

1957 *Present* : H. N. G. Fernando, J., and T. S. Fernando, J.

K. NADESAN, Petitioner, and V. RAMASAMY, Respondent

*S. C. 510—Application for Conditional Leave to appeal to the Privy Council
in S. C. 571/D. C. Point Pedro, 4187*

Privy Council—Application for leave to appeal—Subject matter of dispute—Value thereof less than Rs. 5,000 at date of plaint—Right of appellant to prove subsequent appreciation in value—Appeals (Privy Council) Ordinance (Cap. 85), Schedule, Rule 1.

It is open to a party seeking leave to appeal to the Privy Council, in a case where the subject-matter has been valued in the plaint at a figure below that of Rs. 5,000 specified in Rule 1 of the Schedule to the Appeals (Privy Council) Ordinance, to show that the value has appreciated since the date of the plaint and is now over Rs. 5,000. In such a case he can claim that leave to appeal should be granted as of right.

APPPLICATION for conditional leave to appeal to the Privy Council.

Walter Jayawardene, with K. Shanmugalingam, for the plaintiff-petitioner.

S. Sharvananda, for the respondent.

Cur. adv. vult.

December 17, 1957. H. N. G. FERNANDO, J.—

The petitioner in this application has applied for leave to appeal to Her Majesty in Council against a judgment of this Court dismissing an action filed by the petitioner as plaintiff in the District Court of Point Pedro for a declaration of title to certain property. The property in question was a 1/10th share of Lot 3 in Survey Plan No. 424A of 20th March 1944, and it is conceded that the petitioner had in his plaint valued this share at Rs. 4,500. The petitioner however states in his petition that the value is now over Rs. 5,000 and claims that leave to appeal should be granted as of right. The only ground on which the respondent opposes the application is that the value as stated in the plaint was Rs. 4,500 and that the actual market value is now under Rs. 5,000. Each of the parties has produced affidavits in support of their respective valuations.

It would seem at first sight that when the subject matter of a dispute is land, the plaintiff who values the land at a figure below that of Rs. 5,000 specified in Rule 1 of the Schedule to the Appeals (Privy Council) Ordinance Cap. 85, should be held bound by that valuation. It seems arguable that if the value of the property at the time of the plaint was under Rs. 5,000, then for the purposes of the jurisdiction not only of the original Court, but also of appellate Courts, the value of the matter in dispute should be taken to be its original value. But the authorities upon which the petitioner has relied are not in accordance with the view I have just mentioned, and I am not inclined to question the correctness of those authorities. *De Alwis v. Appuhamy*¹ was a case where two plaintiffs had valued a land at Rs. 16,000 and where the appellants (children of the original 2nd plaintiff) had become substituted plaintiffs. It was common ground that the matter in dispute in the appeal was whether or not the appellants were entitled to a 1/4 share. Upon the application for leave to appeal being made, the appellants sought to show that the current value of their 1/4 share was over Rs. 5,000. Although the appellants were privies of the original plaintiffs, they were afforded an opportunity of establishing the current value of their share. This Court on that occasion considered a number of Ceylon and Indian authorities and declared that the established principle is "that where there has been no fraud on the part of the appellant and where he has

¹ (1929) 30 N. L. R. 421.

not consented to a lower valuation for the purposes of obtaining some advantage, he should be allowed to prove the value of his claim, and that where that value has appreciated since the date when action was first taken, he should be allowed to prove the value at the time of appeal." This principle was re-iterated by Soertsz, J. in *Setha v. Muttuwa*¹, although in that case the original valuation at a figure below Rs. 5,000 had been made not by the applicant for leave to appeal but by his opponent.

There is no averment by the respondent that the original valuation was fraudulent or intended to reduce the amount of stamp duty payable on the proceedings, and it may well be the case that the higher valuations which appear to have been made at recent dates on behalf of the petitioner can be accounted for by reason of the appreciation in value of land in the area concerned. In fact the affidavit of one of the valuers contains statements to that effect.

In the circumstances I would follow the procedure which was adopted in the decision I have first cited and remit the case to the District Judge, Point Pedro, with instructions to hold a summary inquiry into the value as at the end of the year 1956 of the 1/10th share of the land and to make his report to this Court.

T. S. FERNANDO, J.—I agree.

Case remitted for inquiry.

¹ (1942) 44 N. L. R. 49.

