

(1935) 02 PAT CK 0007

In the Patna High Court

Case No : Privy Council Appeal No. 21 of 1933

Karunakar Tikait Samanta and others

APPELLANT

Vs

Purna Chandra Bidydhara Mahapatra and others

RESPONDENT

Date of Decision : 13-02-1935

Acts Referred:

Citation : (1935) 02 PAT CK 0007

Judgement

Courtney-Terrell, C.J.—This is an application for leave to appeal to His Majesty in Council from a judgment, of this Court allowing an appeal from the judgment of the Subordinate Judge in a suit for partition of certain property. The Subordinate Judge had given a decree for partition. That decree was reversed by this Court. The value of the property as stated by the plaintiff for the purpose of jurisdiction was Rs. 12,000 and he claimed an 8 annas interest in the property. The value placed did not affect the jurisdiction of the Court to which, an appeal lay and the stamp fee payable upon the plaint was a fixed and definite amount.

2. There has been, as was pointed out by the Allahabad High Court in the case of Muhammad Asghar v. Abida Begam, 1933 All 177 = 138 I C 670 = 54 All 858, a difference of opinion between the views of the various High Courts in India on the question of whether for the purpose of S. 110, Civil P.C. in the right to appeal to His Majesty in Council the valuation for the purpose of that section was to be taken of the entire property which it was sought to partition or whether it was the value of the share claimed by the plaintiff. The respondents to this application have contended that the correct view is that under the first part of S. 110 the amount to be considered for the purpose of valuation is the share claimed by the plaintiff and therefore leave to appeal should be refused.

3. I agree with the view taken by the Allahabad High Court that this question itself is one of sufficient importance for allowing leave to appeal to His Majesty in Council, under S. 110. A second point has been taken by the petitioner that the decision, apart from the question of the value of the share claimed by him, affects directly or indirectly the entire property which it was sought to partition. I

was a party to the decision of the High Court and took the view that the estate in question was impartible. In addition to this point I agreed with the judgment of Fazl Ali J., who took the view that the plaintiff could not succeed in the suit for other reasons. It may be said therefore that the decision on the question of the impartibility of the estate raised a bar to the suit for partition was a decision which possibly affected the estate notwithstanding that the judgment could only take effect as res judicata between the parties to the litigation. For both reasons, therefore it is desirable that the petitioners should be given leave to appeal. The costs of this application will abide the result of the appeal to the Privy Council.

Dhavle, J.

4. I agree.