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SooperKanoon Citation : sooperkanoon.com/469825

Court : Allahabad

Decided On : Apr-22-1932

Reported in : AIR1933All177

Appellant : Mohammad Asghar and ors.

Respondent : Mt. Abida Begum and ors.

Judgement :

1. This is an application for leave to appeal to His Majesty in Council from a judgment of this Court passed in a first appeal from order, reversing the judgment of the lower appellate. Court and restoring that of the Court of first instance. The suit related to the partition of house properties, the plaintiffs' share in which was valued at less than Rs. 10,000. It is conceded by the application before us that the value of the subject-matter in dispute, viz., the share of the plaintiffs in the disputed house is less than Rs. 10,000. On the other hand it is not disputed by the respondents that the value of the entire house which is sought to be partitioned is more than Rs. 10,000. The parties had agreed to abide by the statement of a referee and this High Court considered that the proceedings were not in the nature of an arbitration but amounted to a compromise, and ordered that a decree should be prepared in terms of the statement made by the referee. The question raised in appeal is whether the proceedings were in the nature of an arbitration or a compromise. On this point there is undoubtedly some conflict of opinion in India and the question is a substantial question of law. There was also a question as to the correct interpretation of the statement made by the referee the answer to

which depends on a consideration of the entire proceedings relating to the reference. A translation of those proceedings was not before the Bench, but it will now have to be prepared. An objection is taken on behalf of the plaintiffs-respondents that the case does not fulfil the requirements of Section 110, Civil P.C., inasmuch as the value of the subject-matter in appeal to their Lordships of the Privy Council is less than Rs. 10,000. On the other hand it is contended on behalf of the defendants that the decree of this Court indirectly involves a question respecting property of the value of more than Rs. 10,000.

2. On this question also there is a conflict of opinion between some of the High Courts in India. It was held in the case of Bhugwat Sahay v. Pashupati Nath Rose (1906) 10 CWN 564, that in a suit for partition the value of the whole estate is the value to be taken into account when considering whether leave to appeal to His Majesty in Council should or should not be granted. On the other hand, the Bombay High Court in the case of John Joseph DeSilva v. John Joseph DeSilva (1904) 6 Bom LR 403 held that the value to be looked at is the value of the interests of the party prejudiced by the decree. We think that inasmuch as the plaintiffs' claim was for the partition of the whole house and the claim could not be decreed without considering the value of the entire house and the method in which the partition should take place, it is very difficult to say that the decree does not at least indirectly involve a question respecting the whole house which is admittedly of the value of Rs. 10,000. There is a difference between the language of para. 1 and that in para. 2, Section 110, Civil P.C. In the first the words used are 'the amount or value of the subject-matter in dispute.' Whereas in the second we have 'respecting property of like amount or value.' Such 'property' need not necessarily be the subject-matter in dispute in the suit. We are therefore of opinion that the defendants are entitled as of right to appeal to their Lordships of the Privy Council and at any rate the case involves a substantial and important question of law and in view of the conflict of opinion which has prevailed in India. It is also otherwise a fit case for appeal to His Majesty in Council under Section 109(c), Civil P.C. We accordingly order that a certificate be granted.