

MISCELLANEOUS CIVIL

Before Sir C. M. King, Knight, Chief Judge and
Mr. Justice Ziaul Hasan

BABU SRI MADHO PRASAD SINGH (APPLICANT) v. SHER
BAHADUR SINGH AND OTHERS (OPPOSITE-PARTY)*

1936
January, 6

Civil Procedure Code (Act V of 1908), section 110, second clause, scope and applicability of—Leave to appeal to Privy Council—Decree involving indirectly some question as to property of the value of Rs.10,000 or above, whether refers to existing or future suits—Suit relating to one of five villages, dismissal of—No suit filed as to four villages—Leave to appeal, whether can be given for property not claimed.

The words "or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value" in the second clause of section 110, C. P. C., are no doubt very wide but the reference in this clause is to suits in existence and not to suits in *gremio futuri*. *Hanuman Prasad v. Bhagwati Prasad* (1), and *Bon Kwi v. S. K. R. S. K. R. Firm* (2), followed.

Where a declaratory suit valued at Rs.600 relating to certain plots of land in one of five villages comprising a taluqa is dismissed by High Court on the basis of an old standing decree passed in regard to land of all the five villages valued at more than Rs.10,000, permission to appeal to Privy Council on the ground that the decision involves indirectly a question respecting property of the value of above Rs.10,000, cannot be granted as the second clause of section 110, C. P. C., does not authorise such an appeal in respect of property for which no claim has been made or in respect of which no question has arisen in any Court, no suit having been filed in respect of the land of the other four villages.

Mr. H. D. Chandra, for the applicant.

Mr. R. B. Lal, for the opposite party.

KING, C.J. and ZIAUL HASAN, J.:—This is an application for permission to appeal to His Majesty's Privy Council against a decision of a Bench of this Court in second appeal in a case brought by the applicant for a

*Privy Council Appeal No. 14 of 1935, for leave to appeal to His Majesty in Council against the decree of a Bench of this Court, dated the 22nd of March, 1935.

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

(2) (1926) A.I.R., Rang., 128.

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declaration that the defendant had no under-proprietary rights in certain plots of land of village Mohlara. Village Mohlara, like four other villages, is part of a taluqa known as Sihipur taluqa which was at one time owned by one Nihal Singh. Nihal Singh had five wives. By his will he gave the taluqa to his five wives, in succession in order of seniority, with the remainder to Sheombar Singh, grandson of his brother. His third wife was Raghunath Kuar and when she came into possession of the taluqa, she transferred it by gift in 1877 to her brother's son Bisheshar Baksh Singh. On this Nihal Singh's fourth widow Ramanand Kuar and Sheombar Singh's son brought suits against Raghunath Kuar and Bisheshar Baksh Singh challenging the validity of the gift. The suits went up to the Judicial Committee and it was held that the gift made by Raghunath Kuar was valid for her lifetime. In 1877 five suits were brought by certain persons against Raghunath Kuar claiming under-proprietary rights in the five villages comprised in the taluqa of Sihipur. The suit relating to village Mohlara was brought by the predecessors-in-interest of the opposite parties before us. All these five suits were decided by one judgment and decreed. The applicant, who is the present taluqdar of Sihipur, brought the suit referred to above in respect to the land of village Mohlara and the trial Court as well as the Court of first appeal decreed his suit. The defendants filed a second appeal which came up before a Bench of this Court and the decision of the two lower Courts was reversed. It was held that the decree obtained by the predecessors-in-interest of the opposite parties against Raghunath Kuar was binding on the plaintiff. It is against this decision that the applicant wants to appeal to His Majesty-in-Council. He relies on the second clause of section 110 of the Code of Civil Procedure and though the valuation of the suit was only Rs.600, an affidavit has been filed to show that the value of the land of all the five villages covered by the decree of 1878 is more than Rs.14,000.

The argument is that the decision of this Court in second appeal involves indirectly a question respecting property of the value of upwards of Rs.10,000.

The words "or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value" are no doubt very wide and it cannot also be denied that the decision of this Court in the second appeal does indirectly involve the question whether or not the decree of 1878 in regard to the land of all the five villages is binding on the applicant but in the case of *Hanuman Prasad v. Bhagwati Prasad* (1), it was held that the reference in the second clause of section 110 of the Code of Civil Procedure is to suits in existence and not to suits *in gremio futuri*. A similar view was taken by the Rangoon High Court in the case of *Bon Kwi v. S. K. R. S. K. R. Firm* (2). No authority has been shown to us on which we can hold that the view of the Allahabad and Rangoon High Courts is not correct and that the second clause of section 110 of the Code of Civil Procedure authorises an appeal to His Majesty's Privy Council in respect of property for which no claim has ever been made or in respect of which no question has ever arisen in any Court. It is admitted that no suits have been filed in respect of the land of the other four villages comprised in the Sihipur taluqa. We are therefore of opinion that even granting that the value of the property indirectly affected by this Court's decision in the second appeal is over Rs.10,000 we cannot grant the permission applied for. The application is therefore dismissed with costs.

Application dismissed.

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

(2) (1926) Rang., 128.

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