

APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty and Mr. Justice
H. G. Smith

1934
March, 19

MAHABIR SINGH (PURCHASER-APPELLANT-APPLICANT) v.
LAL AMBIKA BAKHSH SINGH (OBJECTOR-RESPONDENT-
OPPOSITE PARTY)*

Civil Procedure Code (Act V of 1908), sections 104(2), 109 and 110—Appeal to Privy Council—Section 104, whether applies to appeals to Privy Council—“Substantial question of law”, what is—Question whether civil court can go behind sale officer’s order, if a substantial question of law.

Section 104 of the Code of Civil Procedure refers to appeals to High Courts in British India, and does not forbid appeals to His Majesty in Council when they comply with the conditions laid down in sections 109 and 110 of the Code of Civil Procedure. It therefore cannot be said that under sub-section (2) of section 104 of the Code of Civil Procedure no appeal can lie from any order passed in appeal under Order XLIII, rule 1, clause (j) of the Code of Civil Procedure. *Jagnohan Singh v. Bachha and Raja Partab Bahadur Singh* (1) and *Banshibadan Mandal v. Chhaunat Bibi* (2), referred to.

The contention that the civil court has no jurisdiction to go behind the order of the Sale Officer, and that the order of the Sale Officer cannot be questioned by the Civil Court in execution proceedings does not involve any substantial question of law so as to justify the grant of leave to appeal to Privy Council. *Raghunath Prasad Singh v. Deputy Commissioner of Partabgarh* (3), referred to.

Mr. B. K. Dhaon, for the applicant.

Mr. P. N. Chaudhri, holding brief of Mr. Hyder Husain, for the opposite party.

NANAVUTTY and SMITH, JJ.:—This is an application for grant of certificate of leave to appeal to His Majesty in Council against a Bench decision of this Court delivered on the 1st of August, 1933. We have heard the learned Counsel of both parties, and perused the judgment against which leave to appeal has been sought

*Privy Council Appeal No. 22 of 1933, for leave to appeal to His Majesty in Council.

(1) (1922) A.I.R., Oudh, 146. (2) (1926) A.I.R., Cal., 400.
(3) (1929) I.L.R., 4 Luck., 483.

by the applicant Mahabir Singh. A preliminary objection was raised by the learned Counsel for Lal Ambika Bakhsh Singh, objector-respondent that under subsection (2) of section 104 of the Code of Civil Procedure no appeal could lie from any order passed in appeal under order XLIII, rule 1, clause (j) of the Code of Civil Procedure, and in support of that contention the rulings reported in *Jagmohan Singh v. Bachha and Raja Partab Bahadur Singh* (1) and *Banshibadan Mandal v. Chhaunat Bibi and others* (2) were cited. In our opinion there is no force in this preliminary objection. Section 104 of the Code of Civil Procedure refers to appeals to High Courts in British India, and does not forbid appeals to His Majesty in Council when they comply with the conditions laid down in sections 109 and 110 of the Code of Civil Procedure. We, therefore, overrule the preliminary objection.

On the merits, we are of opinion that we should not grant leave to the applicant Mahabir Singh to appeal to His Majesty in Council, because we are not satisfied that the valuation of the property in suit is Rs.10,000 or more or that the appeal which the applicant proposes to file to His Majesty in Council involves any substantial question of law. In the first place, the applicant Mahabir Singh is a pre-emptor in respect of Mahal Krishnapal Singh alone which was knocked down at the sale, held by the Sale Officer, for Rs.4,634-6, and this amount was deposited in court by the applicant Mahabir Singh, and was accepted by the Sale Officer, but the learned Subordinate Judge set aside the order of the Sale Officer, and the order of the Subordinate Judge was confirmed in appeal by a Bench of this Court, to which one of us was a party. The value of the property, therefore, in which the applicant Mahabir Singh is interested is only Rs.4,634-6. In the memorandum of appeal, which the applicant Mahabir Singh filed in this Court against the order of the learned Subordinate Judge of

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Partabgarh, the valuation of the appeal was put down as Rs.9,459-0-9. Thus it is clear that the applicant has not satisfied us that the decree of this Court dated the 1st of August, 1933, involves directly or indirectly any claim to property worth Rs.10,000 or more.

*Nanamity
and
Smith, JJ.*

In the second place, we also consider that there is no substantial question of law involved in the appeal which the applicant Mahabir Singh proposes to file before His Majesty in Council. In the appeal before this Court the only question which was argued by the learned Counsel for Mahabir Singh was that the Subordinate Judge of Partabgarh had no jurisdiction to go behind the order of the Sale Officer, and that the order of the Sale Officer could not be questioned by the civil Court in execution proceedings. This contention does not involve any substantial question of law, and it has been fully dealt with in the judgment passed by this Court on the 1st of August, 1933. Our attention has been invited to a ruling of their Lordships of the Privy Council reported in *Raghunath Prasad Singh and another v. The Deputy Commissioner of Partabgarh and others* (1). In the light of the observations made by Viscount DUNEDIN in the ruling cited above, we are of opinion that the matter, in respect of which the applicant wants leave to appeal to His Majesty in Council, does not involve any substantial question of law.

We accordingly decline to grant leave to appeal to His Majesty in Council, and dismiss the application of Mahabir Singh with costs.

Appeal dismissed

(1) (1929) I.L.R., 4 Luck., 483; L.R., 54 I.A., 126.