

1931

*Present: Lyall Grant and Drieberg JJ.*GOONERATNE *v.* BISHOP OF COLOMBO.

135—D. C. Matara, 4,918

*Privy Council—Conditional leave—Share of land below value of five thousand rupees—Judgment for plaintiff—Other claims on the same title—Claim or question—Privy Council (Appeals) Ordinance, No. 31 of 1909.*

Where the defendant applied for conditional leave to appeal to the Privy Council from a judgment, declaring the plaintiff entitled to the share of a land, below the value of Rs. 5,000, on the ground that defendant's title to the rest of the land might be challenged by other claimants under the same title,—

*Held*, that the defendant was not entitled to leave to appeal.

**A** PPLICATION for leave to appeal to the Privy Council.

*N. E. Weerasooria*, in support.

*H. V. Perera*, *contra*.

August 7, 1931. LYALL GRANT J.—

I am of opinion that leave to appeal must be refused. The value of the matter in dispute is agreed on by the parties to be much below Rs. 5,000.

The argument that the appeal indirectly involves a question respecting property of the value of over Rs. 5,000 cannot I think be sustained.

In the case cited to us, *McFarlane v. Leclair*<sup>1</sup>, the judgment of the Court below if left undisturbed involved the defendant in liability for a sum exceeding £500.

In *Allan v. Pratt*<sup>2</sup>, it was laid down that the ordinary rule is that what is to be looked at is the value of the claim to the respondent.

The argument that other claims in respect of other shares in the land may possibly be made against the defendant, that the total value of such claims may exceed Rs. 5,000 and that therefore the appeal indirectly

<sup>1</sup> 15 Moore P. C. Cases 181

<sup>2</sup> 13 A. C. 780

involves a larger claim is one for which no authority has been cited and one to which I am unable to agree. The claims of other plaintiffs in other matters are not affected by this action. They must be tried in separate actions and the decision in the present case will only be an authority to be quoted in any such action and any such claim cannot be regarded as *res judicata*. Further, it is not suggested that anyone is in a position to make such a claim. The present judgment therefore does not involve a larger claim than the amount in dispute between the parties.

Apart from the question of the right of the defendant to appeal, we were asked to use our discretion to allow the appeal in order that two questions of law might be settled both of which were represented to be of great importance and in an unsettled state.

The first was the question whether the Judge in a partition suit where the defendant named in the plaint appeared and admitted the plaintiff's title, was bound to investigate plaintiff's title. There is a long series of cases answering this question in the affirmative and I think it may be taken as well established law. I do not think the question is sufficiently doubtful to justify a reference to His Majesty in Council.

The second was a question of registration. In regard to this I do not think any broad issue was raised. The decision depended to a considerable extent on facts peculiar to this case.

On neither of these grounds do I think we should be justified in exercising our discretion to allow an appeal.

The application for leave to appeal is refused.

DRIEBERG J.—

The defendant applies for conditional leave to appeal against a judgment of this Court declaring the plaintiff entitled to an undivided 1/30 share of a land; the defendant was awarded Rs. 3,600 as compensation for improvements. The matters in dispute between the parties are admittedly below Rs. 5,000 in value but it was contended that the appeal involved indirectly a claim or question respecting property of more than Rs. 5,000 in value.

It is said that if the defendant's title to the rest of the land was challenged by other descendants of William Dionysius Tillekeratna and his wife on a claim similar to that of the plaintiff the defendant would be bound by this judgment; the aggregate of such claims would be considerably over Rs. 5,000 in value. But it is not alleged that there are any such claims or that there are actions by such claimants pending and I do not think we can assume that other claims must necessarily arise as the result of this judgment.

It cannot be said that any such claims are involved in this appeal merely because of the possibility of their arising as the result of this judgment. The word "question" used in connection with the word "claim" does not extend the scope of the section and apply to a question as to other shares of the defendant in this land which may arise as the result of this judgment. Nor is it right to say that the defendant is bound by this judgment except to the extent that on two matters of law there is a ruling that would be binding as an authority should the same matter arise for consideration, unless it be reversed by a Full Bench decision.

Mr. Perera contends that some of these possible claims will not necessarily succeed by reason of the rulings on the two matters of law alone, for questions of prescription may arise.

To my mind it is not possible to extend this provision to interests other than those which are necessarily and finally determined by the judgment.

It is true that the interests to be considered are those of the party prejudiced by the judgment and these are not necessarily the same as the interests of the successful party and which were the actual subject of the contest; an example of this is the case of *McFarlane v. Leclair* <sup>1</sup>, where the effect of a judgment was to declare that a transfer of goods to the appellant was void against the respondents and all other creditors of the person from whom the appellant derived title. The respondent's claim was below the appealable value. It was held that an appeal lay, for the appellant would be bound by the judgment in any claims made by the other creditors though they were not parties to the action,—that though the judgment was interlocutory in form it was final in its effect on the rights of the appellant,—and that the value of these possible claims could therefore be considered in determining the right of the appellant to appeal.

It is not possible to look beyond the immediate effect of a judgment; it cannot be said in this case that the immediate effect of it is to finally determine the rights of other claimants, and the value of these possible claims cannot be considered in determining the interests of the defendant which are affected by the judgment from which he seeks to relieve himself. This principle was followed in the case of *Allan v. Pratt* <sup>2</sup>.

I agree with my brother Lyall Grant that the question involved is not one of such great general or public importance that it should be submitted to His Majesty in Council for decision or that there are other grounds for doing so.

The application is refused with costs.

*Leave refused.*

