

1932

IN THE
MATTER OF
JAY DAYAL
MADAN
GOPAL.

of which are so often obscure and exercise the minds of counsel and Judges so much. In any case the Income-tax Act being a fiscal enactment must be liberally construed and administered with leaning always in favour of the subject, where that may be possible.

Mukerji, J.

In the result I would frame the question of law as stated above and would answer it also as stated above.

By THE COURT:—Subject to the limitation that it does not necessarily follow that the income received by the Benares firm is no part of its own income, we answer the question referred to us by saying that even though the finding may be justified on the evidence, the Benares firm cannot legally be a partner in the nine other firms.

The Crown must pay the costs of the assessee, including the sum of Rs.100 that was deposited by the assessee for the reference. We assess the costs of the assessee in this Court at the amount certified by his counsel up to Rs.250.

*Before Sir Shah Muhammad Sulaiman, Chief Justice,
and Mr. Justice Mukerji.*

MUHAMMAD ASGHAR AND OTHERS (APPLICANTS) v.
ABIDA BEGAM (OPPOSITE PARTY).*

1932
April, 22.

Civil Procedure Code, sections 109(c) and 110—Valuation for appeal to Privy Council—Partition suit—Value of whole property to be regarded and not of the share in dispute—“Otherwise a fit case”—Conflict of opinion upon a point of law.

The word “property” in the second paragraph of section 110 of the Civil Procedure Code need not necessarily mean the subject matter in dispute in the suit.

Where in a partition suit the value of the subject matter in dispute, namely the share of the plaintiffs in the whole property, was less than Rs.10,000 but the value of the whole property sought to be partitioned was more than Rs.10,000, it was held that the decree at least indirectly involved a question respecting property of more than Rs.10,000 in value, and there was a right of appeal to the Privy Council under section 110.

*Application No. 6 of 1932, for leave to appeal to His Majesty in Council.

At any rate, in view of the conflict of opinion in India on the point of law involved in the appeal, the case was "otherwise a fit case" for appeal to the Privy Council, under section 109(c).

1932

MUHAMMAD
ASGHAR
v.
ABIDA
BEGAM.

Mr. *Shiva Prasad Sinha*, for the applicants.

Mr. *Mansur Alam*, for the opposite party.

SULAIMAN, C. J. and MUKERJI, J.:—This is an application for leave to appeal to His Majesty in Council from a judgment of this Court passed in first appeal from order, reversing the judgment of the lower appellate court and restoring that of the court of first instance. The suit related to the partition of house properties, the plaintiffs' share in which was valued at less than Rs. 10,000. It is conceded by the applicants before us that the value of the subject matter in dispute, viz. the share of the plaintiffs in the disputed house, is less than Rs. 10,000. On the other hand, it is not disputed by the respondents that the value of the entire house which is sought to be partitioned is more than Rs. 10,000.

The parties had agreed to abide by the statement of a referee and this High Court considered that the proceedings were not in the nature of an arbitration but amounted to a compromise, and ordered that a decree should be prepared in terms of the statement made by the referee. The question raised in appeal is whether the proceedings were in the nature of an arbitration or a compromise. On this point there is undoubtedly some conflict of opinion in India, and the question is a substantial question of law.

There was also a question as to the correct interpretation of the statement made by the referee, the answer to which depends on a consideration of the entire proceedings relating to the reference. A translation of those proceedings was not before the Bench, but it will now have to be prepared.

1932

MUHAMMAD
ASGHAR
D.
ABIDA
BEGAM.

An objection is taken on behalf of the plaintiffs respondents that the case does not fulfil the requirements of section 110 of the Code of Civil Procedure, inasmuch as the value of the subject matter in appeal to their Lordships of the Privy Council is less than Rs. 10,000. On the other hand it is contended on behalf of the defendants that the decree of this Court indirectly involves a question respecting property of the value of more than Rs. 10,000.

On this question also there is a conflict of opinion between some of the High Courts in India. It was held in the case of *Lala Bhugwat Sahay v. Rai Pashupati Nath* (1) that in a suit for partition the value of the whole estate is the value to be taken into account when considering whether leave to appeal to His Majesty in Council should or should not be granted. On the other hand, the Bombay High Court in the case of *DeSilva v. DeSilva* (2) held that the value to be looked at is the value of the interest of the party prejudiced by the decree.

We think that inasmuch as the plaintiffs' claim was for the partition of the whole house and the claim could not be decreed without considering the value of the entire house and the method in which the partition should take place, it is very difficult to say that the decree does not at least indirectly involve a question respecting the whole house which is admittedly of the value of Rs.10,000. There is a difference between the language of the first paragraph and that of the second paragraph of section 110 of the Code of Civil Procedure. In the first the words used are "the amount or value of the subject matter in dispute", whereas in the second we have "respecting property of like amount or value". Such "property" need not necessarily be the subject matter in dispute in the suit. We are therefore of opinion that the defendants are

(1) (1906) 10 C.W.N., 564.

(2) (1904) 6 Bom., L.R., 403.

entitled as of right to appeal to their Lordships of the Privy Council; and at any rate the case involves a substantial and important question of law, and in view of the conflict of opinion which has prevailed in India it is also otherwise a fit case for appeal to His Majesty in Council under section 109(c) of the Code of Civil Procedure. We accordingly order that a certificate be granted.

1932

MUHAMMAD
ASGHAR
v.
ABIDA
BEGAM.

REVISIONAL CRIMINAL.

Before Mr. Justice Young.

EMPEROR v. KATWARU RAI AND OTHERS.*

1932
April, 22.

Criminal Procedure Code, sections 107 and 426(1)—Suspension by appellate court of order to find security—"Convicted person" includes a person required to furnish security for keeping the peace—Criminal Procedure Code, section 423 (1) (d)—Incidental order.

Although it cannot be said that a person, against whom an order has been passed under section 107 of the Criminal Procedure Code to furnish security for keeping the peace, has been convicted of an offence, yet there is no reason why he cannot be said to be a "convicted person" within the meaning of those words in section 426(1) of the Criminal Procedure Code. Those words in the section include all persons against whom an order has been passed by a criminal court from which there is an appeal allowed. On an appeal under section 406 the appellate court can therefore suspend, pending the appeal, the order relating to furnishing of security.

Further, such an order of suspension is also covered by section 423(1)(d), as an incidental order that may be just or proper.

• Mr. R. K. Dave, for the applicants.

The Assistant Government Advocate (Dr. M. Waliullah) for the Crown.

YOUNG, J.:—This is an application in revision against the order of the Additional Sessions Judge

*Criminal Revision No. 156 of 1932, from an order of Preet Nath Ghose, Additional Sessions Judge of Basti, dated the 24th of February, 1932.