

1955 Present : Gunasekara, J., and Sansoni, J.

K. SUBRAMANIAM, Petitioner, and K. KUMARASWAMY
et al., Respondents

*S. C. 403—Application for Conditional leave to appeal to the
Privy Council in D. C. Point Pedro 4,329*

Res adjudicata—Point of law—Erroneous decision thereon—Right of parties to raise same point of law in another suit.

Appeals (Privy Council) Ordinance (Cap. 85)—Rule 1 (a) and (b) of Schedule—“Directly or indirectly”—“General or public importance”.

An erroneous decision on a pure question of law will operate as *res adjudicata* in regard only to the subject-matter of the suit in which it is given. It does not prevent the Court from subsequently deciding the same question correctly in another suit between the same parties when the subject-matter of the suit is different. Therefore, if the subject-matter of a suit is a land of the value of less than Rs. 5,000, the aggrieved party seeking to appeal to the Privy Council on a point of law is not entitled to claim that the appeal involves “indirectly” a question respecting property of the value of over Rs. 5,000 within the meaning of Rule 1 (a) of the Schedule to the Appeals (Privy Council) Ordinance merely because a dispute between the same parties regarding other lands of over Rs. 5,000 in value will involve the same point of law.

Held further, that the discretion vested in the Supreme Court under Rule 1 (b) of the Schedule to the Appeals (Privy Council) Ordinance will not be exercised in favour of a party when his only ground for invoking the Rule is that he is dissatisfied with the decision of the Supreme Court.

APPPLICATION for conditional leave to appeal to the Privy Council.

S. J. V. Chelvanayakam, Q.C., with *H. W. Tambiah* and *S. Sharvananda*, for the 1st defendant petitioner.

C. Renganathan, with *T. Arulanandhan*, for the 8th, 10th and 11th defendants respondents.

Cur. adv. vult.

May 2, 1955. SANSONI, J.—

This is an application by the 1st defendant for conditional leave to appeal to the Privy Council against the judgment of this Court which is reported in *56 N. L. R. 44*. The application is based on two grounds : (1) that the question of law decided in that judgment affects the 1st

defendant's rights in other properties valued at over Rs. 100,000, and therefore "the appeal involves directly or indirectly a question respecting property of the value of Rs. 5000 or upwards" within the meaning of Rule 1 (a) of the Schedule to the Appeals (Privy Council) Ordinance, Cap. 85; (2) that "the question involved in the appeal is one which, by reason of its great general or public importance ought to be submitted to Her Majesty in Council for decision" under Rule 1 (b) of that Schedule. The 8th, 10th and 11th defendants object to the application being granted on either ground.

The question of law involved, and I should add that it is a pure question of law and nothing else, is the correct interpretation of certain provisions of the Jaffna Matrimonial Rights and Inheritance Ordinance (Cap. 48) and Ordinance No. 58 of 1947, by which it was amended. The 1st defendant by deed acquired several allotments of land from time to time during the subsistence of his marriage with one Rasammah. She has died leaving her husband (the 1st defendant) and four children (8th to 11th defendants). The judgment against which it is sought to appeal decided the rights of the 1st, 8th, 9th, 10th and 11th defendants in respect of one land so acquired.

Mr. Chelvanayakam submits that as this judgment is *res adjudicata* as regards the rights of these parties in respect of all the other lands which were similarly acquired by the 1st defendant, it is necessary to have the decision considered by the Privy Council. If this submission were correct it would be a strong reason for allowing this application. But Mr. Renganathan challenges its correctness and he relies on the judgment in *Katiritamby v. Parupathipillai*¹. It was there decided that an erroneous decision on a pure question of law will operate as *res adjudicata quoad* the subject matter of the suit in which it is given, and no further. Unlike a decision on a question of fact or of mixed law and fact, an erroneous decision on the law does not prevent the Court from deciding the same question arising between the same parties in a subsequent suit according to law. Caspersz on Estoppel was cited as an authority by Garvin, A. J., in his judgment (de Sampayo, J., agreeing). This judgment was followed in *Gunarathne v. Punchi Banda*² by Schneider, J., (Maar-tenz, A.J., agreeing). In view of these two decisions of this Court I do not consider it necessary to discuss the other authorities cited in the course of the argument. Assuming, then, that the other lands which were purchased upon other deeds by the 1st defendant during the subsistence of his marriage with Rasammah were purchased under circumstances which were exactly similar to those under which the land now in dispute was purchased, the rights of the parties under those deeds and the manner of devolution of those lands upon the death of Rasammah raise pure questions of law to which the rule already enunciated would apply. It should, therefore, be open to the 1st defendant, if he is so advised, to canvass the correctness of the judgment already given when those questions arise for decision. The first ground of his application therefore fails.

¹ (1921) 23 N. L. R. 209.

² (1927) 29 N. L. R. 249.

With regard to the second ground, Rule 1 (b) vests a discretion in this Court. Now seeing that the value of the interest in dispute in this action is less than Rs. 1000, the expense involved in an appeal to the Privy Council seems to me to be out of all proportion to that interest. The respondents will suffer serious prejudice for they do not appear to be able to bear the expense involved in retaining Counsel to represent them. This is not a case where there are conflicting decisions of this Court on the particular question of law involved. The only point which can be urged in support of the second ground seems to be that the 1st defendant-petitioner is dissatisfied with the decision of this Court: but this is no reason for allowing the application. I do not consider this a case in which our discretion should be exercised in favour of the applicant.

I would refuse this application with costs.

GUNASEKARA, J.—I agree.

Application refused.
