(1920) 12 BOM CK 0014

Bombay High Court

Case No: None

Radhakrishna Ayyar		APPELLANT
	Vs	
Swaminatha Ayyar		RESPONDENT

Date of Decision: Dec. 3, 1920

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 45 Rule 3, 109(c)

Citation: (1921) 23 BOMLR 718

Hon'ble Judges: Phillimore, J; Lawrence Jenkins, J; John Edge, J; Buckmaster, J; Amber Ali, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Buckmaster, J.
In this case a preliminary objection is taken to the appeal on behalf of the respondent based upon the ground that no proper certificate) of appeal has been granted, and that the appeal is consequently incompetent.

2. The conditions that regulate the granting of certificates for leave to appeal have been clearly stated in the cases referred to by counsel for the respondent: 5 CWN 193 (Privy Council) and 5 CWN 689 (Privy Council) It is not necessary to examine them again for the principle which they establish is plain and cannot be questioned. That principle is this: that as an initial condition to appeal to His Majesty in Council, it is essential that the petitioners should satisfy the Court that the subject-matter of the suit is Rs. 10,000, and in addition that in certain cases there should be added some substantial question of law. This does not cover the whole grounds of appeal, because it is plain that there may be certain cases in which it is impossible to define in money value the exact character of the dispute; there are questions, as for example, those relating to religious rights and ceremonies, to caste and family rights, or such matters as the reduction of the captital of companies as well as questions of wide public importance in which the subject-matter in dispute cannot be reduced into actual terms of money. Sub-section(c) of Section 109 of

the CPC contemplates that such a state of things exists, and Rule 3 of Order XLV regulates the procedure. It is there provided that the petition for appeal should state the grounds of appeal, and pray for a certificate that either as regards amount or value and nature, the case fulfils the requirements of Section 110, or that it is otherwise, i.e., u/s 109, Sub-section (c), a fit case for appeal to His Majesty in Council. When any certificate is granted under that Order, it is in their Lordships" opinion of the utmost importance that the certificate should show clearly upon which ground it is based, and they regret to find that the certificate in this case is at least ambiguous. It runs in these terms: "It is hereby certified that, as regards the value of the subject matter and the nature of the question involved, the case fulfils the requirements of 109, and 110, of the Code of Civil Procedure, and that the case is a fit one for appeal to His Majesty in Council."

3. There is no indication in the certificate of what the nature of the question is that it is thought was invoked in the hearing of this appeal, nor is there anything to show that the discretion conferred by Section 109(c) was invoked or was exercised Their Lordships think it should be brought to the attention of the Indian Courts that these certificates are of great consequence, that they seriously affect the rights of litigant parties, and that they ought to be given in such a form that it is impossible to mistake their meaning upon their face.

4. Counsel for the appellants has asked that even though the amount in value in this suit is beneath the proper appealable amount, as it undoubtedly is, his clients should be granted special leave to appeal upon the ground that an important question of law affecting the whole community is raised under the Madras Estates Land Act, 1908, a question which has not hitherto been the subject of judicial interpretation. That question was this: Section 52, sub-section 3, provides that: "puttahs and muchalkas accepted, exchanged or decreed for any revenue year shall remain in force until the commencement of the revenue year for which fresh puttahs or muchalkas are accepted, exchanged or decreed; provided that where a puttah or muchalka has continued in force for more revenue years than one, no fresh puttah or muchalka for the same holding shall take effect until the commencement of the revenue year next succeeding that in which it is tendered, accepted, exchanged or decreed." He desires to contend on behalf of the appellant that "decreed" in that section means decreed under that Act and that no former decree could have any operation. Their Lordships have considered the contention, but they do not think it of sufficient weight to justify granting special leave to appeal.

5. They will, therefore, humbly advise His Majesty that this appeal should be dismissed with costs as incompetent, and that special leave to appeal should not be granted.