur Baldeo Singh* v. *Thakur Lalji Singh* (3) approved.

THIS was an application for leave to appeal to His Majesty in Council. The valuation of the suit was Rs. 61,000 and the valuation of the proposed appeal was above Rs 10,000. The court of first instance decreed the plaintiff's claim for about Rs. 41,000. On appeal the High Court allowed a deduction of Rs. 6,000 in favour of the applicant because of an admitted mistake in the decree of the lower court, but saddled him with a liability for interest in excess of what the court below had awarded. The net result was that the decree of the court below was modified to the prejudice of the applicant by nearly Rs. 8,000. The application for leave to appeal to His Majesty in Council was opposed upon the ground that the decree of the High Court was in reality a decree affirming that of the court below and therefore no appeal lay as a matter of right.

The Hon'ble Munshi *Narain Prasad Ashthana*, for the applicant.

* Application No. 8 of 1920, under order XLV, rule 2, of the Code of Civil Procedure, for leave to appeal to His Majesty in Council.

(1) (1904) 8 C.W.N., 294. (2) (1911) 9 Indian Cases, 1040.

(3) (1906) 10 Oudh Cases, 65.

1920

BHAGWAN SINGH v. THE ALLAHABAD BANK, LIMITED.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the opposite party.

MEARS, C. J., and GOKUL PRASAD, J.:—This is an application for leave to appeal to His Majesty in Council. The suit out of which this application has arisen was brought by the Allahabad Bank, Limited, against the defendant applicant for recovery of Rs. 61,000 and odd on the basis of sixteen hundis drawn by one Seth Hansraj and alleged to have been accepted by the defendant's *gomasta* Babu Lal. Three were also several other suits brought by various plaintiffs against this very defendant on different hundis. There was one defence common to all the suits, namely, that Babu Lal was not authorized by the defendant applicant to sign or accept hundis for him. In some of these cases, the lower court, the Subordinate Judge of Agra, accepted the defendant's contention and in others it did not do so. The losing party appealed to this Court. By consent of parties the evidence given in each of the suits was considered as a whole and this Court was asked to decide the above question of fact on that evidence. In the result this Court came to the conclusion that the defence set up by the applicant was not correct and has decreed the claim of the plaintiffs in the various suits with the result that the defendant applicant has lost in all.

In Privy Council Appeal No. 9 the amount of the subject matter in dispute was Rs. 26,000 in the court below and the same is the amount in dispute in the appeal to His Majesty in Council. In that case the court below had sustained the defence, and this Court having come to a different conclusion, taking the whole of the evidence given in the various cases into account, has reversed the decree of the Subordinate Judge. In that case the applicant had a right of appeal as a matter of course and we have certified that that case was a fit case for appeal to His Majesty in Council. In the present case, as we have stated above, the valuation in the court of first instance was over Rs. 61,000, and the valuation of the proposed appeal to His Majesty in Council is above Rs. 10,000. What happened in this case was that the first court decreed the plaintiff's claim for about Rs. 41,000. On appeal this Court confirmed the finding of the first court as to Babu Lal's competency to sign on

1920

BHAGWAN SINGH v. THE ALLAHABAD BANK, LIMITED,

behalf of the applicant, but in the result allowed a deduction of Rs. 6,000 in favour of the applicant because of an admitted mistake in the decree of the lower court, but saddled him with a liability for interest in excess of what the court below had awarded. The net result was that the decree of the court below was modified to the prejudice of the applicant by nearly eight thousand rupees. This application has been opposed on the ground that the decree was really one which affirmed the decree of the court of first instance, and therefore, having regard to the case of *Raja Sree Nath Roy Bahadur* v *The Secretary of State for India in Council* (1), it is contended on behalf of the opposite party that this is really a decree which affirms the decree of the lower court. We do not see our way to agree to this contention. This view of ours is supported by the case of *Narpat Singh* v. *Kalka Bux Singh* (2), which followed an earlier decision of that Court in *Thakur Baldeo Singh* v. *Thakur Lalji Singh* (3). Mr. CHAMIER, as he then was, Judicial Commissioner, is reported to have said, at page 67, as follows :— " There remains the question whether the applicant is entitled to appeal because the decree of this Court did not affirm the decision of the court below. The respondents rely upon the decision of the Calcutta High Court in *Raja Sree Nath Roy Bahadur* v. *The Secretary of State for India in Council* (1). With all the respect for the learned Judges who decided that case it appears to me that their decision was wrong, for the decree of the High Court plainly modified the decree of the District Judge. This Court has in two recent cases declined to follow that ruling."

It can by no stretch of imagination be said that a decree which modifies the decree of the lower court, except perhaps in the matter of costs only, with which we are not concerned in the present case, is a decree of affirmance. Their Lordships had to consider the provisions of section 596 of the old Code of Civil Procedure, Act No. XIV of 1882, which corresponds to the present section 110 of the Code of Civil Procedure, Act No. V of 1908, and held that the word "decision" used in

(1) (1904) 8 C.W.N., 294. (2) (1911) 9 Indian Cases, 1040.

(3) (1906) 10 Oudh Cases, 65.

that section has the same meaning as a decree. When there is an express provision of the law giving a right of appeal in cases where the decree of the highest court in India does not affirm the decree passed by the lower court we are not entitled to consider the extent to which the said decree has been modified or not. We have stated above that in the present case the decree of this Court has modified the decree of the court below to the prejudice of the applicant. We are, therefore, in perfect accord with the view of the Oudh Judicial Commissioner's Court and are of opinion that leave to appeal should be granted in the present case. We accordingly certify that this case fulfils the requirements of section 110 of the Code of Civil Procedure, Act No. V of 1908, as regards the value and nature of the subject matter of the suit, as the decree appealed from does not affirm the decree of the court below.

Certificate given.

Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Gokul Prasad.

1920 *August*, 11.

BHAGWAN SINGH (APPLICANT) *v.* BHAWANI DAS, BHAGWAN DAS, (OPPOSITE PARTY).*

Civil Procedure Code (1908), *section*, 110; *order XLV, rule* 4—*Appeal to His Majesty in Council—Valuation—Two suits between same parties—Consolidation—Separate judgments in original court but appeals decided together by High Court on the evidence in both suits—Certificate granted.*

Two suits between the same parties in which the same question was raised were decided by separate judgments in the original court. There were two appeals in the High Court, which were heard together and by consent of both parties the evidence in the two suits was considered as a whole In the result the decree of the lower court was set aside. Leave to appeal to the Privy Council was granted in one of the suits. As to the other suit it was held that although the valuation of that suit and of the appeal to the Privy Council therefrom was below Rs. 10,000 and there was no question of law involved, it was a proper case to which the procedure sanctioned by order XLV, rule 4, should be applied and leave granted.

THIS was an application for leave to appeal to His Majesty in Council in somewhat anomalous circumstances which are detailed in the order of the Court.

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* Application No. 10 of 1920, for leave to appeal to His Majesty in Council

1920

BHAGWAN SINGH v. BHAWANI DAS, BHAGWAN DAS.

The Hon'ble Munshi *Narain Prasad Asthana*, for the applicant.

Munshi *Gulzari Lal*, Babu *Piari Lal Banerji* and Pandit *Uma Shankar Bajpai*, for the opposite party.

MEARS, C. J., and GOKUL PRASAD, J.:—The valuation of this suit is below Rs. 6,000 and so is the valuation of the appeal to His Majesty in Council, but this Court has set aside the decree of the lower court. There was another suit on hundis in which the same question was raised between these very parties, namely, Privy Council Appeal No. 9 of 1920. It is true that in the lower court this suit was decided by a separate judgment, but in the appeal in this Court the evidence in the two suits was considered as a whole at the request of the parties, who are the same, and this Court came to a decision on the whole of the evidence in favour of the respondent. In the connected suit we have already given leave to appeal to His Majesty in Council. It is contended that no permission to appeal should be given because there is no question of law involved and the value is below Rs. 10,000 and that order XLV, rule 4, of the Code of Civil Procedure is not applicable. We do not agree with the last contention.

An appeal is after all a proceeding in continuation of a suit. The value of the two suits in the court of first instance as also of the proposed appeal to the Privy Council is above Rs. 10,000 and this Court has reversed the decree of the court of first instance. The points raised in the two cases are identical, and we think that this is a proper case to which the procedure sanctioned by order XLV, rule 4, should be applied and the parties given an opportunity of having one decision from the highest court of appeal. We, therefore, certify that this case fulfils the requirements of section 110 of the Code of Civil Procedure, read with order XLV, rule 4, as regards the nature and value of the subject matter of the suit.

Certificate granted.