

Present : Fisher C.J. and Driberg J.

1929.

SATHASIVA KURUKKAL v. SUBRAMANIAM
KURUKKAL.

30—D. C. Jaffna, 23,069.

*Privy Council—Application for leave to appeal—Value of subject-matter—
Test of value.*

In an application for leave to appeal to the Privy Council the test that should be applied in determining the limit of value is the extent to which the judgment affects the interests of the party who is prejudiced by it and who is seeking to relieve himself from it by appeal.

TWO plaintiffs brought this action to give effect to the appointment by the first plaintiff of the second plaintiff as "his successor and hereditary officiating priest in the Maviddapiram Kandasamy Temple for a period of nine days in each month." They further asked for a declaration that the plaintiffs were entitled to the "customary and usual emoluments and income attaching to the said office of priesthood during the said nine days" and they claimed damages at the rate of Rs. 150 a month "from February 13, 1927, till the plaintiffs are restored to the quiet and peaceful possession of the rights claimed by them." The plaintiff valued the right claimed by the plaintiffs at Rs. 20,000.

The defendant in his answer denied the rights claimed by the plaintiffs, particularly the right of the first plaintiff to convey the rights in question, and pleaded that by reason of the deed purporting to assign these rights the first plaintiff "had forfeited his right to

¹ (1861) *Beven and Siebel*, p. 32, and in *D. C. Galle*, 22,212, *S. C. Min.*, October 1, 1867.

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officiate as priest and the said right has now become vested in the defendant as proprietor and manager of the said temple." The answer valued the right in dispute at Rs. 2,500.

The learned Judge gave judgments in favour of the plaintiffs with damages at the rate of Rs. 400 per annum, which amount had been agreed upon during the course of the trial. The judgment was affirmed by the Supreme Court. On an application by the defendant for conditional leave to appeal to the Privy Council.

Hayley, K.C. (with Garvin), in support.—The applicant is entitled as of right to conditional leave to appeal to the Privy Council under rule 1 (a) of schedule I. of Ordinance No. 31 of 1909 (*Legislative Enactments, Vol. IV., p. 422*) because the right is in fact worth more than Rs. 5,000. Respondent averred in the plaint that the right is worth Rs. 20,000. No issue as to the value of the right was framed at the trial. The case was stamped as a Rs. 20,000 case. On plaintiffs' admission, right is worth over the Rs. 5,000 required under rule 1 (a) (*supra*).

Balasingham (with Subramaniam), contra.—The judgment must be looked at as it affects the interests of the party prejudiced by it and who seeks to get rid of it and the value of the right must be measured on this principle (see Lord Selborne in *Allan v. Pratt*,¹ *Bandara v. Bandara*²). Applicant has not proved to the satisfaction of your Lordships' Court that the right is worth Rs. 5,000. Applicant cannot now say the right is worth more than Rs. 2,500, at which figure he valued the right in his answer.

October 29, 1929. Fisher C.J.—

This is an application for conditional leave to appeal to the Privy Council by a defendant in an action against whom judgment was given in the District Court, which judgment was affirmed by this Court. The action was brought by two plaintiffs and they asked the Court to give effect to the appointment by the first plaintiff of the second plaintiff as "his successor and hereditary officiating priest in the Maviddapiram Kandasamy Temple for a period of nine days" in each month. They further asked for a declaration that the plaintiffs were entitled to the "customary and usual emoluments and incomes attaching to the said office of priesthood during the said nine days" and they claimed damages at the rate of Rs. 1.50 a month "from February 13, 1927, till plaintiffs are restored to the quiet and peaceful possession" of the rights claimed by them. Paragraph 8 of the plaint valued the right of the plaintiffs at Rs. 20,000. The defendant in his answer denied the rights claimed by the plaintiffs, and particularly the rights of the first plaintiff to convey the rights in question to the

¹ *Law Rep. 13 A. C. p. 780 at p. 781.*

² *1 Current L. R. p. 52.*

second plaintiff, and pleaded that by reason of the deed purporting to assign these rights the first plaintiff "had forfeited his right to officiate as priest and the said right has now become vested in the defendant as proprietor and manager of the said temple." The learned Judge gave judgment in favour of the plaintiffs on December 3, 1928, with damages at the rate of Rs. 400 per annum, which amount had been agreed upon during the course of the trial. The respondent to the application contends that the applicant is not entitled as of right to appeal to the Privy Council under rule 1 (a) of schedule I, of Ordinance No. 31 of 1909 (*Legislative Enactments, Vol. IV., p. 422*) on the ground that the matter in dispute is of the value of less than Rs. 5,000. The test to be applied in considering this question is that which is referred to by Lord Selborne in his judgment in *Allan v. Pratt*,¹ and is as follows:—"The judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal. If there is to be a limit of value at all that seems evidently the right principle on which to measure it." (See also *Bandara v. Bandara*.²) The applicant, who is the manager and high priest of the temple, claims that the act of the first plaintiff in attempting to assign his rights to the second plaintiff resulted in the vesting of the rights in himself, and the result of a successful appeal, so far as the interests of the applicant are concerned, would be the vesting of the rights in him. It cannot be contended that the applicant would be entitled to sell these rights. Indeed it was submitted on his behalf before the learned District Judge "that poojah rights are by their nature, inalienable being *res extra commercium*". The value of the "interests of the party who is prejudiced" by the judgment sought to be appealed against is therefore the value attaching to his alleged right to receive Rs. 400 per annum so long as he holds his office. It does not seem possible to say that such a right is of the value of Rs. 5,000, and the applicant himself expressly pleaded that the value of the right in dispute is Rs. 2,500. Under these circumstances the point at issue with regard to value can be decided upon the material in the record and, in my opinion, the applicant is not entitled as of right to appeal. The applicant in his petition asks the Court in the alternative to hold that this is a question "which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision." That point was merely mentioned and was not seriously argued, and, in my opinion, this case is not one which calls for the exercise of our discretion in favour of the applicant. The application must be refused with costs.

DRIEBERG J.—I agree.

Application refused.

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¹ *Law Rep. 13 A. C. p. 781.*

² *1 Current L. R. n.*