

(1922) 09 MAD CK 0006
In the Madras High Court

S.N. Raghunathasami 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 : (1922) 16 LW 682 : (1922) 43 MLJ 622

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 110, C.P.C. 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 seem 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 part, it may be a very substantial part, of the amount claimed in the suit and it comes then within the description of one class of suits referred to by Lord Shaw in Radakrishna Iyer v. Sundar Swamiyar (1922) 43 M.L.J. 323 , 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 Subrahmania Aiyar v. Sellammal ILR (1915) Mad. 843. There the learned Judges, for the purpose of their decision, did not find it

necessary to distinguish between interest before and interest subsequent to the decree. In Moti Chand v. Ganga Prasad Singh ILR (1901) All. 174

Lord 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 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 Shambhu Nath v. Dwarka Das

(1921) 60 I.C. 523 , in which the Patna High Court held that the proper construction to be placed on Section 110 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 110

are satisfied as regards the value of the subject matter.

3. 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 some difference of opinion between the courts in this country.

4. We therefore certify that this case is u/s 110, C.P.C. a fit one for appeal to his Majesty in Council.