

1960                      *Present* : Basnayake, C.J., and Sansoni, J.

SAMICHCHIAPPU, Petitioner, and BARONCHIHAMY and others,  
Respondents

*S. C. 100—Application for Final Leave to Appeal to the Privy Council  
in S. C. 154/D. C. Tangalla, 6205*

*Privy Council—Appeal to Supreme Court dismissed for non-appearance—Dismissal of application for reinstatement—Application by appellant for leave to appeal to Privy Council—Computation of time limit—“Final judgment”—Civil Procedure Code, s. 769 (2)—Appeals (Privy Council) Ordinance, Schedule Rules 1 and 2.*

Where the appellant applies for leave to appeal to the Privy Council in a case where the Supreme Court has refused an application made under section 769 (2) of the Civil Procedure Code to reinstate an appeal which was dismissed for non-appearance, the final judgment, for the purpose of rule 1 (a) of the rules in the Schedule to the Appeals (Privy Council) Ordinance, is the judgment by which the action between the parties was decided in appeal and not the judgment refusing the application for reinstatement of the appeal. Accordingly, the petition for leave to appeal to the Privy Council must be filed within thirty days from the date of the judgment of the Court dismissing the appeal.

**A**PPPLICATION for final leave to appeal to the Privy Council.

*N. E. Weerasooria, Q.C., with W. Wimalachandra, for Defendant-Appellant-Petitioner.*

*H. W. Jayewardene, Q.C., with D. R. P. Goonetilleke, for 1st, 2nd and 3rd Plaintiffs-Respondents-Respondents.*

May 12, 1960. BASNAYAKE, C.J.—

This is an application by the defendant-appellant for final leave to appeal to the Privy Council. The plaintiffs-respondents sued the defendant-appellant to recover the value of the coconuts gathered by the defendant-appellant from a plantation of 634 coconut trees standing on a land called Tennapita Serugahahena *alias* Karuwalahenayaya which was the subject-matter of the Partition Case No. 5552 of the

District Court of Tangalla. In that action the plaintiffs prayed judgment in a sum of Rs. 3,900 against the defendant, and for further damages at the rate of Rs. 600 per crop from 21st September 1951 till possession of the land was given. After trial the learned District Judge delivered judgment declaring that the defendant was liable to pay Rs. 300 per crop from July 1949 in respect of the disputed coconut trees, and that the plaintiffs were entitled to be restored to possession and to recover costs of the action.

The defendant appealed against the judgment and the appeal was dismissed with costs on the 22nd October 1959. Neither his counsel nor the defendant appeared at the hearing of the appeal. Thereafter an application was made under section 769 (2) of the Civil Procedure Code praying that the appeal be reinstated. That application was heard after notice to the plaintiffs and it was dismissed on the 16th December 1959.

Objection to the grant of final leave is taken on the following grounds :—

- “(a) That the matter in dispute on the appeal does not amount to or is of the value of Rs. 5,000 or upwards ; and  
(b) That the petition for leave to appeal was filed 30 days after the date of the judgment of the Court dismissing the appeal.”

Learned counsel for the petitioner submits that the final judgment for the purpose of the application to the Court for the purpose of rule 1 (a) of the rules in the Schedule to the Appeals (Privy Council) Ordinance is the judgment dismissing the application for the reinstatement of the appeal and not the judgment dismissing the appeal itself. He further contends that as the final judgment is the judgment dismissing the application for reinstatement of the appeal, the application for final leave to appeal to the Privy Council is within time. We are unable to agree that the final judgment of the Court referred to in rule 1 (a) is the judgment dismissing the application for reinstatement of the appeal. The final judgment of the Court contemplated in rule 1 is the judgment by which the action between the parties was decided in appeal.

The application for final leave to appeal to the Privy Council is refused.

The respondents are entitled to their costs.

SANSONI, J.—I agree.

*Application refused.*