Thakur Rudra Pratap Singh vs Thakur Mirtunjay Pratap Singh And Ors. on 22 November, 1955

Equivalent citations: AIR1957ALL28, AIR 1957 ALLAHABAD 28

JUDGMENT

D.N. Roy, J.

1. This is an application by Thakur Rudra Pratap Singh, defendant-appellant, for a certificate under Article 133 of the Constitution of India and Sections 109 and 110, Civil P. C. for leave to appeal to the Supreme Court. An application for amendment of the preliminary and final derees in a suit for partition was made by the applicant before the Civil Judge of Allahabad.

That application was dismissed. Against that order a revision was filed in this Court and the revisional petition was also dismissed by our order of the 12-10-1954. The applicant desires to go to the Supreme Court in appeal against that order, and towards that end he prays for the necessary certificate.

2. In order to appreciate the nature and the scope of the application certain facts have got to be stated. One Sheopal Singh had three sons Ajodhya Prasad Singh, Rang Bahadur Singh and .Mangan Singh. Ajodhya Prasad Singh was married to Kunjals Kuar and he left a son Mritunjya Pratap Singh, who was plaintiff 1 to the suit. Mritunjya Pratap Singh has a son Baba Krishna Raj Singh, who was plaintiff 2.

Mangan Singh had a son Tej Pratap. who was plaintiff 3. Tej Pratap died after the order of dis missal of the application for amendment was passed by the learned Civil Judge, and he is now repre sented by his widow and sons. Rang Bahadur Singh left four sons, namely, Suraj Pratap, Ram Pratap, Harihar Pratap and Rudra Pratap, who were the defendants to the suit.

Mritunjya Pratap, Tej Pratap and the sons of Rang Bahadur formed a joint Hindu family which possessed considerable property, both immovable and movable. In 1927 Mritunjya Pratap and his son filed a suit in the Court of the Civil Judge for partition of the joint family property against the other coparceners. To the plaint were attached six lists of the joint family property to be partitioned. List No. 1 was of zamindari property and mentioned the land revenue payable against each item.

List No. 2 was of houses and wells. List No. 3, which is the subject-matter of dispute before us, was of groves and other immovable property. It included one grove situate in village Mandaur, a plot of sankalap land in village Handia, another plot of land in village Hanumanganj, two flower gardens in villages Dhokri and Kotwa, and four orchards containing plum, guava and mango trees in villages Sarai-Mansoor, Kotwa Dhokri and Dalapur.

All the nine items of this list were stated to be joint possession of all the co-parceners. No land revenue was assigned against any of them. The joint family possesed zamindari in all the villages mentioned above, except Mandaur, Handia and Hanumanganj. The properties included in this list were valued at Rs. 1,10,000/- in the list itself. List No. 4 was of outstandings. List No. 5 was of movables.

The sixth list was of cattle. Tej Pratap, who was originally a defendant to the suit, filed a written statement claiming that there was some more joint family property which had been left out from the suit. He gave particulars of some groves which were left out by the plaintiffs and stated that there was some more property of which he could not give the details. Ram Pratap defendant also filed a written statement mentioning some more property. The plaintiffs filed a replication admitting that there was some more joint family property and praying that it should also be brought into the hotch potch to be partitioned.

The plaintiffs were entitled to, and they claimed, one-third share in the joint family property; Tej Pratap was entitled to, and he claimed, one-third share; and the defendants admitted that they were entitled to the remaining one-third share. Subsequently Tej Pratap applied that his one-third share should also be partitioned and he was, therefore, transposed from the array of the defendants to the array of the plaintiffs.

The result was that the plaintiffs claimed sepa-ration of their two-thirds share--one-third going to plaintiffs 1 and 2 and another one-third going to Tej Pratap plaintiff 3; and whatever was left was to go to the defendants who did not claim partition inter se.

On 9-8-1928. counsel for the parties made a joint statement about the property claimed in the written statement and in the replication to be joint family property in addition to that included in the lists. According to the joint statement the decision of some of the controversy was left to the special oath of Mritunjya Pratap and Ram Pratap. Ram Pratap and Mritunjya Pratap made statements on special oath, the consequence of which was that some groves said to be worth Rs. 50,000/- or so were to be added to the property to be partitioned.

When the matter was thus decided the trial Court should have got the lists amended by the plaintiffs, because that was the natural action to be taken. The Court, however, did not adopt that procedure, with the result that the lists remained unamended.

On 3-9-1928, the trial Court passed a preliminary decree declaring that plaintiffs 1 and 2 were entitled to one-third share and plaintiff 3 was entitled to another one-third share, and the defendants were entitled to the remaining one-third share; that the lists attached to the plaint should be amended in the light of the joint statement of the counsel for the parties and the individual statements on special oath, and that the property included in the replication of Mritunjya Pratap and Tej Pratap would be treated as joint family property.

The Court directed the preliminary decree to be prepared in accordance with its findings and further directed that : "So far as the revenue paying properties are concerned, plaintiffs 1 and 2 are declared

to be entitled to the extent of one-third and plaintiff 3 to the extent of one-third" and that : "the final decree would be prepared for the rest of the property".

3. The preliminary decree was prepared, but the lists were not amended; instead the joint statement of the parties, counsel and the individual statements aforesaid were made parts of the preliminary decree.

4. Threafter proceedings were taken for the preparation of a final decree. When the Court's attempt to get the partition done by metes and bounds through a commissioner failed, it passed an order on 20-8-1929, directing the plaintiffs to prepare three equal lots of the joint family property to be partitioned, except. zamindari property, and file them in Court, and directed that the defendants would select their lot out of them and the other two lots would go to the plaintiffs. The plaintiffs prepared three lots.

The lots were more or less equal and their average value was a little over Rs. 16,000/-. The lots included properties. of lists 5 and 6 only. The division of the property included in lists 2 and 4 had been done already in terms of the joint statement of the parties' counsel. The zamindari property of list 1 was to be partitioned through a revenue Court and so was not to be included in the lots. Neither the property of list 3, nor the extra property to be found in the preliminary decree to be partible as joint family property was inluded in the lots.

There was on the record no explanation whatsoever for the plaintiff's omitting to include the extra property and the property of list No. 3 in the lots; but nobody objected also to the omission of the property from the lots. All the parties and the Court assumed that those properties were rightly excluded from the lots.

The defendants had to select their lot, but they did not appear in Court. So the Court allowed the plaintiffs to select their two lots. Plaintiffs 1 and 2 selected lot No. 3 and plaintiff 3 selected lot No. 2. The Court on 17-2-1930, passed the final decree in the following words :

> "The plaintiffs' share in the zamindari properties described in list 1 of the plaint is two-third and that the plaintiffs will be at liberty to get their two-third share in these properties partitioned by metes and bounds. Out of the rest of properties plaintiff 3 is hereby awarded the properties which are comprised in lot 2 of the lots prepared by the plaintiffs.
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> Plaintiifs 1 and 2 are hereby awarded the properties comprised in lot 3 of the lots prepared by plaintiffs. The remaining properties to which the suit relates shall be the exclusive properties of the defendants. Lots 2 and 3 filed by the plaintiffs shall be copied out in the final partition decree but the valuations therein given, will be omitted .....All the properties in suit will also bo shown in the final decree".

5. On 13-7-1932, the parties executed a registered agreement, referring to the final decree in the partition suit reciting that all the joint family property and debts had been partitioned and each

party had become owner of its one-third share and that the partition of the zamindari property by metes and bounds through the revenue Court had not been done and agreeing to appoint Abhairaj, Singh and Mritunjya Pratap as managers of the joint zamindari property. It was agreed by the parties that the arrangement would last for fifteen years, namely, up to 1947. So no division of the zamindari property by metes and bounds through the revenue Court had been done.

6. In 1935 or thereabout the parties jointly applied under Section 4, U. P. Encumbered Estates Act for the liquidation of their debts mentioning all the properties as jointly owned by them. The Special Judge passed decrees against the parties in respect of their debts and forwarded the list of the property to the Collector for the liquidation of the debts. Separate decrees were passed against each of the parties specifying their liabilities, whilst the property was mentioned as jointly owned by them. The extra groves were not included in the list.

When the decrees were sent to the Collector for the liquidation of the debts he found it difficult to do so, because whilst the decrees specified the liabilities of each party separately, the property was described as jointly owned by them. The Collector, therefore, referred the matter back to the Special Judge. By that time disputes had arisen amongst the parties when the matter was before the Special Judge the defendants claimed before him that all the property of list 3 and the extra groves were given to their share, whereas the plaintiffs claimed that those properties were still joint because under the final decree they were to be partitioned fay metes and bounds by the revenue Court.

The Special Judge held that the only property that was left joint under the final decree was that of list No. 1, that it was only that property that was to be partitioned through the revenue Court, that even if the final decree was wrong in leaving. only the zamindari property to be partitioned by a revenue Court, it had become final and could not be corrected by him, and that under Section 151, Civil P. C. he was justified in dividing the property shown in the application under Section 4, Encumbered Estates Act in accordance with the final decree.

He accordingly ordered a copy of the operative portion of the order passing the final decree and a copy of the final decree itself to be forwarded to the Collector as supplementing and explaining the list of property sent to him previously along with the decrees under Section 14, U. P. Encumbered Estates Act.

He made it clear in the order that only the zamindari property in list 1 was held in common by the parties, that lot 2 belonged to plaintiff 3, and lot 3 belonged to plaintiffs 1 and 2, and that the rest of the property of the partition suit belonged to the defendants. That order was passed by the Special Judge on 20-10-1945.

7. Tej Pratap plaintiff 3 made an application under Sections 151 and 152, Civil P. C. for the amendment of the judgment and the decree in the partition suit, praying that the property included in lists 3 and 4, not having been included in the lots sanctioned by the final decree, should be held to be joint.

It may be mentioned here that the preliminary decree in the suit was passed by one Civil Judge and the final decree was passed by another Civil Judge, and this application for amendment was-made before a third Civil Judge who had succeeded to the office on that date. The application for amendment was dismissed on 5-5-1945, and it was observed that the Civil Judge who passed the final decree "must have known that the property in lists 3 and 4 was not included in any lot; hence excluded the lot No. 1 and used for it the words 'the remaining properties to which the suit relates'.' He inferred that the entire property in the suit, which was not included in lots 2 and 3 was given in the share of the defendants and that consequently there was no justification for correcting the judgment and the final decree. An application in revision against that order was dismissed by this Court.

8. Thereafter another application for amendment of the decree was made by the defendants alleging that through a clerical error all the joint family properties which were to be partitioned were not included in the final decree, and praying that the properties of which a detailed list was given in the application should be entered in the preliminary and final decrees.

The list contained a large number of groves and several plots of sankalap land said to have been mentioned in list No. 3 and in the joint statement of the parties. This application was opposed by the plaintiffs, who contended that the property mentioned in list 3 and in the joint statement of the parties was to be partitioned by a revenue Court and was, therefore, not partitioned by the civil Court and was not included in the lots prepared by the plaintiffs and that it was still joint property of the parties.

The defendants claimed that they got the property exclusively in their share because it was amongst the property left out of the property under partition after giving the plaintiffs their two-thirds share in it. That application for amendment was rejected by the learned Civil Judge.

From the order of rejection Rudra Pratap defendant came up in revision to this Court. The revision was dismissed by us on 12-10-1954, and we held that the property of list 3 and the other groves held by the learned Civil Judge to be joint family property on the basis of the joint statement consisted of estates assessed to land revenue and could not have been partitioned by the civil Court; that under the preliminary decree all the revenue paying properties were to be partitioned by the revenue Court and a final decree was to be prepared for partition of only the remaining property; that under the preliminary decree the property included in list 1 and list 3 and the extra property held to be the joint family property on the basis of the joint statement of the parties was to be partitioned by the revenue Court and that ho final decree was to be prepared in respect of it by the civil Court; that the learned Civil Judge had simply to declare the shares of the parties with respect to the groves which fell within the zamindari property and were assessed to land revenue; that the Civil Judge was not to partition the groves in dispute by metes and bounds; that on no other hypothesis can it be explained why the plaintiffs excluded the groves from the lots prepared by them, because not only the groves were such a costly property and the groves mentioned in list 3 were valued by the plaintiffs themselves at Rs. 1,10,000/-, but the other groves held by the learned Civil judge to be joint family groves were also said to be worth more than Rs. 50,000/-; that if they were to be divided by the learned Civil Judge there was no reason whatsoever for the plaintiffs not distributing them among

the lots; that at the time of the passing of the final decree the Civil Judge had no jurisdiction whatsoever to go against the preliminary decree; that at the time of the passing of the final decree the Civil Judge did not intend to give the defendants more than one-third share in the property which was capable of partition by the civil Court; that after having given lots 2 and 3 to the plaintiffs the Civil Judge had no jurisdiction to add anything to the third lot, and he could not include in it any property, even if he thought that the lots did not include all the property divisible by him; that if the Civil Judge were to labour under the impression that some property divisible by him had been left out, his duty would have been to get the lots amended by the plaintiffs; that he could not possibly have included all the remaining property in the lot of the defendants; that the order passed by the Special Judge would not have the force of res judicata in the application for amendment of the final decree; that what happened in the subsequent litigation before the Special Judge was wholly irrelevant to the question of amendment of the final decree; that if the defendants were not entitled to get the final decree amended as soon as it was passed, nothing that happened subsequently in the Encumbered Estates Act proceedings or on Tej Pratap's application for amendment would confer the right upon the defendants to have the decree amended; that what the subsequent judgments and orders did Was simply to interpret the preliminary and final decrees and that interpretation is not binding as res judicata; that an amendment contemplated by Section 152, Civil P, C. was discretionary and it was open to the Court to grant or refuse amendment; that the Court had not exercised jurisdiction not vested in it, nor did it refuse to exercise jurisdiction vested in it; that the Court refused amendemnt on the ground that on merits there was no justification; that the Court did not act illegally or with material irregularity in rejecting the application for amendment, and that consequently the order was not re-visable by the High Court.

9. Under the present application the certificate under Article 133 of the Constitution has been claimed under Clause (1), Sub-clauses (a) (b) and (c) of the Article and also under Sections 109 and 110, Civil P. C. Mr. Jagdish Swarup has contended that the scope of Sections 109 and 110, Civil P. C. is not coextensive with the scope of Article 133 and has argued that unless the matter falls strictly within the scope of Sections 109 and 110 of the Code, the certificate cannot be granted. We see no force in these contentions.

Since the Constitution itself provides that a per.-son has a right to appeal if he has obtained a certain certificate from the High Court, it follows that he has a right to pray for a certificate from the High Court and that the High Court is under a duty to grant it if the required conditions are satisfied. The High Court cannot refuse a certificate on the ground that under Sections 109 and 110, Civil P. C. the person has no right of appeal. The High Court is not concerned with the right of appeal at all; it is only concerned with the question whether the certificate should be granted or not.

If the Civil Procedure Code did not contain the provisions that are contained in Sections 109 and 110 and Order 45, it could not have refused to grant a certificate; merely because Sections 109 and 110 and Order 45, provide for the granting of a certificate in certain circumstances, it cannot be argued that it cannot grant a certificate in other circumstances. Order 45, Rr, 2 and 3 require that a person desirous of appealing to the Supreme Court must apply to the High Court and pray for a certificate either that as regards the amount or value and nature the case fulfils the requirements of Section 110 or that it is otherwise a fit one for appeal to the Supreme Court.

Under these provisions a person cannot ask for a certificate in a case in which he is entitled to file an appeal under Article 133 or Article 132, but which is not covered by the provisions of Section 110, Civil P, C., but it does not follow that he cannot ask for a certificate at all. All that can be said is that the Legislature has provided for a person's asking for a certificate in certain circumstances but not for all circumstances in which he is entitled to a certificate; the procedure in a case governed by Section 110, Civil P. C., will be as laid down in Order 45, but as regards other cases there is no procedure prescribed and it would be open to the High Court to adopt any procedure.

The High Court cannot refuse to grant a certificate merely on the ground that no procedure "has been prescribed to. be followed by it; if it is under a duty to grant it, it must grant it by following any procedure it thinks fit. The provisions of Sections 109 and 110 must be, and are expressed to be, subject to the constitutional rights; therefore, a person can-

not be denied his constitutional rights merely on the ground that the circumstances in which he claims the rights are not governed by the provisions of Sections 109 and 110.

If the nature of the provisions of Sections 109 and 110 and Order 45 is correctly understood, they will not be found to be in conflict with those of Articles 132 and 133 of the Constitution. These two Articles grant a right of appeal in certain circumstances and the provisions in the Code of Civil Procedure are expressed to deal with only some of them. Therefore, the provisions in the Code cannot be said to be at variance with those of the Constitution.

'Joy Chand Lal v. Kamalaksha', AIR 1949 PC 239 (A), which laid down that an order passed by a High Court under Section 115 of the Code cannot be taken up in appeal under Section 109(a), was decided before the Constitution came into, force and is, therefore, distinguishable from the present case.

Anodier contention advanced by Sri Jagdish Swarup was that the provisions of the Code can be reconciled with those of the Constitution by holding that the former apply in civil proceedings which originate in a suit while the latter apply in other civil proceedings which do not originate in a suit.

As instances of other civil proceedings which do not originate in a suit, he mentioned references made to the High Court under the Stamp Act, Income-tax Act, applications for writs and proceedings under the Companies Act. No authority and no convincing reasons were cited in support of the contention.

The words "a civil proceeding" are wide enough to cover any proceeding of a civil nature, whether it is being held by the High Court in its original jurisdiction or in its appellate jurisdiction or in its revisional jurisdiction. It cannot be doubted that the words include proceedings held by the High Court in exercise of its original jurisdiction and also proceedings held by it in exercise of its appellate jurisdiction and there is no warrant whatsoever for restricting the words to proceedings held by the High Court in exercise of only these two jurisdictions and for excluding proceedings held by it in , exercise of its revisional jurisdiction from their scope. If a suit or an appeal before a High Court is a civil proceeding, there is no reason why a revision pending before it is not. As we have explained

earlier, there is really no question of there being any conflict between the provisions of the Code and those of the Constitution and, therefore, there arises no necessity of giving a strained meaning to the provision's of Article 133 in order to reconcile them with the "provisions of the Code.

It is also not quite correct to say that Section 109, gives a right of appeal in civil proceedings which originate in a suit; the word 'suit' is not used in the section but instead the words "final appellate jurisdiction" are used. They certainly exclude orders passed in exerise of the revisional jurisdiction, but they are the only orders excluded from the scope of Section 109.

10. In order that an appeal may lie to the Supreme Court from a judgment, decree or final order in a civil proceeding under Article 133, a certificate is required. This certificate must be to the effect.

(a) either that certain requisites as to the valuation are satisfied; or

(b) that the case is a fit one for appeal to the Supreme Court.

Where the requisites as to the valuation are satisfied, a certificate as to the case being a fit one for appeal to the Supreme Court is not necessary and vice versa. As regards fitness in respect of value. the Article draws a distinction between cases in which the judgment, decree or final order of the High Court affirms the decision of the Court immediately below and other cases.

in the former class of cases the Article requires that, although the requisites as to value are satisfied, the High. Court must further certify that the appeal "involves some substantial question of law". so that in the case of a concurrent judgment of the High Court the Article does not permit an appeal to the Supreme Court merely on the basis of the high value of the matters at stake. The result, therefore, is that under Article 133 of the Constitution an appeal to the Supreme Court will lie in the following cases :

(i) where the judgment, decree or final order. of the High Court is not one of affirmance, the requisites as to value are satisfied;

(ii) where the judgment, decree or final order of the High Court is one of affirmance, firstly, the requisites as to the value are satisfied, and, secondly, a substantial question of law is involved in the appeal; and

(iii) where the High Court certifies that the case is a fit one for appeal to the Supreme Court.

11. Article 133 of the Constitution confers the right of appeal and Sections 109 and 110 and Order 45, Civil P. C. deal with the right and lay down the procedure for obtaining the certificates. Substantially Sections 109 and 110 taken together, incorporate the provisions of Article 133, but the points of difference may be noted:

> 1. The article only applies to an appeal from a judgment, decree or final order of the High Court and this condition applies also to an appeal under Clause 1 (c) of the Article, namely, where the High Court certifies a case to be a fit one for appeal to the Supreme Court. There is a corresponding clause in Section 109, namely, Clause (c) under which also an appeal will lie to the Supreme Court when the High Court certifies the case to be a fit one for appeal to the Supreme Court.

But under Section 109 Clause (c), the appeal will lie from "any decree or order", so that if a case is certified as a fit one for appeal to the Supreme Court by the High Court an appeal would lie to the Supreme Court under Section 109, Clause (c), Civil P. C., even against an order which is not a final order, while under Article 133, Clause 1 (c) such an appeal would not be competent.

But when there is a conflict between Section 109 and Article 133, this Article is to prevail, so that now, in spite of the wider language of Section 109, Clause (c), Civil P. C., an appeal to the Supreme Court will not lie against an order which is not a final order, even if the High Court certifies the case to be a fit one for appeal to the Supreme Court, Reference in this connection may be made to a Madras decision in

--'Ramaswami v. Official Receiver', AIR 1951 Mad 1051 (B).

2. Under Section 109(a), Civil P. C. an appeal will lie to the Supreme "Court only against au order passed on appeal by the High Court. But under Article 133(1) an appeal will He even against an order not passed on appeal, as for instance, against a final order of the High Court in civil revision proceedings.

3. Under Section 110, Civil P. C. it has been held by some Courts that para 2 of Section 110 is an alter native only to the second part of the first para graph of the section so that under Section 110 it is neces sary in every case that the amount or value of the subject-matter of the suit in the Court of first in stance must be Rs. 20,000/- or more.

According to this view even where the judgment, decree or final order involves some claim or question respecting property of the value of Rs. 20,000/- or more, an appeal will not lie to the Supreme Court, unless the value of the subject-matter of dispute in the Court of first instance was also Rs. 20,000/- or more. Under Article 133 such a view will be clearly untenable and the Article makes it clear that where the judgment, decree or final order involves, directly or indirectly, any question respecting property of the value of Rs. 20,000/- or more, the value of the dispute in the Court of first instance is immaterial. In support of this view reference may be made to the Patna decision in--'Lalmina Singh v. Kamal Singh', 30 Pat 1274: (AIR 1952 Pat 450) (C).

4. Under Article 133(1)(a) the words used are "the amount or value of the subject-matter of dispute in the Court of first instance". But under Section 110, para 1, Civil P. C., the words are "The amount or value of the subject matter of the suit in the Court of first instance,".

5. Under Section 109, Civil P. C., an appeal is provided not only against the judgment, decree or final order passed on appeal by a High Court, but also against the judgment, decree or final order passed on appeal by any other Court of final appellate jurisdiction. But under Article 133 the appeal is provided for only against the judgment, decree or final order of a High Court.

By the Judicial Commissioners' Courts (Declaration as High Courts) Act (15 of 1950) Section 3, the Courts of the Judicial Commissioners in Part C States have been declared to be High Courts for the purposes of Articles. 132, 133 and 134 of the Constitution.

6. Clause (3) of Article 133 has no corresponding provision in Sections 109 and 110, Civil P. C. It corresponds to Section 111, Civil P. C. which has now been omitted by the Adaptation of Laws Order of 1950.

7. The right of appeal to the Supreme Court on the basis of the value at stake arose under Sections 109 and 110, Civil P. C. only in the case of a judgment, decree or final order passed on appeal or in the exercise of original civil jurisdiction. But under Article 133 the right extends to a judgment, decree or final order passed in any civil proceeding,

8. Under Section 109(c), Civil P. C. leave to appeal can be granted in respect of any decree or order. But under Article 133(c) such leave can only be granted if the order has been passed in any civil proceeding. In this case also Article 133 will prevail over Section 109, Civil P. C. and a certificate of fitness for appeal cannot be granted unless the order has been passed in a civil proceeding. Reference in this con nection may be made to a Madras decision in--

'Krishnaswami v. Counsel, etc. of India', AIR 1953 Mad 79 (D).

In the end it may be mentioned that there is no provision in the Code of Civil Procedure similar to that contained in Article 132 of the Constitution. Since the Constitution is supreme, the right of appeal conferred by Article 133 cannot be abridged or abrogated by any Legislature. There can, therefore, be no doubt that an order passed in revision by this Court, which is a final order in a civil proceeding, would be the subject of appeal before the Supreme Court if the other conditions under Article 133 of the Constitution are fulfilled. See 30 Pat 1274: (AIR 1952 Pat 450) (C).

12. We would, therefore, proceed to consider the applicability of the different parts of Article 113 of the Constitution to the facts of the present case.

13. Article 133(1)(a) of the Constitution provides that an appeal shall He to the Supreme Court from a judgment, decree or final order from a civil proceeding of a High Court in the territory of India, if the High Court certifies that the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than Rs. 20,000/- or such other sum as may be specified in that behalf by Parliament by law.

Now in the present case the subject-matter of the dispute was the amendment of the decree. That subject-matter was not capable of any exact valuation. Consequently when the application in

revision to this Court had been made by the applicant, the value of the revision was expressed as "Rs. 10,000/- tentatively". It has been contended by learned counsel for the applicant that that was not exactly a correct valuation and the amount or value of the subject-matter of the dispute in the Court of first instance was, and still in dispute on appeal is, not less than Rs. 20,000/-.

We are unable to accept this contention. The Supreme Court has laid down in--'Ganpat Rai Hiralal v. The Aggarwal Chamber of Commerce, Ltd.', AIR 1952 SC 409 (E), that there is no warrant for the view that an amendment petition under Section 152, Civil P. C. is a continuation of the suit or proceedings therein; and that it is in the nature of an independent proceeding, though connected with the order of which amendment is sought.

Sub-clause (a) of Clause (1) of Article 133 of the Constitution makes use of the words "The amount of value of the subject-matter of the dispute", where as Sub-clause (b) of that clause makes use of the words "the judgment, decree or final order involves. directly or indirectly, some claim or question respecting property of the like amount or value".

The two sub-clauses are mutually exclusive and the use of different words in the two sub-clauses would indicate that the framers of the Constitution had in view that "the amount or value of the subject-matter of the dispute" in Sub-clause (a) is not necessarily the same as where the "judgment, decree or final order involves, directly or indirectly, some claim or question respecting property of the like amount or value".

In--'Mohammad Asghar v. Mt. Abida Begum', AIR 1933 All 177 (F), a Division Bench of this Court held that the word "property" in para 2 of Section 110, Civil P. C. need not necessarily be the subject-matter in dispute in the suit. In--"Kishan Chand v. Lachhmi Chand', AIR 1933 All 15 (G), a Division Bench of this Court" held that where the suit involves, directly or indirectly, a claim or question to, or respecting property o the amount or value exceeding Rs. 10,000/-, the fact that the valuation of the suit as put in the plaint is less than Rs. 10,000/-is of no consequence as Section 110 does not speak of valuation of the suit as put in the plaint but of the value of the subject-matter in dispute or of the value of the property affected by it.

In view of the fact that Sub-clause (a) of Article 133 makes use of the words "the amount or value of the subject-matter of the dispute", and the subject-matter of the dispute in the present case having been the "question of amendment of decree', which was not capable of an exact valuation, and in view of the further fact that the valuation of that question was put in revision by the applicant himself tentatively at the Sum of Rs. 10,000/-, that valuation should be accepted as correct in determining the question of "the amount or value of the subject-matter of the dispute", within the meaning of Sub-clause (a) of Article 133.

That being the position, it cannot be said that the amount or the value of the subject-matter of the dispute in appeal was, and is not less than, Rs. 20,000/-. Consequently a certificate under Sub-clause (a) of Article 133 cannot be granted.

14. Coming now to Sub-clause (b) of Article 133 that sub-clause provides that an appeal shall lie to the Supreme Court from any judgment, decree or final order from a civil proceeding of a High Court in the territory of India, if the High Court certifies that the judgment, decree or final order involves, directly or indirectly, some claim or question respecting property of the like amount or value, namely, Rs. 20,000/- or more. The final order passed in revision by this Court no doubt involves, indirectly, a claim or question respecting property of the value of not less than Rs. 20,000/-.

In our judgment dated 12-10-1954, we mentioned that the groves specified in list 3 were valued by the plaintiffs themselves at Rs. 1,10,000/-, and the other groves held by the learned Civil Judge to be joint family groves were also said to be worth more than Rs, 50,000/-.

If they were to be divided by the learned Civil Judge, and if they had been given to the defendants under the final decree in view of the contentions of learned counsel for the applicant, (which contentions were, however, not acceptable to us in our judgment of 12-10-1954), the final order would necessarily involve indirectly a claim or question respecting property of the amount or value of not less than Rs. 20,000/-.

The first part of the condition of Sub-clause (b) of Article 133 is, therefore, fulfilled in the case. Rut, since the judgment or final order of this Court affirmed the decision of the Court immediately below, the applicant would not be entitled to a certificate (unless the case fell within Sub-clause (c) of Article 133) unless this court further certifies that the appeal before the Supreme Court would involve some substantial question of law.

The mere fact that a question of law is involved is not sufficient to satisfy the requirements of this Article in the case of concurrent judgments. The question of law involved in the appeal must be a substantial one. This does not mean that any question of law, the decision on which may affect materially the rights of the parties, is a substantial question of law. A question of law will not be substantial merely because much is at stake on the answer to it. A substantial question of law must be a question, of some difficulty in Which the pros and cons are about evenly balanced.

It has been contended on behalf of the applicant that, since the decision of the learned Special Judge in proceedings under the U. P. Encumbered Estates Act in interpreting the final decree for partition by the civil Court was in favour of the applicant, the decision operated as res judicata in the proceedings for amendment of the decree and, since a different view was taken by this Court when it heard the revisional petition, the determination of the question must be deemed to be a substantial question of law.

In--'Raghunath Prasad Singh v. Deputy Commr., Partabgarh', AIR 1927 PC 110 (H) the Judicial Committee observed that a substantial question of law does not mean a question of general importance, but the words "substantial question of law" mean a substantial question of law as between the parties in the case involved.

In-- 'Ram Kirpal Shukul v. Mt. Rup Kuari', 11 Ind App 37 (I) upon a claim for execution being made, a question arose whether or not the decree in execution awarded future mesne profits. That question

had been determined in the affirmative by the District Judge in a previous stage of the proceedings for execution of the same decree. The Subordinate Judge considered himself bound by that decision and he held that .the debtor's objection in respect of inesne profits and his prayer for the exclusion thereof should be disallowed.

The order of the Subordinate Judge was confirmed on appeal by a later order of the District Judge. The order of the Subordinate Judge and that of the District Judge affirming the same were appealed to the High Court and came to be heard before a Division Bench who referred to a Full Bench the question whether the law -of res judicata applied to proceedings in execution of a decree.

The Full Bench, after referring to Section 13 of Act No. X of 1877 answered the question in the negative whereupon the Division Bench ordered that the appeal be decreed and that the orders of the Judge and the Subordinate Judge be reversed and the execution of the decree for mesne profits be disallowed.

From that order an appeal was taken before the Judicial Committee and the Judicial Committee held that a Judge having decided in the course of execution proceedings that the decree according to its true construction awarded future mesne profits, such a decision, having been or become final, was binding between the parties and could not in a later stage of the execution proceedings be set aside, and the binding force of such a decision depended upon the general principles of law and not upon Section 13 of Act 10 of .1877.

Learned counsel for the applicant upon the strength of this decision has contended that the order passed by the learned Special Judge in pro ceedings under the U. P. Encumbered Estates Act operated as res judicata. He has further relied upon another decision of the Supreme Court in--'Raj Lakshmi Dasi v. Banamali Sen', 1953 SCR 154:

> (AIR 1953 SC 33) (J) where the binuing force of a judgment delivered under the Land Acquisition Act was held dependant on general principles of law and not on Section 11, Civil P. C., and it was laid down that the decision of a Land Acquisition Judge would operate as res judicata, even though he was not competent to try the subsequent suit.
>
> That question alone will not, however, determine the matter in the present case as to whether it is a substantial question oi law witnin the meaning of those words under Article 133 of the Constitution and Sections 109 and 110, Civil P. C. The question would be, even if the subsequent decision on that question is a wrong decision, could it have been made the subject ot revision in this Court and could the order dismissing the revisional petition passed by this Court be made the subject of an appeal before the Supreme Court?
>
> If the learned Civil Judge decided the application for amendment ol the decree over which he had jurisdiction, he could not, only on the ground that he has arrived at a wrong decision, be said to have exercised jurisdiction illegally or with material

irregularity within the meaning of those words under Section 115, Civil P. C. The powers of the High Court under Section 115 of the Code can be exercised if the High Court finds that the Subordinate Judge exercised a jurisdiction not vested in it by law, or failed to exercise' a jurisdiction so vested, or acted in the exercise of its jurisdiction illegally or with material irregularity. These conditions not having been fulfilled, this Court dismissed the application in revision. Consequently the order of dismissal cannot be said to raise a substantial question of law which can be raised in appeal before the Supreme Court.

In--"Amir Hassau Khan v. Sheo Baksh Singh', 11 Cal 6 (K) the Judicial Committee laid down that a Court that has decided a suit over which it had jurisdiction cannot, only on the ground that it has arrived at a wrong decision, be said to have exercised its jurisdiction illegally or with material irregularity. In--"Venkatagiri Ayyangar v. H. R. E. Board, Madras', AIR 1949 PC 156 (L) the Judicial Committee laid down that Section 115, Civil P. C. applies only to cases in which an appeal lies, and where the Legislature has provided no right of appeal the manifest intention is that the order of the trial Court, right or wrong, shall be final; that the section empowers the High Court to satisfy itself upon three matters, namely,

(a) that the order of the subordinate Court is within its jurisdiction;

(b) that the case is one in which the Court ought to exercise jurisdiction; and

(c) that in exercising jurisdiction the Court has not acted illegally, that is in breach of some provision of law, or with material irregularity, that is by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

If the High Court is satisfied upon these three matters, it has no power to interfere because it differs, however proioundly, from the conclusions of the subordinate Court upon questions of tact or law; and there can be no justification whatsoever for the view that Section 115(c) was intended to authorise the High Court to interfere and correct gross and palpable errors of subordinate Courts.

15. In AIR 1949 PC 239 (A) the Judicial Committee, in emphasising what they had earlier expressed in 11 Cal 6 (K), observed that although an error in a decision of a subordinate Court does not by itseli involve that the subordinate Court has acted illegally or with material irregularity so as to justity interference in revision under Sub-section (c) of Section 115 of the Code, nevertheless if the erroneous decision results in the subordinate Court exercising a jurisdiction not vested in it by law, or failing to exercise jurisdiction so vested, a case for revision arises under Sub-section (a) or Sub-section (b), and Sub-section (c) can be ignored.

16. In the present case, regard being had to the observations made above, it cannot be said that the lower Court in disposing- of the application for amendment of the decree exercised a jurisdiction not vested in it by law, or failed to exercise a juris diction so vested, or acted in the exercise of its juris

diction illegally or with, material irregularity. The order passed by the learned Civil Judge on the amendment application was not open to appeal. It was subject to the revisional jurisdiction of this Court and, in fact, a revision was brought to this Court by the applicant and it was dismissed.

The dismissal was on the ground that the Civil Judge did not appear to have exercised a jurisdiction not vested in him by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with material irregularity upon the principle that a Court has jurisdiction to decide a case wrongly as well as rightly and in deciding a case wrongly (even if it be beld for the purposes of argument that he decided it wrongly), the Civil Judge did not act illegally or with material irregularity.

The High Court has no power to interfere in revision in such a case, even if it disagreed with the decision of the learned Civil Judge. In these circumstances it cannot, in our opinion, be contended that there is a substantial question bf law which can be taken to the Supreme Court. The application of well-defined principles to a particular set of facts is not a question of law which can fairly be described as substantial. In this view of the matter a certificate under Clause (b) of Article 133 of the Constitution cannot be granted.

17. It now remains to be seen whether the applicant is entitled to a certificate under Clause (c) of Article 133. That clause lays down that a certificate can be granted by the High Court if the case is a fit one for appeal to the Supreme Court. There is a distinction between an appeal under Sub-clause (a) or Sub-clause (b) of Clause (1) of Article 133 and an appeal under Sub-clause (c). An appeal under Sub-clause (a) or Sub-clause (b) is one as of right, for a party becomes entitled to appeal under either of these sub-clauses as a matter of right when certain facts and conditions are found to exist.

There is, however, no such right of appeal under Sub-clause (c) under which the appeal depends sole-

ly on the discretion of the High Court. The discretion is, however, to be exercised on accepted principles of justice, equity and good conscience. The certificate of fitness under Sub-clause (c) is intended to meet special cases. The question involved must be of some general or public or private importance. At the same time, it the question is one of private importance, as it is contended in the present case, it will not be a fit case under this clause if the points of law are not substantial. We are of opinion that there is prima facie no reason tor issuing a certificate under Sub-clause (c).

18. Our conclusions, therefore, are:

> (a) that the amount or value of the subject matter of the dispute and still in dispute on appeal was and is Rs. 10,000/-;
>
> (b) that the final order involves indirectly some claim or question respecting property ol the value of over Rs. 20,000/-;

(c) that the final order sought to be appealed from affirms the decision of the Court immediately below, and the appeal does not involve any substantial question of law; and

(d) that the case is not a fit one for appeal to the Supreme Court.

19. The certificate asked for under Article 133 of the Constitution read with Sections 109 and 110, Civil P. C. therefore, refused. The plaintiff-respondent shall have their costs from the defendant-appellant.