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In the Calcutta High Court

Kumar Basanta Kumar Roy and Others — APPELLANT

Vs

Secretary of State for India in Council — RESPONDENT

Date of Decision : 08-06-1910

Acts Referred:

Citation : 6 Ind. Cas. 792

Hon'ble Judges : Lawrence Jenkins, C.J;Doss, J

Bench : Division Bench

Judgement

1. This is an application for leave to appeal to His Majesty in Council from a decree of the High Court. As the decree appealed from did not affirm the decision of the Court immediately below, all that has to be shown is that the amount or value of the subject-matter of the suit in the Court of first instance was Rs. 10,000 or upwards, and that the amount or value of the subject-matter in dispute on appeal to His Majesty in Council is of the same sum or upwards. In support of their contention to this effect, the petitioners have filed in support of their petition an affidavit in which it is said "that at the time of the suit the land was valued at Rs. 15 per bigha and mesne profits were claimed at the rate of Re. 1 per bigha per year; that according to the said calculation the value of the claim amounted to Rs. 10,764 at the time of the decision of the appeal by the High Court as will appear from the statement given below; that in these circumstances the claim involved in the decree of the High Court was upwards of Rs. 10,000 in value."

2. Then there is given a statement of value which is summarised as follows:

Rs. A A. Value of land as laid in the plaint... ... 6,156, 9 Mesne profits with interest down to the date of the High, Court decree ... ... 4,607 9 --------- ... 10,764 2 ---------- 3. If this estimate be correct, then the required value is shown but the respondents'' contest its correctness both as to the value of the land and as to the rate at which mesne profits are claimed. It is further objected that future mesne profits cannot be taken into account. So far as the affidavits go, they are far from convincing on either side, but it is contended on behalf of the applicants that the respondents cannot contest the value assigned by the appellants for the following reason:

The value of the land as laid in the plaint was Rs. 6,156-9. The Court of first instance passed a decree against the defendants, the present respondents, who thereupon appealed, treating the value of the land for the purposes of the appeal as Rs. 6,156-9: hence it is said, this valuation cannot now be questioned. This view is supported by the decision in Kristo Indro Saha v. Huromonee Dassee 1 I.A. 84, where in circumstances closely resembling the present, this High Court had rejected the application for leave to appeal on the ground of value. Application was, thereupon, made direct to the Privy Council and leave to appeal was granted. Their Lordships, after pointing out that the defendant had obtained the benefit of an appeal to the High Court upon the facts by adopting the plaintiff''s valuation, remarked: "She cannot afterwards come here and object to that valuation. The Judge ought to have given more weight to the acts of the parties and not to have rejected the application on the ground of value.

4. It is true that in other cases it has been held that a valuation made in conformity with the Stamp Law did not prevent a party from obtaining leave to appeal where the real value did not fall short of the appealable amount, and in Lekhraj Roy v. Kanhya Singh 31 CWN. 301, it was so decided. But this involves no conflict of opinion: indeed it may be pointed out that in both the cases, I have mentioned, the judgment was delivered by Sir James Colville and the members of the Board were the same. And the distinction is obvious, for in the earlier case the endeavour was to lower the value of the subject-matter and this was made by one who had adopted it for the purpose of the previous appeal preferred by him so that the principle that a party cannot approbate or reprobate governed. In the other cases, which are collected in Hari Mohan v. Surendra Narain 31 C. 301, the endeavour was to raise the value and this was made in circumstances where that principle could not be invoked. I, therefore, hold that we must take the value of the property as that laid in the plaint and adopted by the respondents for the purposes of the appeal to tin''s Court.

5. Then it is said that future mesne profits should not be taken into account and that the rate at which they are calculated is too high. Bat what we have to ascertain is "the amount or value of the subject-matter of the suit in the Court of first instance," and seeing that under the CPC 1882, the Court could provide in the decree for the payment of mesne profits in respect of the property from the institution of the suit until the delivery of possession or until the expiration of 3 years from the date of the decree with interest, such mesne profits and interest can, I think, be legitimately regarded as part of the subject-matter of the suit.

6. The objection to the rate at which mesne profits were allowed was limited to the Re. 1 per bigha and not to the rate at which interest was calculated. No exception was taken to the inclusion of this interest or its rate so that I will not refer to it beyond, remarking that Section 211 of the Civil Procedure Code, 1882, imports into the expression "mesne profits" the addition of interest on those

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profits--Grish Chunder Lahiri v. Shoshi Shikhareswar Roy 27 C. 951 : 27 1 A. 10 : 4 C.W.N. 631. The claim of Re. 1 per bigha, for the reasons I have indicated in reference to the valuation of the land, ought not to be rejected as unreasonably high for the purpose of estimating the value of the suit. It is not suggested that the amount or value of the matter in dispute on appeal to His Majesty in Council does not exceed Rs. 10,000.

7. Therefore, the conditions as to value are satisfied and the certificate should be granted.

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