

PRIVY COUNCIL

Annapurnabai

Vs.

Ruprao

(Lords Dunedin Atkinson and Sir John Edge JJ.)

29.07.1924

JUDGMENT

LORDS DUNEDIN J.

1. *One Shankar Rao* died leaving behind him two widows *Ambu Bai* and *Annapurna Bai*. The plaintiff *Ruprao* claimed to be adopted by *Ambu Bai* and he on attaining majority in 1915 sued for possession of *Shanker's* property. The suit was resisted by *Annapurna Bai* and one *Kashinath* who also alleged to be an adopted son of *Shankar Rao* through *Annapurna Bai*. *Annapurna Bai*, prayed for maintenance in case the adoption of *Kashinath* was not proved.

2. The lower Court decreed the suit but granted Rs. 800 per year as maintenance to *Annapurna Bai*. On appeal, the decree was varied by increasing the amount of Rs. 800 to Rs. 1,200 but in other respects the decree of the lower Court was left unchanged.

3. The defendants then applied to the Court of the Judicial Commissioner for leave to appeal to the Privy Council; but the application was dismissed on the ground that the decree of the first Court had been affirmed by the appellate Court except in respect of "a small change" in the amount of maintenance and no question of law being involved, the leave could not be granted.

4. On the application for special leave coming up for hearing it was contended on behalf of the petitioners that the appellate Court in enhancing the maintenance allowance did not affirm the decree of the first Court but in fact varied it and therefore no substantial question of law need be involved. The petitioner's contention was held to be sound and the following judgment was delivered.

Lord Dunedin :- In the opinion of their Lordships the contention of the petitioners' Counsel as to the effect of Section 110 of the Code of Civil Procedure is correct and the petitioners had a right of appeal. They should have special leave to appeal, but it

should be limited to the question as to the maintenance allowance.

5. Their Lordships will humbly advise His Majesty accordingly.

Application allowed.