MISCELLANEOUS CIVIL.

Before Mr. Justice Abdul Raoof and Mr. Justice Campbell.

1924

Feb. 25.

GOKAL CHAND (DEFENDANT) Petitioner,

versus

SANWAL DAS (PLAINTIFF) AND OTHERS (DEFENDANTS) } Respondents.

Civil Miscellaneous No. 730 of 1923.
(Civil Appeal No. 1893 of 1919.)

Civil Procedure Code, Act V of 1908, sections 109, 110 and Order XLV, rule 2—leave to appeal to the King in Council—substantial question of law.

The suit was one for pre-emption. The lower Court held that the custom of pre-emption existed in the entire city of Delhi, and the High Court on appeal agreed with the trial Court that the custom set up had been established by overwhelming evidence. The defendant-petitioner prayed for leave to appeal to the King in Council on the ground that the appeal involved a substantial question of law.

Held, that although the question whether the evidence produced to establish a custom is sufficient is a question of law, it is not a *substantial* question of law, within the meaning of section 110 of the Code of Civil Procedure, *i.e.*, a question of law in respect of which there may be a difference of opinion.

Parshotam Saran v. *Hargu Lal* (1), followed.

Application for leave to appeal to His Majesty in Council, against the judgment of Mr. Justice Abdul Raoof and Mr. Justice Campbell, passed on 12*th November 1923.* (2)

SHAMAIR CHAND, for Petitioner.

SARDHA RAM, for Respondents.

The judgment of the Court was delivered by—

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(1) (1921) 63 I. C. 837. (2) See I. L. R. 5 Lah. 109.

1924

GOKAL CHAND
v.
SANWAL DAS.

ABDUL RAOOF J.—This is an application under Order XLV, rule 2, and sections 109 and 110 of the Civil Procedure Code, for leave to appeal to His Majesty in Council, and we are asked to grant a certificate to the effect that the case fulfils all the requirements of section 110 of the Code and is fit for appeal to His Majesty in Council. The decree of the lower Court decreeing the suit has been affirmed by this Court. The last paragraph of section 110 provides that "where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law." We have, therefore, to see whether this requirement is fulfilled in the present case.

The suit was one for pre-emption and was based on an alleged custom prevailing in the locality in which the property claimed was situated. The lower Court held that the alleged custom of pre-emption existed in the entire city of Delhi. A large number of instances were cited affirming the alleged custom. The defendant-vendee was not able to cite any single instance in which a claim for pre-emption was ever disallowed on the ground that a custom of pre-emption did not prevail in Delhi. This Court, after an examination of the evidence on the record, agreed with the trial Court as to the effect of the evidence in support of the alleged custom, and held that the custom set up had been established by overwhelming evidence.

Against this decision the petitioner proposes to appeal. On the face of it no substantial question of law arises. The proposed appeal really questions the finding of fact relating to the existence of custom, but it is contended by Mr. Shamair Chand, the learned counsel for the applicant, that the question whether the evidence produced to establish a certain custom is sufficient is a question of law. Technically it is so;

1924

GOKAL CHAND
v.
SANWAL DAS.

but can it be said to be a substantial question of law? What is a substantial question of law has been often considered by the various High Courts in reference to such petitions. In a recent case *Parshotam Saran judgment-debtor, appellant,* versus *Hargu Lal decree-holder and Pahladi Lal auction-purchaser, respondents* (1) decided by a Division Bench of the Allahabad High Court the following opinion was expressed :—

"In order to justify the grant of a certificate for leave to appeal to His Majesty in Council, the High Court must be satisfied that a substantial question of law is involved in the case ; that is to say, a question of law in respect of which there may be a difference of opinion."

This gives an indication as to the nature of the question to be raised.

In our opinion no substantial question of law arises in this case. Accordingly we dismiss the application with costs.

C. H. O.

Application dismissed.

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(1) (1921) 63 I. C. 837.