

The mortgaged property was sold in execution of Rani Phul Kunwar's decree after the order of discharge. The right to a decree under order XXXIV, rule 6, of the Code of Civil Procedure did not accrue till after the sale of the property. The right to a personal decree was not time barred on the date of the presentation of the application. The order of discharge cannot take away the statutory right of the decree-holder which materialised long after the order of discharge. We hold that the decree was rightly passed. Our attention has been drawn to section 128 of the Indian Contract Act. This section is irrelevant. We dismiss the application with costs.

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### APPELLATE CIVIL.

*Before Sir Grimwood Mears, Chief Justice, and  
 Mr. Justice Sen.*

NATHU LAL AND ANOTHER (PLAINTIFFS) v. BABU RAM  
 AND OTHERS (DEFENDANTS).\*

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*Civil Procedure Code, sections 109(c) and 110—Valuation—  
 “Involve directly or indirectly a claim to property etc.”—  
 Mere possibility of a future suit by a party is not meant  
 —“Otherwise a fit case”—Appeal to Privy Council from  
 a second appeal.*

The words, “must involve directly or indirectly some claim or question to or respecting property of Rs. 10,000 or upwards in value”, in section 110 of the Civil Procedure Code refer to questions arising between parties to a pending suit and not to questions relating to the title of only one of the parties which might be made the basis of a prospective suit. The reference is to suits in existence and not to suits *in gremio futuri*. The value of property which may be involved in such a future suit cannot be taken into account in computing the valuation of Rs. 10,000 required by section 110.

The High Court certified the present case, which was that of a decision in second appeal, under section 109(c) as being otherwise a fit case for appeal to the Privy Council, having regard to the substantial questions of law sought to be raised in the appeal and their vital importance to the parties.

\*Application No. 28 of 1931, for leave to appeal to His Majesty in Council.

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Mr. *Panna Lal*, for the appellants.

Messrs. *S. K. Das* and *Harnandan Prasad*, for the respondents.

MEARS, C. J., and SEN, J. :—This is an application by the plaintiffs for leave to appeal to His Majesty in Council from a decree of this Court in a second appeal, which reversed the decrees of the courts below and dismissed the plaintiffs' suit. The application purports to be under sections 109(e) and 110 of the Civil Procedure Code.

The facts which have given rise to this application lie within a very narrow compass and are these. Ram Sahai, Jai Sukh Ram and Sita Ram were members of a joint Hindu family, which possessed considerable property. On the 17th of April, 1873, Sita Ram separated. Jai Sukh Ram died in 1891, leaving a widow Mst. Jamna and three daughters. Mst. Naraini, Mst. Ram Dei and Mst. Mullo. A dispute arose between Mst. Jamna and Ram Sahai, the former claiming that her husband was separate from Ram Sahai and the latter asserting that he died as a member of a joint family with him. The dispute was referred to arbitration and an award was given on the 9th of February, 1892, under which the entire 20 biswas zamindari in mauza Jauharpur alias Rasulpur with Nagla and a plot of land bearing No. 2770 situate in Qasba Koil and half of a haveli situate in Gudri were allotted to Mst. Jamna "free from all claims, liabilities and debts". The award provided that whenever any one of the parties intended to sell half of the haveli, the co-sharer of the other half would be entitled to pre-empt. The title deeds relating to the zamindari of mauza Jauharpur and of the land in Koil were directed to be handed over to Mst. Jamna. On the 25th of April, 1905, Mst. Jamna executed a deed of gift of the entire property obtained by her under the award to her three daughters, under

which Mst. Naraini got three annas, Mst. Ram Dei six annas and Mst. Mullo seven annas. The two sisters Mst. Naraini and Mst. Ram Dei had been married to two brothers Chiranji Lal and Ram Dayal. Mst. Naraini died in February, 1923, without leaving any issue. Mst. Ram Dei and Ram Dayal are dead. They left a son Nanak Chand. Upon the death of Nanak Chand, the six annas share of Mst. Ram Dei devolved upon Mst. Laraiti, widow of Nanak Chand, who is still alive.

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The suit which has given rise to these proceedings relates to the three annas share of Mst. Naraini. Nathu Lal, plaintiff No. 1, is the nephew of Chiranji Lal, husband of Mst. Naraini. He sold a one-third share in the zamindari of Jauharpur to Budh Sen, plaintiff No. 2. The suit was launched against Babu Ram and three others who are the sons of Mst. Mullo. The plaintiffs claimed to recover possession of a share in the zamindari and the house in Gudri together with mesne profits. The suit was valued at Rs. 4,725, with the following details; value of zamindari Rs. 3,750; value of house Rs. 375 and mesne profits Rs. 600.

Plaintiffs alleged that Ram Sahai and Jai Sukh Ram were members of a joint family; that upon the death of Jai Sukh Ram the entire property had devolved upon Ram Sahai by rule of survivorship; that Mst. Jamna, widow of Jai Sukh Ram, had no title to the property under the Hindu law of inheritance; that on a true construction of the award dated the 9th of February, 1892, an absolute interest had been carved out to Mst. Jamna with respect to the property allotted to her; that she was competent to execute the deed of gift in favour of the daughters; and that, in any case, her possession between the 9th of February, 1892, and the 28th of April, 1905, was adverse against the true owner and had matured into title.

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The defendants traversed all these allegations. The court of first instance decreed the plaintiffs' suit on the 26th of March, 1928, upon the findings that Jai Sukh Ram at the time of his death was a member of a joint Hindu family with Ram Sahai; that Mst. Jamna had become the absolute owner of the property under the award dated the 9th of February, 1892; that since the award she had remained in adverse proprietary possession for over twelve years till the execution of the deed of gift and that title had devolved upon Nathu Lal, the plaintiff, by rule of inheritance. The lower appellate court affirmed this decree on the 21st of June, 1928. The defendants filed a second appeal (S. A. No. 1395 of 1928) to this Court. On the 22nd of April, 1931, a Division Bench of this Court decreed the appeal and reversed the concurrent judgments of the courts below. The *ratio* of this decision was that Mst. Jamna upon the death of her husband had put forward a claim to the property in the capacity of a Hindu widow; that in the arbitration proceedings she had represented the estate of her husband; that she did not acquire any absolute title to the property by force of the award dated the 9th of February, 1892, and that her possession was that of a Hindu widow and not adverse.

The plaintiffs are anxious to prefer an appeal to His Majesty in Council, *inter alia* upon the following grounds:—

(a) That the agreement of reference and the award have been misconstrued and that under the latter document an absolute estate was acquired by Mst. Jamna.

(b) That even though Mst. Jamna was originally claiming a life interest in the entire estate left by her husband, there was no legal bar to her acquiring an absolute proprietary title to a portion of the said estate,

either as the result of the decision of the arbitrators or as the result of an agreement with Ram Sahai.

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(c) That this Court was not justified in oversetting the concurrent finding of fact about Jai Sukh Ram and Ram Sahai being members of a joint Hindu family at the time of the latter's death—a finding which materially affected the nature and character of Mst. Jamna's possession.

The amount or value of the subject matter of the suit in the court of first instance was Rs. 4,725. The amount or value of the subject matter of the projected appeal to His Majesty in Council is also below Rs. 10,000. It has however been contended by the plaintiffs that the decree in this case involves directly or indirectly some claim or question to or respecting property of the value of Rs. 10,000 or upwards and that the case therefore fulfils the requirements of section 110 of the Code of Civil Procedure. It has been argued that, although the present claim relates to Mst. Naraini's property, the decree would affect the plaintiffs' right with reference to the property of Mst. Ram Dei which is at present in the possession of her daughter-in-law Mst. Laraiti, the value of which is exactly twice the value of the property now in dispute.

No cause of action has up till now accrued in plaintiffs' favour with reference to the six annas share of Mst. Ram Dei. During the life time of Mst. Laraiti, the plaintiff No. 1 has no title to the property and has a mere shadowy right of expectancy, which may never materialise. Nathu Lal plaintiff may die in the life time of Mst. Laraiti and the latter may effectively cut Nathu Lal off by taking a boy in adoption, if she be in possession of the necessary authority. The words, "must involve directly or indirectly some claim or question to or respecting property of upwards of Rs. 10,000 in value", in section 110 refer to questions arising between parties to a pending suit and not

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to questions relating to the title of only one of the parties which might be made the basis of a prospective suit. It has been held by KNOX and BLAIR, JJ., in *Hanuman Prasad v. Bhagwati Prasad* (1) that when it is laid down that the decree must involve directly or indirectly some claim or question to or respecting property of Rs. 10,000 in value or upwards, the reference is to suits in existence and not to suits *in gremio futuri*. In *Rajah of Ramnad v. Kamath Ravuthan* (2) SPENCER and KUMARASWAMI SASTRI, JJ., held that the reference in the Civil Procedure Code was evidently to questions arising between the parties to the suit and not to questions affecting the title of one of the parties to the suit or suits that may hereafter be brought but were not then pending. A similar view was taken by RUTLEDGE, C. J., and CHARI, J., in *Bon Kwi v. S. K. R. S. K. R. Firm* (3).

We are of opinion that the case now before us does not with reference to its valuation fulfil the requirements of section 110 of the Civil Procedure Code.

It has been next contended that the case is *otherwise* a fit case for appeal to His Majesty in Council and should be certified as such under section 109(c) of the Code of Civil Procedure. In special cases, where the points in dispute may not be measurable in money and yet there may be substantial questions of law of sufficient public or private importance, an appeal to the Privy Council may be justified. We have indicated some of the grounds which are sought to be raised in this case and are of opinion that these grounds raise substantial questions of law and are of vital importance to the parties before us. We therefore certify that this case fulfils the requirements of section 109(c) of the Code of Civil Procedure.

(1) (1902) I. L. R., 24 All., 236 (238).

(2) A. I. R., 1922 Mad., 34.

(3) A. I. R., 1926 Rang., 128.