

publishing or conducting it", refer only to an irregularity in the *procedure* to be followed before a property is put up to sale, and rule 91 comes into operation in those cases where in spite of the prescribed procedure having been regularly followed property has been sold in which the judgment-debtor had no saleable interest.

*Order of Court.*

The order of the court is that the order of the court below will be set aside, the sale will also be set aside and the execution case must be dismissed without satisfaction.

*Order set aside.*

---

**PRIVY COUNCIL.**

ANUP MAHTO

v.

MITA DUSADH.

*On appeal from the High Court at Patna.*

*Privy Council Practice—Record on Appeal—Value of Subject-Matter—Report—Code of Civil Procedure (V of 1908), Order XLV, r. 5.*

When on a petition to the High Court for a certificate that a case is a fit one for appeal to the Privy Council a question has arisen as to the value of the subject-matter and a report thereon has been ordered under Order XLV, rule 5, the report and full information on the matter should be included in the record in the appeal to the Privy Council.

Preliminary objection rejected.

Appeal (No. 113 of 1929) from a decree of the High Court (February 22, 1928) reversing a decree of the Subordinate Judge of Patna (April 21, 1925) on appeal from a decree of the third Munsif of Patna.

---

\*PRESENT: Lord Blanesburgh, Lord Macmillan and Sir George Lowndes.

1933.

MAHADEO  
RAM

v.

RAJA MOHAN  
VIKRAM SAH.

AGARWALA,  
J.

J. C.\*  
1933.

---

May, 5.

1933.

ANUP  
MAHTO  
v.  
MITA  
DUSADH.

The suit was instituted in the Court of the Munsif by the respondents against the appellant claiming to eject the appellant from certain agricultural land. The question for determination was whether under the provisions of the Bengal Tenancy Act, 1885, the appellant had occupancy rights. The High Court held that he had not.

The respondents by their printed case in the appeal contended (inter alia) that the subject-matter of the suit was below Rs. 10,000 and that the appeal was consequently incompetent under s.110 of the Code of Civil Procedure, 1908.

The appeal originally came on for hearing in November, 1932, when the above objection was raised by counsel. The Judicial Committee not having before it material for determining the validity of the objection, adjourned the matter in order that the relevant material might be produced.

Upon the adjourned hearing on May 5 there was produced a report which the Munsif had made in consequence of a direction given by the High Court under Order XLV, rule 5.

1933. May 5.—*Hyam* for the appellant.

*Abdul Majid* for the respondents.

The judgment of their Lordships was delivered by—

LORD BLANESBURGH.—In this matter their Lordships are of opinion that the objection taken has no foundation. By the report of the Munsif on a reference to him under Order XLV, rule 5, the value of the suit before the Board exceeds Rs. 10,000. Their Lordships are not going behind that report. Accordingly the objection on the score of value taken to the competency of the appeal fails and the appeal must now be set down for the purpose of being disposed of on the merits.

But although delay has ensued and costs have been needlessly expended by this unavailing preliminary objection of the respondents their Lordships will not treat the case as one in which they ought to direct them to pay in any event the costs thrown away. The appellant is not free from some responsibility in the matter. They desire to say however by way of warning in future cases that when a question of this kind has been raised in India, and when a report with reference to value has been made under the rule above referred to it is desirable that full information with reference to these proceedings be included in the record so that no such unfortunate misapprehension as has arisen in this case will in any future appeal be possible.

The costs of both sides of this preliminary question will be costs in the appeal<sup>(1)</sup>.

Solicitors for appellant : *Barrow, Rogers & Nevill.*

Solicitors for respondents : *Francis & Harker.*

---

### PRIVY COUNCIL.

HUKUM CHAND

v.

MAHARAJ BAHADUR SINGH.

On Appeal from the High Court at Patna.

*Jains—Rights of worship—Parasnath Hill—Works by Swetambaris—Suit by Digambaris—Limitation—Suit for Declaration—Continuing Wrong—Specific Relief Act (I of 1877), s. 56—Limitation Act (IX of 1908), s. 23; Sch. I, article 120.*

Parasnath Hill, which is regarded as sacred by both sects, the Swetambaris and the Digambaris, of the Jain community.

(1) The hearing of the appeal on the merits was adjourned.

\* Present : Lord Thankerton, Sir John Wallis, and Sir Lancelot Sanderson.

1933.

ANUP  
MAHTO  
v.  
MITA  
DUBADH.

LORD  
BLANES-  
BURGH.

J. C.\*  
1933.

---

May, 12.