[FULL BENCH.]

1914

Present: Wood Renton C.J., Ennis J., and De Sampayo A.J.

PITCHE TAMBY *et al. v.* CASSIM MARIKAR *et al.*

197—D. C. Puttalam, 2,356.

Application for leave to appeal to the Privy Council—Action for injunction to restrain defendants from carrying a pagoda in procession—Application refused—Value of action.

The plaintiffs as members of a Muhammadan mosque sued the defendants, the trustees of the mosque, for an injunction restraining them from carrying a pagoda in procession from the mosque premises. No damages were claimed by the plaintiffs in the action, but the plaint was stamped on the basis that the claim was above Rs. 5,000 in value.

The Supreme Court refused an application for leave to appeal to the Privy Council.

WOOD RENTON C.J.—I do not think that the rule laid down in *Delmege* v. *Delmege* [1] has any application to such cases as the present, in which no loss of profits or emoluments is alleged, no damages are claimed, and the alleged right asserted in the action is one on which no pecuniary value can be placed.

THIS was an application by the plaintiffs for leave to appeal to the Privy Council from the judgment of the Supreme Court (reported at page 111).

Bawa, K.C., for the applicants (plaintiffs).—The parties to the case treated the case as one which involved a claim of over Rs. 5,000. The fact that the claim was not expressly valued in the plaint does not matter. In the case reported in *Austin's Reports 8* (*Morgan's Digest 57*) the Supreme Court directed an inquiry to be made as to the value of the subject-matter of the action. Counsel cited *91 L. T. 233*, (*1904*) *A. C. 776*, *1 N. L. R. 271*, *1 S. C. R. 1*, *4 Moore's P. C.*

[1] (*1895-96*) *1 N. L. R. 271.*

1914.

Pitche Tamby v. Cassim Marikar

(*N. S.*) *374, 67 L. T. 317, 14 A. C. 66.* Persons other than the parties to this case are interested in the result of this case. All Muhammadans are interested in seeing that the defendants act according to the rules. This is pre-eminently a case in which special leave should be granted.

F. M. de Saram (with him *Samarawickrame*), for respondents.—[Their Lordships wished to hear respondents only on the question whether special leave should be granted.] There is no doubt or dispute as to the question of law in this case. The only question is whether sufficient cause has been shown to justify an interference by the Court. The appeal is mainly one based on facts. Counsel referred to *3 A. C. 159, 8 A. C. 574.*

Cur. adv. vult.

October 29, 1914. WOOD RENTON C.J.—

This is an application by the plaintiffs in the action for leave to appeal to the Privy Council either as of right under rule 1 (*a*), or at the discretion of this Court under rule 1 (*b*), of the rules scheduled to the Appeals (Privy Council) Ordinance, 1909 (No. 31 of 1909). The plaintiffs as members of a Muhammadan mosque at Puttalam sued the defendants, the trustees of the mosque, for an injunction restraining them from carrying a pagoda in procession from the mosque premises. No damages were claimed by the plaintiffs in the action, but the plaint was stamped on the basis that the claim was above Rs. 5,000 in value. The plaintiff's counsel contended that, although no value was placed on the subject-matter of the action in the plaint itself, and consequently such cases as *Delmege v. Delmege*[1] are not directly applicable, the principle of these decisions should be applied by way of analogy, and the Court should be guided as to the value of the action by the scale under which the process in it had been stamped. I do not think that the rule laid down in *Delmege v. Delmege*[1] has any application to such cases as the present, in which no loss of profits or emoluments is alleged, no damages are claimed, and the alleged right asserted in the action is one on which no pecuniary value can be placed. See *D'Orliac v. D'Orliac.*[2] The appellants' claim to appeal to the Privy Council as of right must fail.

Rule 1 (*b*) of the rules scheduled to the Appeals (Privy Council) Ordinance, 1909 (No. 31 of 1909), empowers the Supreme Court to give special leave to appeal in any case "if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision." It was conceded in the argument at the Bar—and I think that the point of view embodied in the concession is correct—that the Supreme Court in exercising its powers under this rule should be guided, *mutatis mutandis*, by the

[1] (*1895-96*) *1 N. L. R. 271.* [2] (*1866-67*) *4 Moore's P. C. 374 (new series.)*

principles on which the Privy Council itself acts in dealing with applications for special leave to appeal in civil cases. The *locus classicus* on that point is the case of *Prince v. Gagnon*,[1] where it was held that no advice in favour of admitting an appeal by special leave will be given save "when the case is of gravity, involving matter of public interest or affecting property of considerable amount, or where the case is otherwise of some public importance or of a very substantial character." The Privy Council also takes account, in considering applications for special leave to appeal, of the question whether the judgment sought to be appealed against does or does not appear to be of doubtful soundness. It is obvious that this latter test, although we cannot exclude it altogether, is one that we should ourselves apply with caution. But we are required by the terms of rule 1 (*b*) itself, before granting special leave to appeal in any case, to be satisfied that the issue is one of great general or public importance. The words "or otherwise" in the rule must clearly receive an *ejusdem generis* interpretation. However glad the Judges of this Court might be, and would be, that their decision should be submitted to the Privy Council, we are bound to see that special leave to appeal is not granted except in cases coming fairly within the range of the principle above stated. I cannot think that the present case satisfies this test. Had the Supreme Court decided it in a contrary sense, and held that the circumstances were such as to justify a departure from the general rule that secular Courts in this Colony will not interfere with purely ecclesiastical controversies, there might have been some ground for our sanctioning an appeal as of grace. But the only point involved in the decision of the Supreme Court is that on the evidence no such departure is justifiable. That is no doubt a decision on a matter of interest and of importance to the parties themselves. But it turns entirely on questions of fact which have been disposed of in the same sense by the learned District Judge and by the Supreme Court.

I would dismiss the application with costs.

ENNIS J.—I agree.

DE SAMPAYO A.J.—I agree.

Application refused.

[1] (1882) 8 *Appeal Cases* 103