

MISCELLANEOUS CIVIL.

Before Zafar Ali and Bhide JJ.

ASA RAM AND ANOTHER (DEFENDANTS) Petitioners

1930

versus

Jan. 22.

KISHEN CHAND AND OTHERS (PLAINTIFFS)

Respondents.

Civil Miscellaneous No. 580 of 1929.

Civil Procedure Code, Act V of 1908, section 110—Appeal to Privy Council—Application for leave—Cross-appeals—consolidated decree—effect of.

From a decree for ejectment (etc.) of the defendants-mortgagors, allowing interest at a lower rate than that claimed by the plaintiffs-mortgagees, there were appeals by both parties before the High Court, as the result of the decision of which a consolidated decree was drawn up accepting the plaintiffs-mortgagees' appeal in respect of the higher rate of interest and dismissing that of the defendants, who thereupon applied for leave to appeal to the Privy Council. The value of the subject matter of plaintiffs' appeal was admittedly less than Rs. 10,000.

Held, that for the purposes of section 110 of the Civil Procedure Code there were two decrees. But as the dismissal of the defendants' appeal was an affirmance of the decision of the trial Court, the decision of that appeal did not give the defendants a right to the certificate asked for, unless they could show that a substantial question of law was involved.

And, as the decree passed in the appeal filed by the plaintiffs could not improve the position of the defendants, they were, therefore, not entitled to a certificate as a matter of right.

Ramanathan Chetti v. Subramanian Chetti (1), and *Chiranji Lal v. Behari Lal* (2), followed.

Jumuna Prasad Singh v. Jagannath (3), and *Shunmuga Sundara Mudaliar v. Ratnavelu Mudaliar* (4), distinguished.

(1) (1926) 97 I. C. 592.

(3) 1929 A. I. R. (Pat.) 561.

(2) (1918) 48 I. C. 124.

(4) (1929) I. L. R. 52 Mad. 521.

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Held also, that though the proper construction of documents may at times be a question of law, as the petitioners' contention (which they had failed to establish) was that the intention of the parties was different from what appeared on the face of the deed in suit, there was no substantial question of law within the meaning of section 110 of the Code.

Application under section 109, Civil Procedure Code, for leave to appeal to His Majesty in Council.

KISHEN DAYAL, for Petitioners.

BADRI DAS, for Respondents.

The judgment of the Court was delivered by—

BHIDE J.—This is an application for leave to appeal to His Majesty in Council from a decree of this Court passed in pursuance of the decision of two cross-appeals, namely Nos. 1550 and 1813 of 1926. The plaintiffs, who are the mortgagees of certain house property, sued the mortgagors and their representatives-in-interest, for ejectment, arrears of rent and interest thereon. The suit was decreed by the trial Court but interest was allowed at the rate of 1 *per cent. per mensem* instead of the stipulated rate of 2 *per cent. per mensem*. From this decision both parties appealed to this Court. The appeal of the defendants-mortgagors was dismissed and the plaintiffs' appeal, which was confined solely to the question of interest, was accepted. The defendants now wish to appeal from this decision and it is contended on their behalf that they are entitled to a certificate as a matter of right, inasmuch as the value of the appeal exceeds Rs. 10,000.

On behalf of the plaintiffs-respondents it is contended that the decree of this Court was in substance a decree of affirmance and that in any case the variation in the decree, if any, took place as a result of the

decision of the appeal filed by the plaintiffs and it cannot entitle the defendants to the certificate asked for, unless they are able to show that a substantial question of law is involved.

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As regards the first point, there are, no doubt certain authorities of the Calcutta High Court which lay down that a slight variation in the decree, as for instance, in the matter of costs, interest, etc., is not sufficient to convert a decree of affirmance into a decree of variation, *vide, inter alia, Raja Sree Nath Roy Bahadur and others v. The Secretary of State for India in Council* (1). But the correctness of these rulings appears to be open to some doubt in view of the decision of their Lordships of the Privy Council in *Annapurnabai and another v. Ruprao* (2).

The second contention of the learned counsel for the respondents, however, appears to be sound. There were two appeals before this Court and although a consolidated decree was drawn up as a result of the decision of the two appeals, there is no doubt that, in reality, there were two decrees. So far as the appeal of the defendants was concerned, the decree was one of affirmance of the decision of the trial Court. Consequently, the decision of that appeal does not give the defendants a right to the certificate asked for, unless they can show that a substantial question of law is involved. The decree passed in the appeal filed by the plaintiffs, no doubt, varied the decision of the trial Court, but the value of the subject matter of that appeal was admittedly less than Rs. 10,000. It seems to us, therefore, that the mere fact that the decree of the trial Court was varied as a result of the decision of the plaintiffs' appeal cannot

(1) (1904) 8 Cal. W. N. 294.

(2) (1924) I. L. R. 51 Cal. 969 (P.O.).

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improve the position of the defendants. This was the view taken by the Madras High Court in *Ramanathan Chetti v. Subramanian Chetti* (1), and a similar view was taken by the Allahabad High Court in *Chiranji Lal v. Behari Lal* (2). The learned counsel for the petitioners has relied upon *Jumuna Prasad Singh v. Jagannath* (3). That was also a case in which there were two cross appeals and the variation of the decree took place only in respect of interest in one of the appeals. It appears, however, from the judgment that the value of the subject matter of the appeal in which the variation took place exceeded Rs. 10,000. That case is consequently distinguishable from the present case. Another case relied upon by the learned counsel for the petitioner was *Shunmuga Sundara Mudaliar v. Ratnavelu Mudaliar* (4). The facts of that case were rather peculiar. There was an appeal as well as cross-objections. Certain items of account were involved in the appeal while a few others were involved in the cross-objections. The decision proceeded upon a ground common to both the appeal and the cross-objections and hence it was held that there was in substance only one decree. In our opinion the line of reasoning adopted in *Ramanathan Chetti v. Subramanian Chetti* (1) and *Chiranji Lal v. Behari Lal* (2) applies to the present case and the petitioners are, therefore, not entitled to a certificate as a matter of right.

The next point for consideration is whether there is a substantial point of law involved in the proposed appeal. The contention of the learned counsel for the petitioners is that one of the main points raised

(1) (1926) 97 I. C. 592.

(3) 1929 A. I. R. (Pat.) 561.

(2) (1918) 48 I. C. 124.

(4) (1929) I. L. R. 52 Mad. 521.

in the appeal is that the relation of landlord and tenant did not subsist between the parties and as the decision of this question depends upon the construction of certain documents, a substantial question of law is involved.

There seems to be no force in this contention. According to the plain tenor of the mortgage deed and the lease relied upon, there is no doubt that the relation of landlord and tenant was created. The contention of the petitioners is that the intention of the parties was different from what appears on the face of the documents. This they have failed to establish. The question of proper construction of documents may at times be a question of law but we are unable to hold in the above circumstances that any *substantial question* of law within the meaning of section 110, Civil Procedure Code, is involved in the present case.

We accordingly dismiss the application with costs.

N. F. E.

Application dismissed.

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