

(1922) 03 AHC CK 0053
In the Allahabad High Court

Chandar Sekhar and Others

APPELLANT

Vs

Musammat Amir Begam and Others

RESPONDENT

Date of Decision : 30-03-1922

Acts Referred:

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

Citation : (1922) 03 AHC CK 0053

Hon'ble Judges : Grimwood Mears, C.J;P.C. Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an application for leave to appeal to His Majesty in Council on the ground that this Court did not affirm the decision of the Court below, and as the value of the subject matter exceeded Rs. 10,000 the applicants were entitled as of right u/s 110 of the CPC to appeal to His Majesty in Council.

2. The suit was one to enforce a mortgage and the amount claimed far exceeded Rs. 10,000. The present applicants for leave to appeal were some of the defendants to the suit, they being the grandsons of the mortgagor. In the Court below it was contended that the property comprised in the mortgage was ancestral property, that the debt was not incurred for family necessity, and that, therefore, the portion of the debt which was not for family necessity could not be recovered from the ancestral property. There were other pleas also, such as a denial of the fact of the mortgage, and also as to other portions of the mortgaged property being or not being ancestral property. The Court of first instance found in favour of the plaintiffs and held that the whole of the mortgage-debt had been incurred for family necessity and decreed the claim in full. The defendants, the present applicants, appealed to this Court and this Court held that a portion of the property comprised in the mortgage was ancestral property and that two of the items which formed the consideration for the mortgage were

not items for which the family property was legally liable, As to these two items, the total amount of which was over Rs. 10,000 including interest, this High Court held that the present applicants and the ancestral property were not liable, So that, as regards this portion of the claim, the decree of this Court was in favour of the applicant?, and as regards the remainder of the claim it was a decree in affirmance of the decision of the lower Court. The applicants defendants, now seek to appeal to His Majesty in Council against that portion of the decree which is adverse to them, that is to say, in regard to that portion of the decree of this Court which affirmed the decision and the decree of the Court of first instance, We are of opinion that they are not entitled to appeal to His Majesty in Council as regards this part of the claim and to re open that part of the case which was decided adversely to them by the lower Court as well as by this Court. As observed by the Calcutta High Court in the case of Raja Sree Nath Roy v. Secretary of State for India in Council S. C. W. N. 294, the Court has to look to the substance of the matter. It is true that this Court varied the decision of the Court below but that modification was in favour of the present applicants and did not afford them a right to appeal because the decision was in their favour. As regards the portion of the claim which was decided against them there was in substance an adverse concurrent decision of both the Courts, the decision of this Court being a concurrent decision with that of the Court of first instance and in affirmance of that decision. In this view, the present application cannot be granted. No question of law is involved in the case.

3. A similar view was held by this Court in Kamal Nath v. Bithal Das 64 Ind. Cas. 916, 20 A. L. J. 9.

4. We accordingly reject the application with costs including fees on the higher scale