

1963 *Present* : L. B. de Silva, J., and Sri Skanda Rajah, J.

K. RAMANATHAN, Petitioner, and L. H. PERERA and 2 others,
Respondents

*S. C. 73/1962—Application for Conditional Leave to Appeal to the
Privy Council in S. C. 45/D . C. Colombo, 760/Z1*

*Privy Council—Conditional leave to appeal—Decree for less than Rs. 5000—Seizure
of property worth over Rs. 5,000—Action brought under section 247 of Civil
Procedure Code—Valuation of subject matter—Appeals (Privy Council)
Ordinance, Schedules, Rule 1 (a).*

Where property worth over Rs. 5,000 in value is seized by a judgment-creditor in respect of a judgment debt which is below Rs. 5,000, a claimant-plaintiff in an action brought under the provisions of section 247 of the Civil Procedure Code is entitled to prefer an appeal to the Privy Council as of right from a judgment of the Supreme Court dismissing his claim. In such a case, the appeal is governed by the second part of Rule 1 (a) of the Schedule to the Appeals (Privy Council) Ordinance inasmuch as it involves directly or indirectly some claim or question to or respecting property or some civil right amounting to Rs. 5,000 or upwards.

APPPLICATION for conditional leave to appeal to the Privy Council.

M. Tiruchelvam, Q.C., with *K. Thevarajah*, for Plaintiff-Petitioner.

C. Ranganathan, with *S. C. Crossette-Thambiah*, for Defendants-Respondents.

Cur. adv. vult.

November 26, 1963. L. B. DE SILVA, J.—

The defendants-respondents seized the right, title and interest of one Rajendra, the judgment debtor in D. C. Colombo Case No. 14719/S in the property described in the schedule to the plaint in this case, filed of record marked " B " in this application. This property is subject to a Trust created by Last Will No. 147 dated 29th August, 1938, filed of record marked " A ". The said Rajendra is entitled to the beneficial interest in a 1/24th share of the said property.

The plaintiff-petitioner who is a trustee under the said last will preferred a claim to the interests seized, in his capacity as such trustee. His claim was dismissed and he, thereafter, filed the present action under the provisions of section 247 of the Civil Procedure Code, for a declaration that the interests of the judgment-debtor Rajendra in the Trust property, were not liable to seizure and sale under the said decree.

The plaintiff-petitioner's action was dismissed by the learned District Judge and his appeal to this Court was also dismissed. He is now seeking conditional leave to appeal to Her Majesty the Queen in Council.

The questions for decision in this application are :

- (a) whether the subject matter in dispute on this appeal amounts to or is of the value of Rs. 5,000 or upwards or
- (b) If this appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the value of five thousand rupees or upwards

as provided by Rule 1 (a) in the schedule to the Appeals (Privy Council) Ordinance (Chapter 100 of the Revised Legislative Enactments of Ceylon).

The decree in execution of which the interests of the judgment-debtor were seized was below Rs. 5,000 in value. The beneficial interests of the judgment-debtor extended to a 1/24th share of the property, described in the schedule to the plaint. The entirety of this property is reasonably worth Rs. 243,000 according to the affidavit filed by the petitioner. This valuation has not been challenged by any counter-affidavit in these proceedings. We are amply justified in holding for the purpose of this application, that the judgment debtor's beneficial interests under the Trust in this property, which were seized in execution, were worth over Rs. 5,000 in value.

It was submitted on behalf of the respondents that this Court has held in two cases reported in 2 Browne's Reports, p. 82 and 9 New Law Reports, p.48 that the value of the subject matter of a 247 action is the value of the property seized or the amount of the decree under which the seizure took place, whichever is less. These decisions which we would respectfully follow, will dispose of question (a) referred to earlier. The petitioner will have no right of appeal under the first part of Rule (1) (a) governing appeals to Her Majesty's Privy Council.

But in our opinion, this appeal clearly involves directly some claim or question to or respecting property or some civil right amounting to Rs. 5,000 or upwards. The question of the liability of the beneficial interests of the judgment-debtor in the Trust property to seizure in execution of the decree against him, arises in this appeal to Her Majesty in Council directly or at least indirectly.

For the purpose of this application, it is immaterial whether the petitioner's contention that such beneficial interests in the Trust property are not liable to seizure, is sound in law or not. The further questions whether a Trustee is entitled in law to make such a claim on behalf of the Trust or for the protection of the Trust property or for the protection of the interests of the beneficiary under the Instrument of Trust, are also immaterial at this stage. These are the very matters upon which the petitioner is seeking a decision by his appeal to Her Majesty in Council, as he is dissatisfied with the decision given by this Court on his appeal thereto.

Our attention has been drawn by Counsel for the respondents to the case of *L. Sudaman Prasad v. Mohamed Abdul Alim*¹. In that case,

¹ A. I. R. 1941 Oudh 407.

the petitioner for Conditional Leave to appeal to His Majesty in Council was the seizing creditor whose decree was below Rs. 10,000 in value, though the property seized was over that value. This case cited with approval the case cited in A. I. R. 1934 Rangoon 292, where it was held that under section 100, it is the extent to which the decree or Order has operated to the prejudice of the applicant that determines whether the decree or order is subject to appeal or not.

In the Oudh case, the applicant was only concerned with the recovery of the amount decreed to him, which was below the appealable value of Rs. 10,000 under the Indian provisions. He had no interest in the value of the property seized as such. In our view, the position of a claimant to property seized in execution is quite different. He is primarily concerned in protecting the property which he claims, from such seizure and sale under the seizing creditor's decree. The prejudice to him in the 247 action or in appeal is the liability of the property which he claims, to seizure and sale.

If such property is worth over Rs. 5,000, he is entitled to appeal as of right under the 2nd part of Rule 1 (a). In view of this finding, it is not necessary to consider if the petitioner should be granted leave to appeal under the provisions of Rule 1 (B) of the Privy Council Appellate rules, though this matter was argued before us.

The application for conditional leave to appeal to Her Majesty in Council is allowed on the usual terms. The petitioner is entitled to the costs of this application.

SRI SKANDA RAJAH, J.—I agree.

Application allowed.
