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**(1930) 04 BOM CK 0009**

**Bombay High Court**

**Case No:** Civil Application No. 1266 of 1928

Mahmadalli Isabhai

APPELLANT

Vs

Abdul Rahim  
Funumulla

RESPONDENT

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**Date of Decision:** April 16, 1930

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 110

**Citation:** (1930) 32 BOMLR 1189

**Hon'ble Judges:** Patkar, J; Baker, J

**Bench:** Division Bench

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### **Judgement**

Patkar, J.

It is conceded that the amount or value of the subject-matter in dispute on appeal to His Majesty in Council is not Rs. 10,000 or upwards, but it is contended that the decree or final order involves indirectly some claim or question to or respecting property of like amount or value. The decree passed in the case is that the plaintiff is declared entitled to hold the land in suit on the same terms as before, all his life, that is to say, until the death of Sarafalli Mahamadalli, or until due surrender by him, during his life-time by a proper and sufficient notice. It is contended on behalf of the applicant that the factory erected by him on the land is worth more than Rs. 10,000. The learned District Judge has found that the value of the buildings erected on the land is Rs. 25,620 and the loss to be sustained . by the applicant if the whole construction is removed is somewhere near Rs. 19,000, but he held that the loss to be caused in this way could not be said to be the value of the property indirectly involved, and that though it might be the consequence of the decree passed in the suit, it was not property involved in the suit directly or indirectly, and therefore came to the conclusion that the value of the property involved indirectly was only Rs. 4,000.

2. In Mnlla"s Civil Procedure Code, 8th Edition, page 298, it is stated that where the plaintiff obtained a decree for possession of a piece of land worth Rs. 2,000 and the result of the decree was to oblige the defendant to remove buildings worth more than Rs. 10,000 which the defendant had built on the land, leave was granted to appeal to the Privy Council. The reference to the case of Sraemuth Davasikamoney Pandarasannadhi v. Palaniappa Chettiar ILR (1910) Mad. 535 does not support the proposition thus laid down. On the other hand, in the case of Dhanna Mal v. Moti Sagar (1923) VI L.L.J. 78, it was held that where the subject-matter in dispute in the case was merely the nature of a tenancy, the value of which was Rs. 2,000, there was no right of appeal to the Privy Council although the tenancy affected property worth over Rs. 10,000.

3. In the present case, the suit was brought by the plaintiff, the tenant, to obtain specific performance of the oral agreement of fifty-one years" lease or in the alternative to have it declared that under the terms of the lease, Exhibit 67, he was entitled to remain in possession of the land in suit on payment of the rent of Rs. 100 a year as long as he pleased, or for a further period of twenty-five years after April 11, 1918, and for an injunction restraining the defendants from disturbing him in the enjoyment of the plaint land. The decree that was eventually confirmed by the High Court was as follows :-

The plaintiff is declared entitled to hold the land in suit on the same terms as before, all his life, that is to say, until the death of Sarafalli Mohamadalli, or until due surrender by him, during his life-time by a proper and sufficient notice. The rest of the plaintiff"s claim is rejected. The cross-objections are dismissed.

4. This suit was not brought by the landlord to evict the tenant, but was brought by the tenant to have a declaration of his rights by virtue of a subsequent agreement between him and the landlord. No decree was passed for evicting the tenant from possession of the land. If the tenant had been evicted from the land, it might have been possible to hold that the decree not only involved directly some claim or question relating to land which was worth Rs. 4,000 but also indirectly involved some claim or question to or respecting the buildings erected thereon of the value of more than Rs. 10,000 in the present case. Until the landlord brings a suit to evict the present plaintiff from the possession of the land leased to him, there is no necessity for him either to remove the structure or to give vacant possession of the land to the landlord. In [Alagappa Chetty Vs. Nachiappan alias Kirukan and Others](#), it was held that the question whether a decree involves indirectly a claim or question to or respecting property of the value of Rs. 10,000 or upwards within Section 110, Clause (2), must be determined with reference to the actual circumstances at the time and not to circumstances which are remote and not in particular to a mere possibility that future suits as to all or parts of the larger extent of the property alleged to be concerned may be instituted at some time in the future. In Surendra Nath Roy v. Dwarka, Nath Chakeravarti ILR (1916) Cal. 119 an ejectment decree was passed in respect of land which increased in value after the institution of the suit and it was held that the value of the land at the time of the decree exceeded the statutory limit and that the point of time to be considered is the date of the judgment under appeal. In Sri Kishan Lal

v. Kashmiro ILR (1913) All. 445 the decision related to an award which dealt with property other than that in suit and therefore the decree involved a question relating to property of a value exceeding Rs. 10,000. Similarly, in *Must. Aliman v. Musst. Hasiba* (1897) 1 C.W.N. 93 (notes), the effect of the Hiba governed property of considerable value other than the property in suit. The cases of *De Silva v. De Silva* (1904) 6 Bom. L.R. 403 and [Lallubhai Pragji Vs. Bhimbhai Dajibhai](#), have no application to the facts of the present case as those cases only related to the question of easement. In [Appala Raja and Others Vs. Rangappa Naicker and Others](#), it was held by Spencer J. that the claim must be one to or respecting property of Rs. 10,000 in value and not a claim merely affecting property of such value. The decree, therefore, in the present case does not involve indirectly any claim or question to or respecting the factory erected on the land, but involves a claim to the land itself which is worth about Rs. 4,000.

5. On the whole, we think that the conditions laid down in Section 110 are not complied with in the present case. We must, therefore, refuse the application and discharge the rule with costs.

Baker, J.

6. The District Judge has returned a finding that the value of the plaint property involved by the decree in S. A. No. 709 of 1926 is Rs. 4,000 only. The plaintiff sued alleging that he was entitled to a permanent lease of the land in suit on which, he had erected a ginning factory. It was held by this Court that he was entitled to the lease for his life only. The plaintiff has since died, and the lease therefore comes to an end. The suit was originally brought in the Court of the Second Class Subordinate Judge. It is, however, contended that the effect of the decree will be that the plaintiff or rather his legal representative will have to vacate the land necessitating the consequent removal of the buildings of the ginning factory, the value of which is about Rs. 19,000. There is a reference in Mulla's Code of Civil Procedure, 8th Edition, p. 298, to the case of *Sreemuth Devasikamoney Pandarasannadhi v. Palaniappa Chettiar* ILR (1910) Mad. 535 as laying down that where the plaintiff obtained a decree for possession of a piece of land worth Rs. 2,000 and the result of the decree was to oblige the defendant to remove buildings worth more than Rs. 10,000 which the defendant had built on the land leave was granted to appeal to the Privy Council. But the report does not bear this out as there is no reference in it to any appeal to the Privy Council, nor have I been able to find any further reference to the subject. Most of the reported cases refer to easements, which stand on an entirely different footing. In cases of easement it has been held that the value of the easement must be taken into consideration when determining the value of the subject-matter of the suit, and not that of the whole property. There is a case directly in point in *Dhanna Mal v. Moti Sagar* (1923) VI L.L.J. 78, where the facts are similar to those of the present case, and it was held that leave to appeal to the Privy Council should be refused,

7. In the present case the decree is not one for ejectment and further proceedings will be necessary before the question of removing the buildings standing on the land arises.

8. In these circumstances, I agree that the case does not fulfil the conditions of Section 40, Civil Procedure Code, and the leave to appeal should not be