

Anant Ram and Others Vs Raja Sheoraj Singh and Others

Court: Allahabad High Court

Date of Decision: Dec. 7, 1912

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 110

Citation: 18 Ind. Cas. 305

Hon'ble Judges: Henry Richards, C.J; Banerji, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This is an application for leave to appeal to His Majesty in Council. The value of the subject-matter of the suit in the Court below exceeds Rs.

10,000. That Court made a decree for Rs. 15,985 3-10. This amount upon appeal preferred by some of the defendants was reduced by this

Court by a sum which is much less than Rs. 10,000. Therefore, the value of the subject-matter of the proposed appeal to His Majesty in Council is

below Rs. 10,000 and the case does not fulfil the requirements of Section 110 of the Code of Civil Procedure.

2. It is, however, contended that questions of general importance are involved in the case and that we should certify it as otherwise a fit one for

appeal to His Majesty in Council." The questions which arose in the case are two-fold. First, whether the burden lies upon a mortgagee, who takes

a mortgage from the manager of a joint Hindu family governed by the Mitakshara law, to prove that the debt was incurred for family necessity and

the second is whether if the debt was not so incurred, the interest of the manager of the family, that if, of the mortgagor in the mortgaged property,

could be sold in enforcement of the mortgage,

3. The first question was considered by a Full Bench of this Court in the case of Chandra Deo Singh v. Mata Prasad 31 A. 176; 6 A.L.J. 263

(F.B.); 1 Ind. Cas. 479 but the learned Judges who constituted the Full Bench were not unanimous on the point.

4. The second question was decided against the mortgagee in Kali Shankar v. Nawab Singh 31 A. 507; 6 A.L.J. 762; 3 Ind. Cas. 909, following

the ruling of the majority of the Full Bench in the case first mentioned. The view taken in this last mentioned case is opposed to the decisions of the

Calcutta High Court. So that it is clear that substantial questions of law of general importance are involved in the proposed appeal. We are,

therefore, of opinion that the case is ""otherwise a fit one for appeal to His Majesty in Council,"" and we so certify.