

(1951) 11 RAJ CK 0013
In the Rajasthan High Court
Case No : Misc. Application No. 13 of 1950

Nathu Lal

APPELLANT

Vs

Durga Prasad

RESPONDENT

Date of Decision : 19-11-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110
Constitution of India, 1950 — Article 133

Citation : AIR 1953 Raj 36 : (1952) RLW 359

Hon'ble Judges : Wanchoo, C.J;Ranawat, J

Bench : Division Bench

Advocate : C.L. Agrawal, for the Appellant; D.M. Bhandari, for the Respondent

Final Decision : Allowed

Judgement

Ranawat, J.—On an application filed by the defendant under Article 133 of the Constitution of India for leave to appeal to the Supreme Court an order was made by a Division Bench of this Court, to which I was a party, on the 27th November 1950, by which it was held that the defendant had a right to so in appeal to the Supreme Court under Article 133 of the Constitution of India, provided he can show that the value of detriment, which he would suffer on account of the execution of the decree is Rs. 20,000/- or upwards, which would be the value of the entire property, as it now stands, including the additions made by the defendant after the filing of the suit. As the property had not been valued, a direction was issued to the District Judge, Jaipur City, to hold an enquiry in the matter and to submit his findings to this Court. In pursuance of that order, the District Judge, Jaipur city, held an enquiry and he has submitted the papers back to this Court along with his finding that the value of the entire property is more than Rs. 20,000/-. An objection petition has been filed on behalf of the plaintiff-decree-holder that the finding of the District Judge is erroneous and that in calculating the value of detriment to the defendant on account of the execution of the decree in question, the value of the property,

which was the subject-matter of the suit, should not have been included.

2. As regards the point, whether under para 2 of Section 110 C. P. C. the value of the subject-matter of the suit should be taken into account in calculating the value of the loss or detriment which the defendant would suffer on account of the execution of this decree, there appears a finding of this Court in the order dated the 27th November 1950, but a perusal of that order shows that this point was not specifically agitated by the parties before the Court at that time and consequently this point has not been discussed in that order. The parties were therefore allowed to argue this point again.

3. The provisions of Article 133 of the Constitution of India are exactly the same as those of sections 109 and 110 of the Civil Procedure Code.

4. The argument of the learned counsel of the defendant is that the term "property" used in the second paragraph of Section 110 C. P. C. stands for some property other than the property which is the subject matter of the suit. According to him, the value of the property which is the subject matter of the suit should be altogether ignored and the value of the property relating to which some claim or question is directly or indirectly involved in the decree or final order must alone be of the value of Rs. 20,000/- or more in order to enable a party to go in appeal to the Supreme Court. The counsel on the opposite side supports the opinion expressed by this Court in the remand order referred to above.

5. The law on the subject is contained in the observations of Wallis C. J. and Srinivasa Aiyangar J. in--"Subramania Aiyer v. Sellam- mal" AIR 1916 Mad 985, which are as follows:

Wallis, C. J.

"It is of course necessary to read the whole section together and to give effect to every part of it, and when doing so it becomes necessary in my opinion in order to give effect to the new provision in the first paragraph to put a restrictive construction on the general words of the second paragraph which are reproduced from Clause 39 of the Letters Patent, and to read them in their collocation as applying only to cases which involve some claim or question to or respecting property additional to the actual subject-matter in dispute in the appeal and to be taken into account therewith in making up the appealable value".

Per Srinivasa Aiyangar J.

"If the decision beyond awarding relief in respect of the particular object matter of the suit affects right in other properties, Clause 2 would apply; also if the matter in dispute is one which is incapable of valuation as in the case of easements, Clause 2 may apply".

6. The principles laid down in the decision reported in--"Subramania Aiyar v. Sellammal" AIR 1916 Mad 985 were approved by their Lordships of the Privy

Council in--" AIR 1930 44 (Privy Council) The point did not arise in that case as regards the method of calculation of the value of the property. In a number of cases, e.g.,--" Govindbhai Lallubhai Patel Vs. Dahyabhai Nathabhai Patel and Others, -- Maneklal Mansukhbhai Vs. Hormusji Jamshedji, and -- "Bya Maung v. Maung Kyi Nyo" AIR 1921 LB 48, which have been cited at the bar, para 2 of Section 110 C. P. C. was held to be applicable, but in all those cases, either the property was not capable of admitting any valuation or it was by itself more than Rs. 10,000/- in value. The question, therefore, did not arise in those cases whether in calculating the value of the property, the value of the property, which is the subject-matter of the suit, should also be taken into account or not. No clear authority has been cited by either side on this point. Even though this point did not specifically arise in AIR 1916 Mad 985, yet an opinion has been expressed on this point in that case by Wallis C. J. His Lordship observed that the second paragraph of Section 110 C. P. C. applies only to cases which involve some claim or question to or respecting property additional to the actual subject-matter in dispute in the appeal and to be taken into account therewith in making up the appealable value.

According to this judgment, which was approved by the Privy Council, the value of the subject-matter of the suit should be added to the value of the other property, which is affected by the decree or order in making up the appealable value. The word "directly" appearing in para 2 of Section 110 C. P. C. also renders support to this view. In para 1 of Section 110 the amount of the value of the subject-matter of the suit and the amount of the value of the subject-matter of appeal are required to be Rs. 20,000/- or more in order to enable a party to file an appeal to the Supreme Court. Similarly, like amount of value of the property is specified in para 2 of Section 110 C. P. C. Taking the two paragraphs together it would be proper to hold that the value of the property which is affected by the decree should be Rs. 20,000/- or more including the property which is the subject-matter of the suit.

In case, no other property is affected by the decree para 1 only would apply and there would be no case for the application of paragraph 2. But where property other than or in addition to the property, which is the subject-matter of the suit, is involved, paragraph 2 of Section 110 would govern the case and in calculating the value of the property both the value of the property, which is the subject-matter of the suit, and the value of the property, which is other than that property, should be taken into account in making up the appealable value.

7. Taking next the objection as regards the finding of the lower court about the value of the property in this case, it may be noted that Durgalal, one of the witnesses produced by the defendant has assessed the value of the property in question to be Rs. 32688/-. He has made an allowance of 15 per cent, on account of depreciation in the value of the property. On the other hand, Bhagwati Singh, one of the plaintiff's witnesses, has said that the property is of the value of Rs. 25,156/-. He has scaled down the figure to Rs. 14,836/- to arrive at the

figure of actual cost at the time the construction was made. It may be noted that the value of the property at the time the decree was made has to be considered in the present case. It was, therefore, not necessary for Balwant Singh to give the value of the property of the pre-war days. After the war the value of immovable property in big towns has gone up immensely.

The figures of actual amounts spent on the construction of property several years back, therefore, afford little assistance in finding out the market value of the property on the date of the passing of the decree. The counsel for the plaintiff has laid stress on an affidavit filed by the defendant on a previous occasion in order to show that the value of the property is below Rs. 20,000/-, but it may be observed that the figures mentioned in the affidavit are the figures of actual expenditure incurred by the defendant some years back. The increase in the market value of properties has got to be taken into account and consequently the figures of actual expenditure some years back cannot be of much help in finding out the market value at the time of the passing of the decree unless those figures are also increased at least in the same proportion as the value of money has depreciated.

8. In view of the evidence that has come on the record the finding of the learned District Judge that the value of the entire property is more than Rs. 20,000/- does not appear to be wrong. The objection petition filed by the plaintiff is, therefore, dismissed.

9. A certificate that the amount of the value of the property is more than Rs. 20,000/- and that the case fulfils the requirements of para 2 of Section 110 C. P. C., may be granted to the defendant.

Wanchoo, C. J.

I have had the advantage of reading the judgment of my brother, Ranawat. I have some doubt whether in making up the amount of Rs. 20,000/- the Court can add the value of the subject-matter in dispute under the first paragraph of Section 110 of the CPC to the value of the additional property directly or indirectly involved under the second paragraph of the same section and would not like to express a final opinion on the point. But in a case like the present, I would be prepared to grant a certificate under Clause (c) of Section 109, which corresponds to Article 133(1)(c) of the Constitution. I, therefore, agree with the order proposed.