

APPELLATE CIVIL.

Before Sir Arthur Page, K.C., Chief Justice, and Mr. Justice Das.

1930

Jan. 14.

GNANAMANIKKAM AMMAL

v.

S. R. SAMSON.*

Privy Council—Leave to appeal—Valuation of petitioner's claim—Civil Procedure Code (Act V of 1908) S. 110.

To determine the value prescribed by S. 110 of the Civil Procedure Code, the Court has to consider what is the detriment to the person seeking to appeal to the Privy Council, and if that is less than Rs. 10,000, then, whatever may be the value of the property in suit, the case does not fulfil the requirements of the section.

Where the value of the applicant's share in a decree relating to certain property is less than Rs. 10,000, though the value of the whole property itself exceeds that amount, leave to appeal to the Privy Council cannot be granted.

Gesain Ehatnath Gir v. Bihari Lal, 4 Pat. L.J. 415—*followed*.

Ajjala Raja v. Rangappa, 33 Mad. L.J. 481; *John De Silva v. De Silva*, 6 Bom. L.R. 403; *Lallubhai v. Bhimbhai*, I.L.R. 53, Bom. 552; *Mirza Abid Husain v. Ahmad Husain*, 26 Bom. L.R. 731; *Nariman v. Hasham Ismayal*, I.L.R. 49 Bom. 149; *Udaychand v. Guzdar*, I.L.R. 52 Cal. 650—*referred to*.
Lala Bhugwat v. Rai Pashupati Nath Bose, 10 Cal. W.N. 564—*distinguished*.

Choudhury for the applicant.

P. B. Sen for the respondent.

PAGE, C.J. and DAS, J.—This an application for a certificate granting leave to appeal to His Majesty in Council.

The present application arises out of a decree embodying the terms of an award passed by the Cuddalore Court in Madras. That decree was transferred to the District Court of Pynmana in Burma for execution. The present applicant applied for leave to execute the decree to the extent of her share in certain property awarded to her thereunder, and the execution proceedings are Civil Execution

* Civil Miscellaneous Application No. 183 of 1930 arising out of Civil First Appeal No. 94 of 1930.

No. 19 of 1929. In the decree the value of the applicant's share was stated to be Rs. 7,348-5-4. The learned District Judge granted to the applicant leave to execute the decree to that extent. From that order an appeal was brought to the High Court, and the High Court reversed the order of the District Judge, and refused to allow the applicant to execute the decree.

The applicant now applies for leave to appeal to His Majesty in Council against the order of the High Court reversing the order of the District Judge of Pyinmana.

In our opinion it is abundantly clear that the value of the subject matter of the proceedings in the District Court was under Rs. 10,000, and that the amount or value of the subject matter in dispute on appeal to His Majesty in Council is also under Rs. 10,000.

The learned advocate for the applicant further contended that the decree or final order on appeal involved, directly or indirectly, some claim or question to or respecting property of Rs. 10,000. The ground of this contention was that the total value of the property in which it was decreed that the applicant was entitled to a share was more than Rs. 24,000; and he urged, therefore, that the final decree or order must involve some claim or question to or respecting property of the value of more than Rs. 10,000.

In our opinion the law to be applied is that laid down by the Bombay High Court in *John Joseph De Silva Sr. v. John Joseph De Silva Jr.* (1) and *Nariman Rustomji Mehta v. Hasham Ismayal Valad Haji Khamisa* (2); and by the Patna

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(1) (1904) 6 Bom. L.R. 403.

(2) (1925) I.I.R. 49 Bom. 149.

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High Court in *Gosain Bhaunath Gir v. Bihari Lal* (1). In the latter case Dawson Miller, C.J., in the course of his judgment, observed: "What one really has to look to in all these cases, in my opinion, is what is the detriment to the person seeking to appeal to the Privy Council, and whatever may be the value of the property with respect to which the claim is brought, if in fact the total amount of the subject matter of the suit, so far as the appellant's interest is concerned, is under Rs. 10,000, then it seems to me that it does not come within the terms of the section". Otherwise, as pointed out by Jenkins, C.J. in *De Silva v. De Silva* (6, Bom. L.R. at page 406), "it would follow that if the sole subject matter in dispute were an easement of trifling value, but affecting property worth Rs. 10,000 or upwards then a right to appeal to His Majesty in Council under the Civil Procedure Code would exist. It appears to me that this would be giving to the words of the section an operation that could not have been intended." (See also *Lallubhai v. Bhimbhai* (2); *Mirza Abid Husain Khan v. Ahmad Husain* (3); *Appala Raja v. Rangappa Naicker* (4); *Udoychand v. Guzdar* (5). Now, if this appeal were allowed, and were successful, what would be the position? In Civil Execution No. 19 of 1929 all that the applicant sought was to execute the decree to the extent of her share in the property. That alone was the object of the application. In the execution proceedings no claim was made to, and no question arose respecting, "property" other than the interest of the applicant in property that had been decreed to her, and any orders that

(1) (1919) 4 Pat. L.J. 415.

(3) (1924) 26 Bom. L.R. 731.

(5) (1925) I.L.R. 52 Cal. 650.

(2) (1929) I.L.R. 53 Bom. 552.

(4) 33 Mad. L.J. 481.

might be passed in Civil Execution No. 19 of 1929 would not affect any other property, or be binding upon the other decree holders in the suit who were not parties to the application for execution.

We were referred to a decision of the Calcutta High Court in *Lala Bhugwat Sahay and others v. Rai Pashupati Nath Bose and others* (1). That was a case where partition of property valued at Rs. 30,000 was sought and decreed, and in the circumstances of that case the Calcutta High Court held that although the value of the applicants' interest were only Rs. 4,000 the subject matter of the partition suit taken as a whole was Rs. 30,000. In our opinion the facts of that case are very different from those in the case which we are now considering; and in our opinion the true test to be applied is that laid down by Dawson Miller, C.J. in *Gosain Bhannath Gir v. Bihari Lal* (2).

The learned advocate for the applicant further contended that in any event the order of the High Court from which he sought to appeal was passed in a case which this High Court ought to certify was a fit one for appeal to His Majesty in Council under section 109 (c) of the Civil Procedure Code. In our opinion the circumstances of this case do not bring it within section 109 (c).

For these reasons the application must be dismissed with costs, 5 gold mohurs.

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(1) (1906) 10 Cal. W. N. 564.

(2) (1919) 4 Pat. L.J. 415.