

(1922) 09 MAD CK 0023
In the Madras High Court

O.S.N. Raghunathaswami Iyengar and Another	APPELLANT
Vs	
S. Gopaul Rao and Others	RESPONDENT

Date of Decision : 01-09-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110

Citation : 74 Ind. Cas. 596

Hon'ble Judges : Ramesam, J;Oldfield, J

Bench : Division Bench

Judgement

1. This is an application for leave to appeal to the Judicial Committee against an affirming judgment. We have then to see whether the requirements of section no, Civil Procedure Code, are satisfied, both as to the value of the subject" matter and as to there being some substantial question of law for disposal.

2. As regards the subject matter, the suit one for recovery by sale on a mortgage, was brought for the principal amount of Rs. 9,942-4-9 and also for subsequent interest, including, in the ordinary use of that expression, both interest up to and subsequent to the decree. The argument for the petitioner is that, if to the principal amount be added interest up to the decree; the necessary Rs. 10,000 will be made out; It is not disputed that this would be so. This contention is opposed on the ground that the amount of interest between plaint and decree cannot be thus taken in calculation. It seems to us that, although interest between plaint and decree is not ascertained in the plaint and although the total amount, claimable on account of it cannot be ascertained until the decree, still it is certainly a part, it may be a very substantial part, of the amount claimed In the suit, and it comes then within the description of one of the classes of suits referred to by Lord Shaw in Raihakrishna Ayyar v. Sundaraswamier 74 Ind. Cas. 584, of which he said that for the purpose of ascertaining the value of the subject matter, the interest between plaint and decree must be regarded as part of the sum of money actually at stake. We have not been shown any distinct authority against this view. Amongst other cases we have been referred to

Subramania Aiyar v. Sellammal 31 Ind. Cas. 296 There the learned Judges, for the purpose of their decision, did not find it necessary to distinguish between interest before and interest subsequently to the decree. In Moti Chand v. Ganga Prasad Singh 6 C.W.N. 362 Iyord Davey said: "In the present case the amount or value of the subject matter of the suit in the Court of first instance, construing that in the manner most favourable to the proposed appellant, was at the outside the the amount for which he recovered his decree. The question in that case was whether not merely interest before decree but also interest after decree could be included in the subject matter. But it is significant that for the purpose of argument nothing was said which would preclude the inclusion of the former, lastly, there is a case in Mathura Prasad Singh v. Ram Prasad Tewary 2 P.L.T. 340 in which the Pattia High Court held that the proper construction to be placed on section no must be taken to be the amount or value which the plaintiff either obtained, or, had he been successful, would have obtained in his suit at the date when the decree was passed. The question then under decision was that which we have now to decide and, following this authority, we" hold that the requirements of section no are satisfied as regards the value of subject matter.

2. We hold, further, that the appeal involves a substantial question of law, since our judgments deal with questions relating to legal representation and to Court sales, regarding which there is difference of opinion between the Courts in this country.

3. We, therefore, certify that the cases is, u/s 110, Civil Procedure Code, a fit case for appeal to His Majesty in Council.