MISCELLANEOUS CIVIL.

Before Mr. Justice Gokaran Nath Misra.

BISHESHWAR DAYAL (APPLICANT) *v.* LACHMAN RAM AND ANOTHER (PLAINTIFF OPPOSITE PARTY).* 1926 *May*, 14.

Oudh Courts Act (IV of 1925), section 12(2)—Test as to when a case should be declared fit for third appeal—Decision set aside as no judgment in law, whether a good ground for third appeal—Interpretation of a document, whether a ground for grant of certificate.

Where the judgment of the lower appellate court was set aside on the ground that it was no judgment in law, *held*, that there was no ground to certify that the case was a fit one for third appeal.

Held, that a particular interpretation put upon a document by a Judge in second appeal is no ground to grant a certificate that the case is a fit one for third appeal.

Held further, that such case should be declared as fit one for third appeal in which there may be involved questions of public importance or which may be important precedents governing numerous other cases, or in which, while the right in dispute is not measureable in money, it is of great public or private importance.

Held also, that the right of third appeal conferred under section 12(2) of the Oudh Courts Act is a right not wider than that conferred under the Letters Patent of a High Court. Under that section the intention of the legislature was to curtail the right of appeal and to grant it only in such cases in which the Judge, against whose decision it is intended to appeal, considers the case a fit one for third appeal. [15 Bom., L. R., 1021, relied upon.]

Mr. *Bisheshwar Nath Srivastava*, for the applicant

* Civil Miscellaneous Application No. 326 of 1926, for leave to appeal under section 12(2), Oudh Courts Acts, against the judgment and decree, dated the 4th of March, 1926, in Second Civil Appeal No. 11 of 1925, decided by Mr. Justice GOKARAN NATH MISRA, reversing the judgment and decree, dated the 3rd of October, 1924, of Ganga Shankar, Subordinate Judge of Unao, affirming the judgmen and decree, dated the 31st of March, 1924, of Brij Kishen Topa, Munsif of North Unao, decreeing plaintiff's suit

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MISRA, J. :—This is an application requesting me to certify that Second Civil Appeal No. 11 of 1925 is a fit case for third appeal. I have heard the learned Counsel for the applicant, but have come to the conclusion that it is not a case in which I should grant his client leave to appeal under section 12(2) of the Oudh Courts Act (IV of 1925). This was a case which had come up to me in appeal from the judgment of the Subordinate Judge of Unao. The first point which had been argued before me on behalf of the plaintiff-appellant, now opposite party, was that the judgment of the learned Subordinate Judge was no judgment at all, and his finding on the point in dispute should not, therefore, be considered as binding in second appeal. I agreed with that contention. I had found in previous cases which had come up to me in appeal from the judgment of the same Subordinate Judge that he was in the habit of writing judgments which, in my opinion, were defective, and could not be considered valid and legal judgments. The learned Subordinate Judge had, in this case, as will appear from my judgment, merely agreed with the decision of the learned Munsif, stating that on a consideration of the oral and documentary evidence, he was of the same opinion as the Munsif, and consequently he dismissed the appeal. I, therefore, set aside his judgment. There were then two courses open to me, either to remand the case to the learned Subordinate Judge for a fresh finding, or to come to a finding myself under the provisions of section 103 of the Code of Civil Procedure, as recently amended. As I had heard the case at length, I did not think it proper to put the parties to the expense of appearing again before the Subordinate Judge, and decided to arrive at a finding on the evidence on the record myself. I then heard Counsel for the parties at great length, and came to

the conclusion that the judgment of the trial court was erroneous, and could not be sustained. Having come to this finding, I accepted the appeal, set aside the decrees of the courts below and passed a decree in favour of the plaintiff.

There are, therefore, two points for consideration before me in regard to the present application.

The first point is whether I was right in setting aside the judgment of the learned Subordinate Judge, which I had held was no judgment in law. The second point is whether the finding of fact at which I arrived is one in regard to which I should give the defendant-applicant leave to appeal.

Regarding the first point, I am of opinion that the matter is one about which a series of decisions both of the late Court of the Judicial Commissioner of Oudh as well as of other High Courts in India have laid down the rule that courts of first appeal should, in order that their judgment may be binding in second appeal, deliver a judgment which should show that they have considered the evidence on the record, and the conclusions to which they have arrived on the basis of such evidence are their own conclusions. A mere statement by a court of first appeal to the effect that it has considered the oral and documentary evidence, and saw no reason to interfere with the judgment of the trial court is a judgment which does not indicate to a court of second appeal that the court of first appeal has applied its mind to the consideration of the evidence, oral and documentary, in the case. I have dealt at length with this question in a judgment of mine, reported in *Anandpal Singh* v. *Mahabal Singh* (1). I am, therefore, of opinion that there can be no ground for complaint on that account, and I am not inclined to certify that the present case is a fit one for third appeal.

(1) (1926) 3 O.W.N., 352.

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Regarding the second point, I am of opinion that it is entirely a question of fact, decided by me after having gone through all the evidence on the record. I heard Counsel for the plaintiff as well as for the defendant at great length, and it was then that I came to the finding against which the defendant complains. Indeed after the case had been argued at length, the learned Counsel who appeared on behalf of the defendant admitted that the only way in which he could support his client's case was by offering an explanation regarding the sale-deed relied upon by the plaintiff. This explanation was never put forward on behalf of the defendant during the course of the examination of *M. Abdul Hamid*, Pleader. I, therefore, rejected that explanation, and decided the case after interpreting the sale-deed in a manner in which I considered it proper to interpret it. The learned Advocate for the applicant contends before me that my interpretation is not correct. I am not concerned with that question at this stage, while considering the question whether the case is one in which the applicant should be given leave to appeal. I am only concerned with the consideration of the question whether a litigant, who has lost his case in this Court in second appeal, is entitled to get a certificate from a Judge of this Court, who is responsible for that decision, that the case is a fit one for third appeal, on the ground that a particular interpretation has been put upon a particular document by the Judge responsible for the decision which is stated not to be correct. I am of opinion that in cases like this a certificate for leave to appeal should not be granted, and I proceed to state my reasons for this view.

In High Courts established in India by virtue of Letters Patent granted by His Majesty in Council, there is invariably a provision for a third appeal

against the decisions arrived at by a single Judge of the High Court. These appeals are called Letters Patent appeals because there is no provision for such appeals in the Code of Civil Procedure beyond the Letters Patent themselves. It is an invariable practice in High Courts, in the Letter Patent of which there is a provision for such an appeal, that these appeals are only entertained on a point of law. They are not entertained on a point of fact. Appeals under Letters Patent are, therefore, only admitted when a question of law is involved. In the present case my judgment is based on the ordinary interpretation of a sale-deed as supplemented by the evidence of *M. Abdul Hamid*, Pleader. I do not consider that there is any point of law involved in the case. The argument advanced by the learned Advocate for the applicant that the right of third appeal conferred under section 12(2) of the Oudh Courts Act (IV of 1925) is a right wider than that conferred upon a litigant desirous of appealing under the provisions contained in Letters Patent of a High Court, a single Judge of which Court has decided the case against him, has, in my opinion, no substance. Under section 12(2) of the Oudh Courts Act, the intention of the legislature was to curtail the right of appeal, and to grant it only in cases in which the Judge, against whose decision it is intended to appeal, considers the case a fit one for third appeal.

I now proceed to discuss the meaning of these words as used in section 12(2) of the Oudh Courts Act. These words are nowhere explained in the Act itself, but to find out the proper interpretation to be given to them, one has only to turn to section 109(*c*) of the Code of Civil Procedure (IV of 1908) where such words do exist. It has been held by the various High Courts in India that, where a case has to be certified as a fit

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one for appeal to His Majesty in Council, the interpretation to be put upon these words must be a very restricted interpretation. Clause (*c*) of that section is intended to meet special cases, such for example as those in which the point in dispute is not measurable by money, though it may be of great public or private importance. What is, therefore, contemplated in clause (*c*) of that section is a class of cases in which there may be involved questions of public importance or which may be important precedents governing numerous other cases, or in which, while the right in dispute is not measurable in money, it is of great public or private importance—vide *Hirjibhai* v. *Jamshedje* (1); *Kripasindhu Panigrahi* v. *Nandacharan* (2); *Mohammad Karim Khan* v. *Sadik Husain* (3), and *Raja Rajeshwara Sethupathi* v. *Tiruneelakantam Servai* (4). Applying this test I think I can safely hold that the point involved in this case is not a point of any general importance. Indeed the point involved is not even a substantial point of law. I, therefore, reject this application.

Application rejected.

(1) (1913) 15 Bom., L.R., 1021.
(2) (1920) 1 Pat. L.T., 289.
(3) (1923) 10 O.L.J., 289.
(4) (1923) 44 M.L.J., 217.