

Present : Lyall Grant and Driesberg JJ.

DE ALWIS v. APPUHAMY.

.293—D. C. Kalutara, 12,275

Privy Council—Application for leave to appeal—Value of land in the plaint—Value of share in dispute below Rs. 5,000—Proof of actual value—Appreciation of value since action.

Where in a partition action the value of the land was stated in the plaint to be Rs. 16,000 and the share in dispute was one-fourth of the land,—

Held (in an application for leave to appeal to the Privy Council), that the appellant was entitled to prove the actual value of the share in dispute in the following cases : (a) Where there has been no fraud on the part of the appellant and the land has not been under-valued for the purpose of obtaining some advantage, (b) where the value has appreciated since the institution of the action.

Held further, that evidence on the question of value should be confined to the evidence of the appellant.

THIS was an action for the partition of a rubber estate, 40 acres in extent, valued in the plaint at Rs. 16,000. In the course of the action a contest arose between the third plaintiff on the one side and the fourth and fifth added plaintiffs (by their next friend the first plaintiff) on the other, in respect of a one-fourth share originally allotted to the second plaintiff, who died during the pendency of the action. The contest turned on the interpretation of a will, and the learned District Judge held in favour of the third plaintiff. This was upheld by the Supreme Court in appeal, and the fourth and fifth plaintiffs (petitioners) made this application for conditional leave to appeal to the Privy Council. The face value of the one-fourth share being only Rs. 4,000, the petitioners sought to prove that its real value was above Rs. 5,000.

Keuneman (with him *Rajakariar*), for petitioners.—We move to file an affidavit from the Vidane Arachchi valuing the land at Rs. 600 an acre. The whole extent is 40 acres. We also move to file affidavit from the next friend of the petitioners and to produce (a) deeds showing dealings with this land at Rs. 1,000 an acre, and (b) an agreement to sell 16 acres at Rs. 16,000.

[GRANT J.—Can you go behind the statement in the plaint ?]

We are not bound by the statements made by the original plaintiffs.

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In a case reported in 7 *Moore's Indian Cases* 261, special leave to appeal was given where application was supported by other evidence *re* value. It is true that in this case the petitioner was a defendant, but in a case reported at page 428 of the same volume similar relief was granted to the plaintiff.

In *Surendra Nath Roy v. Chakravarti*¹ it was held that the value is the value at the time of decree and appeal, and not at time of plaint. If that is the case no admissions made at time of plaint are material.

No reason why Your Lordships should not call evidence. (*Morgan's Digest* (1835), p. 57.) Where value of the property did not appear in proceedings, the Supreme Court ordered the District Court to investigate the value.

Ameresekera (with him *Canakarathne*), for respondent.—The petitioners are privies of the deceased second plaintiff and are bound by her statement (section 18 of Evidence Ordinance). The petitioners did not take up this position as soon as they entered the case. They ought not to be allowed to lead evidence at this stage. Value given in the plaint is decisive, *vide Appuhamy v. Corea*,² which was followed in 306, D. C., Colombo, 24,762—S. C. M., February 2, 1911.

Vide also 12 *N. L. R.* 367, 15 *Moore's Privy Council Appeals* 181, *Baretto v. Antonis Rodrigues et. al.*³

Keuneman, in reply.—No case cited by respondent against our contention except case in Browne's Reports, but the Privy Council decisions were not considered in that case. Besides, the revenue has not been defrauded in this case.

The Bombay case is in my favour. In that case the value came into issue in the original Court for purposes of jurisdiction. In this case no question of valuation need have been raised in the lower Court.

March 27, 1929. LYALL GRANT J.—

This is an application for conditional leave to appeal to the Privy Council. The petitioners are the fourth and fifth plaintiffs in a partition action appearing by their next friend the first plaintiff.

The appellants were not original plaintiffs to the action, but were added on the death of the second plaintiff, their mother, by whose will they claimed one-quarter of the whole land.

The land sought to be partitioned consists of about 40 acres in the Kalutara District, which is said to be fully planted up with rubber. The material value of the action is set out in the plaint at Rs. 16,000.

¹ 44 *Cal.* 119.

² (1900) 1 *Browne's Rep.* 165.

³ 35 *Bom.* 24.

It is agreed that the matter in dispute is whether the fourth and fifth plaintiffs are or are not entitled to one-fourth share of the land, and that the value of this quarter as given in the plaint is Rs. 4,000, that is to say, that the petitioners' claim was valued at Rs. 4,000.

The petitioners now seek to show that the present value of the estate is over Rs. 20,000 and that the matter in dispute is therefore over the value of Rs. 5,000.

It is admitted that unless an appeal lies as of right there do not exist any grounds upon which this Court can be asked to exercise in favour of the petitioners the discretion vested in it by Rule 1 (6) of the Rules governing appeals to His Majesty in Council.

In *Mohideen Hadjiar v. Pitchey*,¹ the Privy Council granted an application to appeal by a plaintiff where the original claim was under the appealable amount, but where the value of the property including mesne profits to the date of judgment was over that amount.

In *Allan v. Pratt*,² where the appeal was by a defendant, the Privy Council laid down the rule that the proper measure of value for determining the question of the right of appeal is the amount which has been recovered by the plaintiff in the action and against which the appeal could be brought and endorsed the further rule previously adopted that the judgment is to be looked at as it affects the interest of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal.

The petitioners in the present case do not aver that the value of the claim is greater now than it was at the date of the bringing of the action. They say, however, that at that date it was undervalued and claim to be allowed to submit a valuation showing that the amount in dispute is over Rs. 5,000.

In 1835, in a case reported in *Morgan's Digest* 57, where the value of the property did not appear in the proceedings and was alleged by the appellant to exceed £500, this Court ordered the District Court to ascertain the value of the property by commissioners.

In *Appuhamy v. Corea*,³ the property had been valued at Rs. 4,500 by the plaintiff. No objection to the valuation had been taken by the defendant, but on judgment going against him in the Supreme Court he sought leave to prove that the land was worth Rs. 29,000. Bonser C.J. refused leave to appeal on the ground that the defendant was bound by his previous conduct.

Bonser C.J. based his refusal to allow a revaluation largely on the ground that the parties had valued the claim low for their own purposes, one of which was to avoid the payment of heavy stamp duty.

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This consideration is not a serious one in the present case. Ordinary stamp duty is not payable in a partition action, and the original plaintiff's claim was well over the appealable amount, apparently the valuation made no difference to the scale of fees applicable.

The value of a partition action for determining the Court which has jurisdiction under section 77 of the Courts Ordinance and for other purposes is taken to be the value of the whole land sought to be partitioned, and not merely the value of that part of it which may happen to be in dispute or the value of the share. (See *4 Thambiah's Reports 166.*) The present appellants, who came in after the plaint was filed, gained no advantage by an under-valuation of the land in the plaint.

The value of the partition action is, however, admittedly not a guide to the appealable value of the case under the Privy Council Rules, where the value of the claim is the determining factor. Were it otherwise, a plaintiff who claimed a share of a nominal amount could take his claim to the Privy Council assuming the value of the whole land to be over Rs. 5,000.

In India parties have been allowed to show that the claim had increased in value between the date of the plaint and the date of appeal. See *Surendra Nath Roy v. Dwarka Nath Chakravarti*.¹

In that case the value of the land was alleged to have increased during the pendency of the suit. The principle was there admitted that the value at the date of appeal was to be taken.

In *Mohun Lall Sookul v. Beebee Doss*,² the Privy Council decided that where by the usage of the Indian Courts a case was valued for purposes of stamp duty at an amount below the appealable value, the petitioners should by evidence to be taken in India be allowed to show that the real value at the time of the plaint was greater.

In *Gourmonet Debia v. Khaja Abdool Gunny*,³ the Privy Council allowed a similar application on depositions filed in the record.

In *Mohun Lall Sookul v. Beebee Doss*,⁴ a further order was made by the Privy Council in the case reported in *7 Moore's Indian Appeal Cases, 428.*

That order sets forth in some detail the principles which are to be followed in allowing an appeal. It appears that where a suit is undervalued for the purpose of evading the revenue laws no indulgence will be granted. In regard to this their Lordships of the Privy Council in effect endorse the view expressed by Bonser C.J.

¹ *44 Indian Law Reports (Cal.) 119.*

² (1860), *7 Moore's Ind. Appeal Cases 428.*

³ *8 Moore's Ind. Appeal Cases 268.*

⁴ *8 Moore's Ind. Appeal Cases 492.*

in *Appuhamy v. Corea* (*supra*). In the particular case however the Privy Council proceeded partly on the ground that the mistake was one on the part of the Court no less than of the appellants.

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The established principle appears to be that where there has been no fraud on the part of the appellant and where he has not consented to a lower valuation for the purposes of obtaining some advantage, he should be allowed to prove the value of his claim, and that where that value has appreciated since the date when action was first taken, he should be allowed to prove the value at the time of appeal.

On the question whether the respondent should be allowed to lead evidence on the question of value, the rule is laid down in *8 Moore 492*. Evidence in value is to be confined to evidence led by the appellant, and this restriction is with a view to prevent the introduction, for the purpose of merely a Fiscal regulation, of a contested issue on the question of value.

A : affidavit and one or two documents have been put before us with a view to showing that the amount in dispute is over Rs. 5,000.

They are sufficient, I think, to show that there exist reasonable grounds for inquiry on the point.

The case is accordingly remitted to the District Judge of Kalutara, with instructions to hold a summary inquiry into the value of the applicant's claim and to report to this Court.

DRIEBERG J.—I agree.

Application allowed.

