

1923.*Present:* Bertram C.J. and Porter J.KRISHNAPPA CHETTY *v.* HORATALA.

181—D. C. Kurunegala, 8,353.

*Privy Council—Special leave to appeal—Question of general and public importance—Ordinance No. 31 of 1909.*

Where an appeal involves a complicated question of law, which has been the subject of decisions of a conflicting nature, the Supreme Court may grant special leave to appeal to the Privy Council.

**A**PPPLICATION for special leave to appeal to the Privy Council.

*Cross Da Brera*, for defendant, appellant.

*Samarawickreme*, for plaintiffs, respondent.

November 26, 1923. BERTRAM C.J.—

This is an application by the defendant for conditional leave to appeal to the Privy Council. The dispute is between the purchasers at sales under two decrees in execution of two mortgage bonds, one primary the other secondary. The value of the land which was subject to the mortgage was estimated by the plaintiffs in their plaint at Rs. 2,500 and this is admitted in the defendant's answer. The defendant who was in possession of the land alleges that he has executed certain improvements and claims in reconvention Rs. 9,000 as compensation for these improvements. The decree of this Court in appeal declares that the plaintiffs are entitled to the land, but expressly reserves the question of compensation and directs that the case shall be sent back to the District Court for the purpose of its determination. The judgment sought to be appealed against, therefore, does not involve any question of these improvements. The matter in dispute is the title to the land as the value of the land has been agreed on as Rs. 2,500, no appeal lies as of right.

In the alternative, however, the defendant asks for leave to appeal on the ground that the question involved in the appeal is one which by reason of its great general and public importance ought to be submitted to His Majesty in Council for decision. The case turns upon a question which has long been litigated in the Courts of this Colony, namely, the effect of the failure by a mortgagee to register his address in pursuance of the provisions of sections 643 and 644 of the Civil Procedure Code. Both parties are purchasers in execution of mortgage decrees. The defendant claims under

the primary mortgage the plaintiffs under the secondary mortgage. Neither mortgagee registered his address. This Court has declared the purchaser under the secondary mortgage entitled to the land and has ordered the defendant, who was the primary mortgage and who put his bond in suit and bought in the land at the sale, to relinquish it. The question of law involved is an extremely complicated one. It has been the subject of a long series of decisions, some of them of a conflicting nature. The judgment sought to be appealed against propounds a new solution for the problem which has so long perplexed our Courts. The defendant rejects this solution and claims himself to be entitled to the land.

The difficulties presented by these decisions can only be cleared up either by legislation or by a comprehensive survey of the decisions in a higher Court. In view of the history of the question in our own Courts, I think it is of the utmost importance that the Privy Council should be invited to give an authoritative decision on the question. I would therefore grant leave to appeal subject to the prescribed conditions.

We took time to consider our decision in view of the fact that it appeared to be alleged in the action that the primary mortgage bond had been already discharged before it was put in suit. This question, however, does not arise on the proposed appeal. It was determined in a previous action. It was there held that the bond was not discharged and the decision of the District Court was confirmed by this Court. The defendant is no doubt not bound by that judgment, but no issue was framed on the question in the present case. The judgment of this Court reserves to the plaintiffs the right to raise the point in a subsequent action which they contemplate, but it is not involved in the present appeal.

PORTER J.—I agree.

*Application allowed.*

1923:

BERTHAM  
C.J.

Krishnappa  
Chetty  
v. Horatula