

APPELLATE CIVIL.

Before Mr. Justice Broomfield and Mr. Justice Sen.

APPA TRIMBAK DESHPANDE AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 4), APPLICANTS *v.* VAMAN GOVIND DESHPANDE AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 3), OPPONENTS.*

1936
October 13

Civil Procedure Code (Act V of 1908), section 110—High Court reversing trial Court's decree in partition suit—Decree affecting interests of plaintiff and defendant No. 4—Total value of interests affected over Rs. 10,000—Leave to appeal to Privy Council.

In a suit to recover by partition his one-sixth share in the plaint property, plaintiff (applicant No. 1) valued his claim at Rs. 5,500 for jurisdiction. The suit was decreed and the decree provided that the applicant No. 2, a brother of the plaintiff, who was defendant No. 4 in the suit, should also recover his one-sixth share in the property on payment of the necessary stamp duty. The defendants Nos. 1 to 3 (opponents) appealed to the High Court, valuing the claim at Rs. 5,500 for jurisdiction. The appellate Court reversed the trial Court's decree and dismissed the suit. The plaintiff and defendant No. 4 having applied for leave to appeal to His Majesty in Council, the question arose as to whether the value of the subject-matter was Rs. 10,000 or upwards within the meaning of section 110 of the Civil Procedure Code, 1908:—

Held, that the decree of the High Court involved a question respecting property of the value of Rs. 10,000 or upwards and that the applicants were entitled to leave.

De Silva v. De Silva,⁽¹⁾ relied on.

Lakshman Bhatkar v. Babaji Bhatkar,⁽²⁾ referred to.

APPLICATION for leave to appeal to the Privy Council.

The material facts appear sufficiently from the judgment of the Court.

B. G. Rao, for the applicants.

G. N. Thakor, with *P. B. Gajendragadkar* and *S. G. Patwardhan*, for the opponents.

BROOMFIELD J. This is an application for leave to appeal to the Privy Council. It was a case which involved several difficult questions of law and this Court disagreed with the trial Court and dismissed the plaintiff's suit.

* Civil Application No. 88 of 1936.

⁽¹⁾ (1904) 6 Bom. L. R. 403.

⁽²⁾ (1883) 8 Bom. 31.

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There has been some argument however on the question whether the value of the subject-matter within the meaning of section 110 of the Civil Procedure Code is rupees ten thousand or upwards. The suit was brought by the plaintiff to recover his one-sixth share in certain properties by partition. The trial Court allowed the suit and provided in its decree that defendant No. 4, a brother of the plaintiff, should also recover his one-sixth share, with mesne profits equal to those which the plaintiff would get, on payment of the necessary stamp duty. The plaintiff valued his claim at Rs. 5,410 for Court-fees and Rs. 5,500 for jurisdiction. There was an appeal to this Court by defendants Nos. 1 to 3. They valued the appeal at Rs. 4,279 for Court-fees and Rs. 5,500 for jurisdiction. Thus both in the trial Court and in the appeal the value of the subject-matter was stated to be less than Rs. 10,000. But Mr. Rao who appears for the applicants (plaintiff and defendant No. 4) contends that as the decree of this Court dismissing the suit and setting aside the trial Court's decree has the effect of depriving defendant No. 4 of his share also, the value of the subject-matter is really twice Rs. 5,500, that is, Rs. 11,000.

Mr. Thakor who appears to oppose the application for leave argues that in a partition suit the value of the subject-matter is the value of the share claimed by the plaintiff and not the value of the whole property. He relies on *Lakshman Bhatkar v. Babaji Bhatkar*⁽¹⁾ and *De Silva v. De Silva*.⁽²⁾ In the former case it was held that what *prima facie* determines the jurisdiction of a Court is the claim, or subject-matter of the claim, as estimated by the plaintiff, and that the subject-matter of a claim is the specific thing sought by the plaintiff. So in a partition suit, where the plaintiff seeks for a division and separate possession of his share in joint property, it is the share so claimed which is the subject-matter of the claim, and not the whole of the joint property which is sought to be divided. In the latter case

⁽¹⁾ (1883) 8 Bom. 31.

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it was held that to determine the value prescribed by section 596 of the Civil Procedure Code (which corresponds to the present section 110) the decree is to be looked at as it affects the interests of the party prejudiced by it. Where the detriment to the party seeking relief is estimated at less than Rs. 10,000 the value of the matter in dispute in appeal is not of the prescribed value, the decree itself does not involve any claim or question to or respecting property of the prescribed value, and the case does not fulfil the requirements of section 596 of the Code.

In neither of these cases, however, was there any order made in favour of a party other than the plaintiff. Applying the principle laid down in the latter of the two cases, viz., that the decree is to be looked at as it affects the interests of the party (or parties) prejudiced by it, it would appear that the decree of this Court has affected the interests of both the applicants, viz., the plaintiff and defendant No. 4, and that the decree of this Court does involve a question respecting property of the value of Rs. 10,000 or upwards. It is true that the share of defendant No. 4 is only involved indirectly, but for the purpose of the second paragraph of section 110 that is sufficient. We certify, therefore, that the decree of this Court in the appeal involves a question respecting property of the value of Rs. 10,000 or upwards.

That being so the applicants are entitled to leave irrespective of the question whether there is a substantial question of law because this Court reversed the decree of the trial Court. We may say, however, that there are substantial questions of law also involved.

We grant leave accordingly. Costs will be costs in the appeal.

Leave granted.

Y. V. D.