ANDHRA PRADESH HIGH COURT

Rajah Kishore Devigaru

Vs.

Bhaskara Gouta Chorani

S.C.C.M.P. Nos. 6834, 6835 and C.M. P. No. 6836 of 1959. in Appeals Nos. 98 and 99 of 1953

(P. Chandra Reddy, C.J., Krishna Rao and Mohd. Ahmed Ansari, JJ.)

03.11.1958. 16.11.1959

JUDGMENT

Krishna Rao, J.

1. These are respectively two petitions for leave to appeal to the Supreme Court against the common judgment and separate decrees of this Court in Appeals Nos. 98 and 99 of 1953 and a third petition for the consolidation of these two petitions. They raise a question regarding the applicability of Section 110, Civil Procedure Code and of Article 133 of the Constitution of India. As there is a conflict of judicial opinion on this question, the matter has teen referred to a Full Bench.

2. The material facts may be briefly stated. The petitioner, Kishori Devi, is the transferee of a money decree for a little over Rs. 10,000 passed against one Lakshminarayana Raju in O. S. No. 9 of 1948 on the file of the Court of the Subordinate Judge, Srikakulam. In execution of the decree, she attached a number of immoveable properties in December, 1950 as belonging to the judgment-debtor. The respondents filed two applications for releasing the respective properties mentioned in them from the attachment. They claimed to be the owners of the properties, basing their title on a settlement deed (Ex. A. 18) executed by the judgment-debtor in 1948. As these applications were dismissed, they brought two suits under Order 21, Rule 63 of the Civil Procedure Code, O. S. Nos. 73 and 74 of 1951 in the court of the Subordinate Judge of Srikakulam, praying that the respective claim orders be set aside and the attachment be raised. The petitioner was the 1st defendant in each of the two suits and the judgment-debtor, Lakshminarayana Raju, was the 2nd defendant. The trial judge, in a common judgment, held that as the judgment-debtor and his two sons were undivided, the respondents had title to only an undivided one-third share in the properties. He decreed both the suits in part, granting declaration of title in favour of the respondents on that basis and directing that the attachment over their undivided one-third share of the properties be raised. The respondents preferred appeals to this court, Appeals Nos. 98 and 99 of 1953, on the ground that they were entitled to the entire properties and not a mere one-third share in them and that the entire properties ought to be released from the attachment. The appeals were dealt with in a common judgment.
This court agreed with the trial Judge's conclusions that the respondents had title only to an

undivided one-third share but held that the entire properties must be released from attachment as the judgment-debtor had no interest in them and the respondents were in possession. The result was that both the suits were wholly decreed in favour of the respondents. The cross-objections filed by the petitioner in which she attacked the settlement deed as being nominal and void and contended that the claim orders were not liable to be set aside at all, were dismissed. The petitioner , is aggrieved because, according to her, both the suits ought to have been dismissed in toto. She therefore seeks leave to appeal to the Supreme Court.

3. As the judgment of this court on the appeals is not one of affirmance and as in our view the case cannot be considered to be a fit one for appeal to the Supreme Court under Section 109(c) of the Civil Procedure Code and Article 133(1) of the Constitution the only question for determination is whether the requirements as to value are satisfied. The relevant portion of Section 110, Civil Procedure Code and of Article 133(1) of the Constitution are :

> "110. In each of the cases mentioned in clauses (a) and (b) of Section 109 the amount or value of the subject-matter of the suit in the court of first instance must be twenty thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to the Supreme Court must be the same sum or upwards;

Or the judgment, decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value;

> x x x x"
> "133. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies -
> (a) 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 twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or
> (b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value or
> x x x x"

We may note in passing that the words "judgment, decree or final order" were substituted in Sections 109 and 110 for the words "decree or final order" after the commencement of the Constitution.

4. The contentions of the learned counsel for the petitioner are (1) that the subject-matter of the suits or at any rate of the dispute, both in the court of first instance and on the appeals to the Supreme Court, is the property attached by her and as the market value of these properties exceeds Rs. 20,000, the requirements under S 110, paragraph 1 and of Article 133(1)(a) are fulfilled and (2) that in any event, the case comes under Article 133 (1)(b), which must be read independently of Article 133(1)(a) and must naturally prevail, if it is at conflict with the provisions of Section 110 of the Civil Procedure Code.

5. There can be no doubt that the provisions of Article 133 must prevail to the extent to which there is any conflict between them and the provisions of Section 110. In order to construe these provisions, it may be of assistance to give a brief summary of the history of the legislation with reference to its bearing on the subject of valuation. Appeals to the Privy Council were originally governed by the Order in Council of 10-4-1838 which prescribed that the amount or the value of the subject-matter in dispute in appeal to Her Majesty in Council should be Rs. 10,000 or upwards. The position was modified by Clause 39 of the Letters Patent, 1865 in regard to the High Courts of the three Presidency towns. Under the clause an appeal could be taken to Her Majesty in Council from any final judgment, decree or order of the High Court made on appeal or in exercise of its original jurisdiction by a majority of the full number of Judges of the said High Court or of any Division Court provided in either case, the sum or matter at issue was of the amount or value of not less than Rs. 10,000/-or that such judgment, decree or order involved, directly" or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than Rs. 10,000/- or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid when the said High Court declares the case to be a fit one for appeal to Her Majesty in Council. The object of the alternative provisions that were added was presumably to provide for appeals in cases where the pecuniary value of the appeal was not a correct or proper measure of the prejudice to the appellant and in cases where the decision of the highest tribunal was desirable in the interest of the administration of justice. Then came the Privy Council Appeals Act VI of 1874 which imposed for the first time an additional condition with reference to the court of first instance, viz., that the value of the subject-matter of the suit when instituted must be Rs. 10,000/- or onwards. This had the effect of making the competence of the appeal not dependent on the period of the pendency of litigation after the suit is filed, as by swelling up interest or mesne profits or by an increase in the value of the property. *Mangamma v. Mahalakshmamma*[1], and *Rajendra Kumar v. Rash Bihari*[1], The aforesaid provisions were substantially incorporated in the successive Codes of Civil Procedure and are enacted in Sections 109 and 110 of the Code of 1908. One of the points of difference which may be noted in Article 133(1) (a) is that with reference to the court of first instance, the expression used is subject-matter of dispute" instead of the expression "subject-matter of the suit" in Section 110.

6. The value of the subject-matter of a proceeding must naturally depend on the nature and object of the proceeding and the purpose of the valuation. The purpose of Sections 109 and 110 and of Article 133(1) is clearly to restrict appeals to the highest court to cases of sufficient importance either from the point of view of the party affected or from the point of view of the administration of justice. So far as the party affected is concerned, the main criterion is the pecuniary estimate of the benefit he seeks or of the prejudice caused to him. In construing the provisions, we may recall the following observation of Lord Dunedin in *Udoychand Pannalal v. P. E. Guzdar and Co*[2]*.,* in regard to section 110:

[1] AIR 1931 PC 125

[2] AIR 1925 PC 159, at p. 160

> "It must always be kept in view that no real mischief could arise from not allowing a very wide construction of the section, because such cases, if worthy of being tried by higher tribunal, could always be dealt with under sub-section (c) of Section 109."

The observation would apply equally to the construction of Article 133 (1).

7. It would be a formidable task to review all the decisions which have construed the effect of Section 110 and of Article 133 (1) on the question of valuation. Learned counsel have not invited us to do so, nor do we consider such a course necessary Nor the purpose on hand. It is well settled that with regard to "the amount or the value of the subject-matter of the suit in the court of first instance" the material date is that of the institution of the suit AIR 1931 PC 125. That subject-matter and the amount or the value thereof must naturally be looked at from the point of view of the plaintiff, because it is he that brings the suit and is the dominus litis. The dictum of Lord Robertson in *Bibi Phul Kumari v. Ghanshyam Misra*[3] is apposite:

> "The value of the action must mean the value to the plaintiff."

In ascertaining the subject matter of a suit, it would be proper to take into account the effect of Section 12 and of Order 2, Rule 2 of the Civil Procedure Code. A plaintiff who omits to sue in respect of any part of his claim or, without leave of the court, for all the reliefs to which he is entitled, in respect of the same cause of action, is barred from instituting a further suit in that respect. Hence there are no reasons to regard the subject matter of a suit from the point of view of the plaintiff as anything other than the relief sought by him, either expressly or by implication from the nature of the suit. We are supported in this view by *Subramania Ayyar v. Sellamma*[4] where Srinivasa Ayyangar J., construing section 110 said:

> "In my judgment the first clause applies to cases where the decree awards a particular sum, or property of a particular value or refuses that relief (i.e.) to cases where the subject matter in dispute is of a particular value."

8. Similarly with regard to the value of the subject-matter in dispute on appeal to the Supreme Court, the material date is that of the judgment appealed from (see *Gooroo Persad v. Juggut Chander*[5], and the subject-matter in dispute must be determined by looking at the portion of the decree sought to be got rid of from the point of view of the appellant. In *Macfarlane v. Leclaire*[6], the Judicial Committee had to consider whether an appeal from the Court of Appeal of Canada was of the appealable value. This turned on a construction of the relevant provision in the Canadian Legislation, which was in the following terms:

> "Be it enacted that the judgment of the Court of Appeals of that Province shall be final in all cases, where the matter in dispute shall not exceed the sum, or value of 500 sterling."

[3] 17 Mad. L. J. 618 at p. 621 (PC)

[4] ILR 39 Mad 843, at p. 849: (AIR 1916 Mad 985 at p. 988)

[5] 8 Moo Ind App 166 (P.C)

[6] (1862) 15 E. R. 462 at p. 465

Lord Chelmsford said :-

> "In determining the question of the value of the matter in dispute upon which the right to appeal depends, their Lordships consider the correct course to adopt is to look at the judgment as it affects the interests of the parties who are prejudiced by it, and who seek to relieve themselves from it by an appeal. If their liability upon the judgment is of an amount sufficient to entitle them to appeal, they cannot be deprived of their right because

> the matter in dispute happens not to be of equal value to both parties; and, therefore, if the judgment had been in their favor, their adversary might possibly have had no power to question it by an appeal."

The same view was taken by Jenkins, C. J. in *De Silva v. De Silva*[7], and by Lord Tucker in *Meghji Lakhamashi and Bros. v. Furniture Workshop*[8],

9. We are of opinion that for the purpose of valuation under Section 110, paragraph 1, the correct course is to consider the reliefs the plaintiff would have obtained had he been successful as on the date of the suit and the reliefs that the appellant would have obtained had he been successful as on the date of the decree appealed from.

10. We shall next consider the effect of the expression "the subject-matter of the dispute in the court of first instance" used in Article 138(1) (a). The meaning of the words "subjects in dispute" occurring in Section 42 of the Code of 1882, which corresponds to Order 2, Rule I of the present Code, were construed by a Division Bench of the Madras High Court consisting of Benson and Bhashyam Ayyangar JJ. in *Ramaswami Ayyar v. Vythinatha Ayyar*[9] Negativing the contention that the words connote the corpus or subject-matter of the claim, the learned Judges said:

> "In our opinion the expression the 'subjects in dispute' signifies the jural relation between the parties to the suit, for the determination of which toe suit is brought.
> XX XX XX

It is clear that the expression 'subjects in dispute' means the cause of action or the subject-matter of litigation, that is, the right which one party claims as against the other and demands the judgment of the court upon." We are of opinion that this is also the true meaning of the expression "subject-matter in dispute". The dispute is brought into the court of first instance by the plaintiff. Just as the subject-matter in dispute on appeal has to be determined by looking at the judgment which gave rise to the appeal, the subject-matter of the dispute in the court of first instance has to be determined by looking at the substance of the averments in the plaint and the nature of the suit. The reliefs actually asked for would not be the criterion because the plaintiff may be content to obtain a decision which would avail him indirectly by operating as res judicata.

11. Where the subject-matter is not a pecuniary claim directly made a great deal

[7] 6 Bom. LR 403
[9] ILR 26 Mad. 760 at p. 763, 866
[8] 1954 AC 80

would depend on the method adopted for the valuation. As this is not prescribed for the purpose of Section 110 and Article 133(1), the natural construction is that the real value of the subject-matter must be determined. In other words, the mode of valuation is not controlled by the special statutory provisions governing valuation for the purpose of court fee or of jurisdiction. As early as in 1890, construing the corresponding provision in Section 596 of the Civil Procedure Code, 1882, it was held by a Full Bench of the Madras High Court in *Pichayyee v. Sivagami*[10], that the value of the subject-matter which consisted of lands was only their market value. In *Mirza Abid Hussain Khan v. Amad Hussain*[11] where the suit was to enforce an annuity, the Judicial Committee proceeded on a "reasonable method of valuation" of the annuity.

12. The question as to the applicability of section 110, paragraph 2, Civil Procedure Code, which is in the same terms as Article 133(1) (b) of the Constitution, has been a matter of frequent controversy. The stand taken by the learned counsel for the petitioner is firstly, that they may be availed of independently of Section 110 paragraph 1 and of Article 133(1) (a) and secondly, that the question which party is the appellant is immaterial to their applicability. The first point arose for consideration in connection with Section 110 in ILR. 39 Mad. 843: AIR 1916 Madras 985 and it was held that section 110, paragraph 2 applies only to cases which involve rights to property additional to the actual subject-matter in dispute in the suit and the appeal. The reasoning of both the learned Judges was that a literal construction of Section 110, paragraph 2 would make the additional condition imposed by the Privy Council Appeals Act VI of 1874 nugatory. This reasoning was approved by Viscount Dunedin in AIR 1930 PC 44. The question as to whether Section 110. paragraph 2 necessarily refers to property outside the suit was left open by Lord Clauson in *Shevantibai v. Janardhan Raghunath*[12] With regard to the second point, it is true that Section 110, paragraph 2 makes no reference to the appellant and mentions only the judgment, decree or final order appealed from. But section 110 has to be read along with Section 109, which specifies the cases where appeals lie. To give right of appeal irrespective of whether the decision appealed from operates to the prejudice of the appellant would be wholly opposed to the principle underlying the legislation. It is clear that for the purpose of paragraph 2 no. less than that of paragraph 1 of Section 110, the decision appealed from must be looked at from the point of view of the appellant and the valuation founded on the benefit which he would obtain or the detriment which he would get rid of if the appeal were successful. This view is supported by the decisions in the 6 Bom. L.R. 403 *Bhaunath Gir v. Biharilal*[13] (2) and *Gnanamanikkam v. S. R. Samson*[14], The above reasoning applies equally to the language of Article 133 (1) of the Constitution.

13. The learned Counsel for the petitioner relied on 1954 AC 80 in support of the position that he is entitled to invoke clause (b) independently of clause (a) of Article 133(1). There the Privy Council had to construe a legislative provision relating to East Africa, by which an appeal lay as of right "where the matter in dispute on the appeal amounts to or is of the value of 500 sterling or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil

[10] ILR 15 Mad 237
[11] AIR 1923 PC 102
[12] AIR 1944 PC 65
[13] 1919-4 Pat LJ 415; (AIR 1919 Pat 305)
[14] ILR 9 Rang. 52: AIR 1931 Ran 138

right amounting to or of the said value or upwards." It was held by the Privy Council that a case may fall in whole or in part within more than one limb of the provision and that it will be sufficient for the appellant to show that he comes under any one. They held further that whatever might have been the result if the first limb stood alone, the case fell within the second limb of the provision and that the determining factor, owing to the presence of the word "indirectly", was the value of the property and not the value of the claim or question. But there is no condition existed with regard to the amount or value of the matter in dispute in the court of first instance, which is found in Article 133(1) (a). It is a well settled rule of construction that the component parts of a statute ought to be construed so as to harmonise with each other if that is possible without doing violence to the language. If clause (b) is construed as governing all cases where the prejudice to the appellant is valued at Rs. 20,000 and upwards, clause (a) would be rendered nugatory.

14. In our opinion, clause (b) of Article 133(1) is intended to meet a situation essentially different

from that arising under clause (a). Under clause(a) we have to look at the value of the reliefs obtainable in the suit and in the appeal. Under clause (b) we have to look at the effect of the judgment appealed against from the point of view of the appellant. A thing is said to be involved in another when it is a necessary resultant of that other. (Stroud's Judicial Dictionary). The matters adjudicated upon in the judgment appealed from may have far reaching consequences detrimental to the property of the appellant, although they were not comprised in the cause of action of the plaintiff and cannot be regarded as being "still in dispute" on appeal, As observed by Lord Shaw in *Ratha Krishna Ayyar v. Sunderswamy Iyer*[15], -

> "The proceedings may, in many cases, such as a suit for an instalment of rent or under a contract, raise the entire question of the contract relations between the parties and that question may, settled one way or the other, affect a much greater value, and its determination may govern rights and liabilities of a value beyond the limit.'-

Another illustration is furnished by the case cited in ILR 39 Mad. 843 of *Devasikamoney Pandarasannadhi v. Pallaniappa Chetti*[16], where the plaintiff obtained a decree for possession of land worth at the most Rs. 2000/-, but the buildings which the defendant had erected on the land and which he had to remove were worth over Rs. 20,000/- and leave to appeal to the Privy Council was granted. In *Surapati Ray v. Ram Narain Mukherjee*[17] the suit was for rent below the appealable value and was decided against all the defendants, but some of the defendants were aggrieved because they had transferred their tenancy right to other defendants, which transfer was held to be invalid. Their appeal to the Privy Council was held to be competent because "the subject-matter in dispute was a recurring liability and is in respect of property considerably above the appealable value." In our view, the true construction of Article 133(1) is that clause (b) applies only where the value of the subject-matter still in dispute on appeal is not a fair or correct measure of the extent to which the appellant is prejudiced by the judgment appealed from. We are inclined to agree with the reasoning in 1954 A.C. 80 that the criterion for the purpose of clause

[15] AIR 1922 PC 257
[16] ILR 34 Mad. 535
[17] AIR 1923 PC 88

(b) is the value of the "property" and not the value of the 'claim or question.' A claim to the status of an adopted son or a question of the right to an office of trustee may itself be incapable of valuation, but may involve property exceeding the appealable value. We would however, express no final opinion on this point, as it has not been raised or fully argued before us.

15. We may summaries our conclusions from the foregoing discussion in the form of the following rules :-

> 1. For valuation under Section 110 of the subject-matter of the suit in the court of first instance, the matter should be looked at from the point of view of the plaintiff. It is the amount or value of the reliefs excluding costs that the plaintiff would have directly obtained if he were successful, as on the date of the institution of the suit.
> 2. For also the valuation under Article 133(1) (a) of the subject-matter of the dispute in the court of first instance, the matter must be looked at from the point of view of the plaintiff. But it is the amount or value of the reliefs excluding costs that the plaintiff

would, either directly or indirectly by the principle of res judicata, obtain if he were successful as on the date of the institution of the suit.

3. For the valuation of the subject-matter in dispute on appeal to the Supreme Court, both under Section 110, paragraph 1 and under Article 133(1) (a), the effect of the judgment appealed from must be looked at from the point of view of the appellant as on the date of the judgment. It is the amount or the value of such of the reliefs determined under Rule (2) supra in respect of which he is prejudiced by the judgment.

4. For also the valuation of an appeal under Section 110, paragraph 2, and under Article 133 (1) (b), the judgment appealed from must be looked at from the point of view of the appellant as on the date of the judgment. But regard must be had to all the matters that necessarily result from the judgment and operate to his prejudice. The result must not be too remote or contingent on supervening facts and circumstances.

5. There is no rule of thumb demarcating paragraph 1 from paragraph 2 of Section 110 or clause (a) from clause (b) of Article 133(1). The question would be whether the valuation under Rule (3) supra is not a just measure of his detriment and the wider valuation under Rule (4) supra is called for. It is a matter for judicial determination on a consideration of all the facts and circumstances as at the time of the judgment appealed from.

6. Under which ever of the foregoing Rules the matter is valued, a reasonable method or valuation from a business like or practical point of view should be adopted.

16. In support of his first contention that the subject-matter throughout is the property attached, the learned Counsel for the petitioner cited the decisions in *Dwaraka Das v. Kameshwar Prasad*[18], *Krishnasami Naidu v. Soma Sundaram Chettiar*[19], *Narayan Singh v. Aiyasami Reddi*[20], and in *Renganatha v. Tirupparan Kundram Arumuga*

[18] ILR 17 All. 69

[19] ILR 30 mad 335 (FB)

[20] ILR 39 Mad. 602

Nainer Trust[21], all of which relate to the question of valuation for purposes of jurisdiction. We are of the opinion that the case here is governed by ILR 30 Mad. 335 (FB) with which the facts are on all fours. Although the judgment-debtor was impleaded as the 2nd defendant, the plaintiffs did not ask for a declaration of their title. The cases of ILR 17 All. 69 and of ILR 39 Mad. 602 dealt with the situation when such a declaration was sought. In the case of AIR 1956 Madras 402, the judgment debtor was not a party to the suit. The plaints in both the suits here do not aver any cause of action against the judgment-debtor and much less ask for a declaration of the plaintiffs' title to the property. All that they seek is to get rid of the effect of the adverse claim orders and of the attachment. It was pointed out by the learned counsel for the petitioner that in both the plaints the value for jurisdiction was put as the value of the property claimed by the plaintiffs in each suit. But it was conceded that any error in this respect on their part would make no difference because the correctness of valuation for jurisdiction was never in issue. In this situation it is clear from ILR 30 Mad 335 (FB), that the jurisdictional value of the subject-matter of each of these two suits is the smaller amount for which the attachment was made which is admittedly less than Rs. 10,000/-.

17. There is no difference in principle in determining the subject-matter of a suit for the purpose of jurisdiction and for the purpose of Section 110, Civil Procedure Code. The subject-matter of the suits here was the right of the plaintiffs to obtain a release from the attachment of properties

in their possession. The maximum value of this matter could only be the amount for which the properties were attached, because if that amount were paid to the petitioner the properties are bound to be released. No doubt the plaintiffs claimed that they are the owners of the properties. But it made no difference to them if the attachment was raised on some other grounds. A 'claim', which means a 'legal demand', of ownership of the properties was no doubt involved in the suit. But it is difficult to see how as between them and the petitioner, there could have been any other legal demand, except either the continuance or the release of the attachment. Apparently there was no dispute of title with the judgment-debtor, who not only remained ex parte but also gave evidence in their favors. In the circumstances, it cannot be said that they indirectly asked for an adjudication of their title as against the judgment-debtor. It follows that the case does not fall either under Section 110, paragraph 1 or of Article 133(1)(a).

18. As regards the valuation of the appeal to the Supreme Court, the extent to which the petitioner is prejudiced by the judgment of this Court is that she is only prevented from realising the amount due to her by a sale of the properties attachched. Let the situation be considered. If the appeals were allowed, the position so far as she is concerned would only be that she can sell the properties in the execution and realise the sum of less than Rs. 20,000 from the judgment-debtor. This cannot possibly be worth more than that amount. The valuation of the appeal here under Section 110, paragraph 1, and Article 133(1)(a) is the full and fair measure of the detriment to her which she seeks to get rid of and she is therefore not entitled to invoke Section 110, paragraph 2 or Article 133(1)(b).

19. For the position that the case falls under Section 110, paragraph 2 and a fortiori

[21] AIR 1956 Mad 402

under Article 133 (1)(b), the learned counsel for the petitioner relied on the view taken by the Allahabad High Court in *Nadir Husain v. Municipal Board, Agra*[22], at p. 170, which was followed by the same High Court in *Ram Devi v. Badlu Ram*[23], and by the Patna High Court in *Iswari Prasad Singh v. Kameshwar Singh*[24] In AIR 1937 Allahabad 169 at p. 170, the material facts were these. The Municipal Board of Agra brought a suit for the recovery of Rs. 17,000 against the 1st defendant personally, with a prayer that defendants 2 to 4 were liable to pay Rs. 7,625/ under a hypothecation bond and, in the event of default, the mortgaged property was liable to be sold. The value of the mortgaged property exceeded Rs. 10,000. The Subordinate Judge and the High Court on the appeal by the plaintiff held that defendants 2 to 4 were liable to the extent of only Rs. 7,625/- and that the mortgaged property was liable to be sold in execution for that amount. Defendants 2 to 4 sought leave to appeal to His Majesty in Council. The learned Judges granted leave and said:

> "So far as the pecuniary liability of the applicants' property is concerned it is certainly limited to the sum of Rs. 7,625/- only. They could never be called upon to pay more than that amount, nor can more than that amount be realised out of their property. But it cannot be disputed that property worth more than Rs. 7,625/- could be put up for sale at auction in execution of the mortgage decree and sold. After the realization of Rs. 7,625/- the balance will have to be paid to the defendants.

It is also clear that at auction the mortgaged property may not fetch its full value and therefore property worth more than Rs. 10,000 may be sold at auction for realising Rs. 7,625/- only. The

defendants can never recover the property when once sold though he will get the surplus, if any x x x x We find it very difficult to hold that the High Court's decree does not directly or indirectly involve some claim or question as to or respecting property of the value of Rs. 10,000/-. This reasoning was adopted in AIR 1948 Allahabad 51 and also in AIR 1941 Patna 288. It was dissented from in *Sudaman Prasad v. Mohd. Abdul Alim*[25], *Sati Bala Dasi v. Chota Nagpur Banking Association Ltd*[26]., and *Venkataswami v. Manikyam*[27], The method of adopting the value of the mortgaged property instead of the amount sought to be recovered as the criterion for valuation runs contrary to the following dictum of Lord Atkinson in AIR 1923 PC 102:

> "The 110th section of the Code, of Civil Procedure, 1908 applies to the value of annuity which is sought to be recovered, not to the value of the property upon which that annuity is charged." As we have already indicated, the decree appealed from has to be looked at as it affects the interest of the appellant. The value of the detriment to an appellant who seeks to relieve himself of a mortgage decree against his property is only the amount sought to be recovered by the sale of the property. As soon as that amount is paid, the property ceases to be in jeopardy. Only a portion of the property sufficient for the realization of the amount is liable to be sold and the possibility of really more valuable property being sold away is too remote a result. With all respect

[22] AIR 1937 All169 [24] AIR 1941 Pat 288 [26] AIR 1949 Pat 448
[23] AIR 1948 All 51 [25] AIR 1941 Oudh 407 [27] AIR 1951 Mad 723

]to the learned Judges, we must dissent from the reasoning in AIR 1937 Allahabad 169 at p. 170.

20. In this view of the matter, it is unnecessary to call for a finding as to the value of the properties that were attached. The wo petitions for leave to appeal to the Supreme Court, C. M. P. Nos. 6834 and 6835 of 1959 are dismissed with costs (Consolidated Advocate's fee Rs. 100). C. M. P. No. 6836 which is mainly for the consequential relief of consolidation for printing the records is also dismissed and there will be no separate order as to costs therein.
Petition dismissed.