(1929) 12 BOM CK 0016

Bombay High Court

Case No: None

Gudivada Mangamma		APPELLANT
	Vs	
Maddi Mahalakshmanna		RESPONDENT

Date of Decision: Dec. 3, 1929

Acts Referred:

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

Citation: (1930) 32 BOMLR 517

Hon'ble Judges: Viscount Dunedin, J; George Lowndes, J; Binod Mitter, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Viscount Dunedin, J.

The case turned upon whether the widow, whose heir the respondent is, took an absolute interest in certain properties of the husband or only a life estate. If the latter, the respondent had no right. The Subordinate Judge held that the widow had only a life estate. The High Court reversed. The losing parties then applied for leave to appeal to the King in Council, which was refused upon the ground that the amount or value of the subject matter of the suit was less than Rs. 10,000.

2. The appellant now asks for special leave to appeal on the ground that the decision of the High Court was wrong in the respect that the amount or value of the subject matter of the suit was more than Rs. 10,000. The point arises in this way. Part of the property in question consisted of promissory notes. The promissory notes in the plaint were described as of their face value, and, so valued together with the other subjects in dispute, the amount of Rs. 10,000 cannot be reached, but if to the face value of the promissory notes is added the interest up to the date of the decree of the first Court, then the sum of Rs. 10,000 is exceeded. The section of the CPC which rules the matter is Section 110, which is as follows :-

In each of the cases mentioned in Clauses (a) and (6) of Section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law.

3. Case (a) of a 109 is an appeal from a decree passed on appeal by a High Court, and therefore the present case is within case (a). Now, it is a matter of history that the present section of the Code was an amended form of the enactment which prior to the Code controlled the matter. Up to 1874 appeals to Privy Council were governed by the Order in Council of April 10, 1888. The words then were "amount or value of the subject matter in dispute in appeals to Her Majesty in Council." Upon that there were decisions of the Privy Council that interest on money claims and mesne profits of immovable property subsequent to the date of the suit, but awarded by the decree, might be reckoned, but none subsequent to that date. Then came the Privy Council Appeals Act VI of 1874, and subsequently the Code of Civil Procedure, which imposed the additional condition as to the value in the Court of first instance, which is not included in the Order above quoted. In 1901, in the case of Moti Chand v. Ganga Parshad Singh (1901) L.R. 29 IndAp 40 : 4 Bom. L.R. 159 their Lordships held that the word "and" meant "and" and not " or", so that each of the two conditions had to be separately fulfilled. In that case the amount recoverable even under the decree in the first Court did not amount to Rs. 10,000, so that the present position did not arise. The question did, however, arise in India, and the Calcutta and Madras Courts gave contrary decisions. Their Lordships consider that the Madras Courts were right. The case is Sibbramania Ayyar v. Sellammal ILR (1915) Mad. 843. In that case the question was as to mesne profits. If mesne profits from the date of the institution of the suit to the date of the decree were added the sum of Rs. 10,000 was exceeded, secus if not. The Courts held that they could not be added, and their Lordships agree with their reasoning, which, indeed, treated the question under the first part of the section as completely clear, but considered whether the second part, " or the decree or final order must involve," etc,, made any difference, and held that it did not, for reasons which commend themselves to their Lordships.

4. Learned counsel for the petitioner sought to distinguish that case by saying that it applied to mesne profits and not to interest and also that there the pecuniary claim was directly made and not, as here, a claim for a promissory note itself, leaving the pecuniary claim to be worked out by action against the make of the promissory note. But, in truth, mesne profits are much more akin to the interest sought to be

added by computation in this case than the case of interest directly sued for, for they are something attaching to the subject claimed and not what is the subject of a direct claim. And, further, the point that there here no direct action for the money, but only for the thing the will bring in the money, so far from helping the appellant, is al against him. Who can tell whether there will be any interest due under the promissory note ? The maker of the promissory note may have many defences. The truth is that it is somewhat of a concession to allow the promissory notes to be ranked as at their face value. That concession is allowed, and that is the utmost that can be said to be the value as at the institution of the suit. To add what may eventually turn out to be accrued monies after that date and up to the decree is to go far beyond what has been conceded and is in the teeth of what their Lordships hold to be the true meaning of the Code.

5. Their Lordships will therefore humbly advise His Majesty that the application should be dismissed with costs.