

1959 *Present* : Sansoni, J., and H. N. G. Fernando, J.

S. M. MOHIDEEN, Petitioner, and K. V. SUPPIAH, Respondent

S. C. 396—In the matter of an Application for Final Leave to Appeal to the Privy Council in S. C. 145 D. C. Kandy 4,422/MR.

Privy Council—Leave to appeal thereto—Subject-matter in dispute—Valuation for the purpose of stamping—Relevancy of claim in reconvention.

In an application for leave to appeal to the Privy Council, the value of the matter in dispute on the appeal, for the purpose of stamping, is to be ascertained from the point of view of the appellant, and is judged by the amount he seeks to relieve himself from by appealing.

Plaintiff sued the defendant to recover a sum of Rs. 82,612·82. The defendant denied the claim, and claimed in reconvention a sum of Rs. 24,500. The District Judge gave the plaintiff judgment for Rs. 35,003·66 and dismissed the defendant's claim in reconvention. On an appeal by the defendant the Supreme Court reduced the amount awarded to the plaintiff to Rs. 30,176·33 and dismissed the defendant's claim in reconvention. The defendant thereupon sought leave to appeal to the Privy Council.

Held, that the value of the matter in dispute for the purpose of stamping was no more than Rs. 30,176·33. In such a case the value of the claim in reconvention is not material.

APPPLICATION for final leave to appeal to the Privy Council.

H. W. Jayewardene, Q.C., with *D. R. P. Goonetilleke* and *C. P. Fernando*, for the defendant-appellant, petitioner.

S. Sharvananda, with *M. Shanmugalingam*, for the plaintiff-respondent.

Cur. adv. vult.

June 29, 1959. SANSONI, J.—

We now give our reasons for the order made at the conclusion of the arguments.

The plaintiff sued the defendant to recover a sum of Rs. 82,612·82. The defendant denied the claim, and claimed in reconvention a sum of Rs. 24,500/-. The District Judge gave the plaintiff judgment for Rs. 35,000·66 and dismissed the defendant's claim in reconvention. On an appeal by the defendant this Court reduced the amount awarded to the plaintiff to Rs. 30,176·33 and dismissed the defendant's claim in reconvention.

The defendant now seeks final leave to appeal to the Privy Council, and the plaintiff objects on the ground that the applications for conditional leave and final leave and the other connected papers have been under-stamped. It is not denied that the original stamping of these papers was done on the basis that the matter in dispute in the appeal was Rs. 30,176·33. In view of the objection raised by the defendant, additional stamps were supplied on the basis that the matter in dispute was Rs. 82,612·82.

Now so far as the District Court and this Court are concerned an action remains throughout in the class in which the pleadings placed it, unless an order of the Court at a relevant stage of the case puts it in a higher or lower class. If there is an agreement entered into by the parties and formally recorded by the Judge, there is what is equivalent to an amendment of the pleadings, and it will have the same effect on the question of stamping—see *Samynathan v. Atukorale*¹ and *Little's Oriental Balm and Pharmaceutical, Ltd. v. Saibo*². The stamping of pleadings and documents is required to be done according to the value of the action ascertained in this way. Another rule laid down in *Vellasampulle v. The Uplands Tea Estates of Ceylon Ltd.*³, which has been consistently followed, is that all pleadings, documents etc., are stamped according to the class in which the claim in convention falls, unless the claim in reconvention is higher; in the latter event the class in which the claim in reconvention falls will govern the matter. But the class is never ascertained on the aggregate amount of both the claims.

Mr. Sharvananda for the defendant, basing himself on the argument that an appeal is a continuation of an action, at one stage submitted that the stamping in the matter of this application for leave to appeal to the Privy Council should be according to the class in which the claim in convention falls, viz. Rs. 82,612·82. At a later stage, as I understood him, he was prepared to concede that the amount of the judgment sought to be appealed against might determine the class. In that connection he referred us to the well-known rule enunciated in *Allan v. Prati*⁴ that “the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal”.

¹ (1940) 41 N. L. R. 409.

² (1933) 40 N. L. R. 441.

³ (1912) 1 C. A. C. 108.

⁴ (1888) 13 A. C. 780.

I have no doubt that it is the value of the subject-matter in dispute that must govern the question of stamping. It is, in a case like this, the sum awarded in the judgment and not the sum claimed that determines that value. That was the decision in *Allan v. Pratt*¹ which was the case of an appeal from a judgment awarding damages for personal injuries. Following the principle laid down in that case the Privy Council held in *Meghji Lakhamsi and Brothers v. Furniture Workshop*² that an appeal may sometimes lie where the plaintiff is the appellant although there could be no appeal by the defendant, or vice versa. The value of the claim in convention or in reconvention has nothing to do with the question of stamping at this stage.

What then is the value of the subject matter in dispute on the appeal which the defendant seeks to take to the Privy Council? Mr. Sharvananda, falling back on the second position adopted in his argument, says it is Rs. 30,176·33 plus Rs. 24,500/-. I am unable to agree. I think it is the former sum, for that is the amount which has been awarded against the defendant and it is the most that he can be ordered to pay. If he succeeds in establishing any part of his claim in reconvention this sum of Rs. 30,176·33 will be reduced to that extent. But the judgment which will ultimately be given, even if the defendant succeeds to the fullest extent possible, will not exceed Rs. 30,176·33. I cannot therefore see why stamping on a higher value than this should be necessary.

I would hold that since the value of the matter in dispute on the appeal is to be ascertained from the point of view of the appellant, and is judged by the amount he seeks to relieve himself from by appealing, the value for the purpose of stamping is no more than Rs. 30,176·33. The defendant-petitioner is entitled to the costs of this application.

In the course of the argument the case of *Pinencihamy v. Wilson*³ was referred to. The plaintiffs there valued the subject-matter at Rs. 500 and the 1st defendant prayed for a dismissal of the action and claimed a sum of Rs. 500 in reconvention. It was held that the value of the subject matter in the action was thereby enhanced to Rs. 1,000. It would seem that the attention of the learned Judges who decided that appeal was not drawn to the case of *Vellasamy Pullu v. Uplands Tea Estates of Ceylon Ltd.*⁴ and the later cases which followed it. We think that this judgment may require consideration when the question arises in an appropriate case.

H. N. G. FERNANDO, J.—I agree.

Application allowed.

¹ (1888) 13 A. C. 780.

² (1954) A. C. 80.

³ (1957) 59 N. L. R. 71.

⁴ (1912) 1 C. A. C. 108.