PATNA HIGH COURT

Kanak Sunder Bibi

Vs

Ram Lakhan Pandey

Supreme Court No. 63 of 1955

(Das, C.J., Ramaswami, Jamuar Choudhary, and Kanhaiya Singh, JJ.)

04.04.1956

JUDGMENT

Choudhary, J.

1. This is an application for leave to appeal to the Supreme Court. The short facts giving rise to the application are these. Pawanjai Kumar Jain and his son, Rajkumar Jain, were possessed of some properties including two houses in the town of Arrah. Under a deed of family arrangement one of the two houses was to be sold by Pawanjai Kumar Jain in order to pay off all the joint family debts and the other house was to be held by him and his son in equal shares. On 1-7-1939. Pawanjai Kumar Jain executed a deed of gift with respect to all the properties that he had at that time including his interest in the aforesaid two houses to his sister, Sri Kanak Sunder Bibi, the petitioner, who as a consideration thereof accepted the liability to pay his debts and to maintain him till his life. On 29-4-1940, Pawanjai Kumar Jain and Rajkumar Jain were adjudged to be insolvents. One of the two houses was sold in execution of a mortgage decree for Rs. 27,000 out of which a sum of Rs. 10,700 was taken by the decree-holder towards the satisfaction of his decree and out of the remaining amount of Rs. 16,300 the Receiver realized half of the total price as being the share of Rajkumar Jain. After the order of adjudication the Receiver made an application under Section 53, Provincial Insolvency Act for the annulment of certain transfers made by Pawanjai Kumar Jai including the aforesaid deed of gift. On 12-7-1954, the Insolvency Court annulled the deed of gift. One of the contentions raised before it was that the said deed of gift was invalid and was not given effect to. The Insolvency Court, however, for the purpose of the insolvency proceeding, proceeded on the assumption that the deed of gift was valid and operative. It, therefore, left the question of its validity and effectiveness open and held that its annulment was for the limited purpose of the insolvency proceeding and after the discharge of the insolvents any of the gifted properties that would be left over was to revert to the petitioner, the donee.
With regard to the other house, which was not sold, it directed that it should be divided in equal shares between the father and the son. Against the decision of the Insolvency Court the petitioner preferred an appeal to this Court being Miscellaneous Appeal No. 133 of 1954. Rajkumar Jain, one of the insolvents, Pawanjai Kumar Jain having died in the mean time, filed a cross objection praying that the deed of gift in question should be declared to be a sham and void transaction.

There was another appeal, namely, Miscellaneous Appeal No. 219 of 1954, which had been filed by a purchaser from another donee, namely Janki Kishann. That appeal was also heard and disposed of along with Miscellaneous Appeal No. 133 of 1954. We are, however not concerned with Miscellaneous Appeal No. 219 of 1954 and it is, therefore, not necessary to give the facts giving rise to that appeal. This Court affirmed the order of the Insolvency court with regard to the annulment of the deed of gift and held that the transfer in favor of the petitioner was without any valuable consideration and she was not a purchaser within the meaning of Section 53, Provincial Insolvency Act. The order of the Insolvency Court with respect to the division of the other house, however, was varied by this Court. It was held by this Court that one of the aforesaid two houses having already been sold and half of the price having already been realised by the Receiver on behalf of the son, the other house which was not sold should be treated under the terms of the family arrangement deed as the property of Pawanjai Kumar Jain as having been given to him for the payment of family debts on condition mentioned therein. The cross objection filed by Rajkumar Jain was allowed to a limited extent inasmuch as this Court directed that the question whether any part of the gifted properties would revert to the donee or not was left over for decision at a subsequent stage, or by a suit, if and when a determination of that question becomes necessary. Miscellaneous Appeal No. 133 of 1954 filed by the petitioner was dismissed subject to the modifications referred to above. The result was that there was a variation in the order passed by the Insolvency Court on two points, namely, (1) with regard to the direction of the division of the other house and (2) with regard to the order relating to the reversion of the left over properties to the donee. The petitioner has, therefore, filed the present application for leave to appeal to the Supreme Court against the judgment and order of this Court passed in that Miscellaneous appeal. By the proposed appeal she challenges the order of this Court both with regard to the annulment of the deed of gift on which the two Courts are in agreement as well as with regard to the direction leaving open the question of reversion of the left over properties to the donee on which the order of this Court is at variance with that of the Insolvency Court. The application was at the first instance heard by My Lord the Chief Justice and Kanhaiya Singh, J. The point raised in this application, a reference to which will be made later on, is of considerable difficulty. The decisions of the various High Courts, some of which are Full Bench Decisions, one including of this Court, are conflicting. In view of such conflicting decisions and of the importance of the question raised, their Lordships thought it desirable that a more authoritative pronouncement on the question should be obtained and accordingly this case was directed to be heard by a larger Bench. The application has, therefore, been placed before us for disposal.

2. That the value of the subject-matter of dispute in the court of first instance and still in dispute on appeal is more than Rs. 20,000 has not been challenged before us. When the application was originally heard by a Bench of this court which referred it to the larger Bench, no argument was advanced before their Lordships that the appeal involves some substantial question of law. Mr. Jha, who has argued the case before us with great ability, has contended that the appeal does involve some substantial question of law. He has submitted that before the Bench which heard this application originally he, in view of the Full Bench decision of this court in *'Braja Sunder Deb v.*
Rajendra Narayan[1]', was sure to get leave and as such he did not think it necessary to advance any argument on the point that the appeal involved some substantial question of law. Be that as it may, we are, for the present, proceeding on the assumption that the proposed appeal does not involve any substantial question of law.

3. Mr. Jha appearing for the petitioner has contended that the judgment of this court is (one of reversal) and not of affirmance and as such the petitioner is entitled to get a certificate for leave to appeal to the Supreme Court as of right. His contention is that though the proposed appeal relates to the question of annulment on which this court has affirmed the order of the Insolvency court, the petitioner, by this appeal, also challenges the order of this court in regard to the left over properties on which point this court has varied the order of the Insolvency court to the prejudice of the petitioner and as such the judgment of this court is one of reversal. He has also contended that the variation in the order of the Insolvency court with regard to the division of the house which had not been sold, though in favor of the petitioner, makes the judgment of this court as being not of affirmance.

4. Mr. Haniandan Singh on behalf of the opposite parties has, however, contended that the judgment of this court is a judgment of affirmance and no leave could be granted to the petitioner unless the appeal involves substantial question of law. His contention is that so far as the variation with, regard to the division of the house is concerned it is in favor of the petitioner and is no longer the subject-matter of dispute in the proposed appeal and such a variation does not make the judgment of this court as being not of affirmance for the purpose of leave to appeal to the Supreme Court.
With regard to the variation concerning the left over properties his contention is that the question relating to it has no bearing on the proposed appeal which is really concerned with the annulment order and it does not affect the petitioner's right to claim them by taking recourse to appropriate proceedings if the order of annulment stands inasmuch as the question has been left open by this court. He characterises the order of this court as not being of variance in this respect.

5. The right of a litigant to get leave for appeal to the Supreme Court in cases like the present one is governed by Article 133(1), Constitution of India, which, in terms, is practically similar to Section 109, Section 110, Civil Procedure Code. This Article states that 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
> (c) that the case is a fit one for appeal to the Supreme Court, and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c),
> if the High Court further certifies that the appeal involves some substantial question of law.

6. We are not concerned with clauses (b) and (c) of this Article. The requirements of clause (a) as regards the value are fulfilled in that case. The point as regards the appeal involving some substantial question of law is, for the present, assumed to be against the petitioner. The only ground on which the petitioner can, therefore, get leave to appeal depends upon the

determination of the question whether the judgment, decree or final order appealed from affirms the decision of the court immediately below or reverses it. If it affirms, the petitioner has no right of appeal; on the other hand, if it reverses, the petitioner is entitled to get the required certificate as of right. The determination of the question raised depends on the interpretation of the word "appealed from" used in reference to the words "Judgment, decree or final order", and of the word "decision" used in reference to the words 'of the court immediately below". Are the words "appealed from" descriptive of the words "Judgment, decree or final order" so as to mean the entire judgment, decree or final order against which the appeal to the Supreme Court is to be preferred, or have they been used to qualify and limit the words "Judgment, decree or final order" so as to mean only those portions of judgment, decree or final order which are directly the subject-matters of appeal before the Supreme Court ? Similarly does the word "decision" mean the decision taken as a whole or does it refer to only that portion of the decision which is the subject matter of appeal to the Supreme Court ? In other words the question is whether the last clause of Article 133(1) of the Constitution entitles a litigant, where the proposed appeal does not involve substantial question of law, to appeal to the Supreme Court only against that portion of the decision of the lower court which has been varied by the High Court, or against the entire decision of that court including the affirmed portion, or even against the affirmed portion of the decision only where the variance is entirely in favor of the petitioner. It is not easy to answer these questions and their determination presents good deal of difficulty.

7. At the outset I must make it perfectly clear that no contention has been raised before us that the judgment of the High Court will not be one of affirmance if it has affirmed the actual decision of the Court immediately below but has based its decision on grounds different from those given by the latter Court. Such a contention, if raised, would have Been Inadmissible in view of the decision of the Privy Council in the case of *'Tasaduq Rasul Khan v. Manik Chand[2]',* where their Lordships rejected the argument that in order that the decree should be held to have affirmed the decision of the court below it should not only affirm the decree but also the grounds of facts upon which that judgment was based.

8. The word 'decision' used in Article 133(1) of the Constitution and Section 110 of the Code of Civil Procedure has not been defined any where. This word as used in Section 596, Civil Procedure Code of 1882 (Act 14 of 1882) which is equivalent to Section 110 of the present Civil Procedure Code (Act 5 of 1908) came to be considered by the Privy Council in the case of '30 Ind App. 35 (PC), referred to above. In that connection their Lordships examined the definitions of the words 'decree' and 'judgment' and held that a decree decides the suit whereas a judgment gives the statement of the grounds upon which the decree is passed. Consequently their Lordships rejected the argument raised in this case that the word 'decision' has the same meaning as the word 'judgment and held that the natural, obvious and prima facie meaning of the word 'decision' is decision of the suit by the Court and that that meaning should be given to it in the Section. Thus the word 'decision' is equivalent to the word 'decree'. In other words, the word 'decision' embraces the final determination of the Court on all the claims put forward in controversy between the parties in a suit or a proceeding. The next question is as to what is the meaning of the expression 'appealed from'. In order to find out what it means one has to see as to from what an appeal is preferred. Obviously it is preferred against a decree or an order. There is no appeal from an item of a decree or that of an order. This has been made perfectly clear by the Privy Council in the case of *'Jowad Hussain v. Gendah Singh[3]',* wherein their Lordships held that an appeal must be against a decree as pronounced and though it may be rested on an argument

directed to special items, it must be against the decree and the decree alone. In this connection I may usefully quote a passage from the judgment in the case of *'Barthrop v. Kona Coffee Co*[4]*.',* which is to the following effect :

> "The word 'decision' in equity within the meaning of statute relating to appeals is practically synonymous with 'decree' and an appeal should be taken from the decree and not from the court's opinion".

On the above meaning of the two expressions "appealed from" and "decision" as used in the last paragraph of Article 133(1) of the Constitution the test to find out whether the judgment, decree or final order of the High Court is one of affirmance or reversal is to see whether it, taken as a whole, affirms or reverses the decision of the Gout immediately below in regard to the claims in controversy taken as a whole. In other words, place the two decrees, one passed by the High Court and the other passed by the court immediately below, side by side, read them and compare them, and if it appears that the decree of the High Court has varied the decree of the court immediately below on any of the claims in controversy, the former cannot be said to have affirmed the latter. This conclusion is in consonance with the plain reading of the Article in question.

9. It is an elementary principle of canon of construction that in interpreting a statute a plain meaning of the language used must be given. If the language is plain and simple and conveys an idea, definite and certain, effect must be given to it. We are not at liberty to read into the statute any words which are not to be round there actually or by necessary implication. We cannot introduce new words in it to give a different meaning when the natural and obvious meaning of the language does not admit such an interpretation. Now can we enter into speculations as to what the Legislators may or may not have intended apart from what it has expressed by the language that it has employed. Bearing in mind the above principles of construction of statutory provision I do not find any justification in limiting the right of appeal as given by the last clause of Article 133(1) of the Constitution only to the matter over which there has been a variance by the decree of the High Court. The language employed by the framers of
the Constitution is clear enough and does not in my opinion, admit any controversy.

10. The leading and basic case on the point in question is that of *'Annapurnabai v. Ruprao*[5]*',* (E). In that case one Shanker Rao Patel died childless leaving two widows. Petitioner No. 2 alleged to have been adopted by petitioner No. 1, the junior widow of Shanker Rao Patel. The respondent claimed to have been adopted by his senior widow. A suit was filed on his behalf against the petitioners for possession of half of the properties of Shanker Rao Patel. The petitioner No. 1 claimed to be entitled to maintenance at the rate of Rs. 3000 per annum. The learned Additional District Judge held that the plaintiff was the adopted son of Shankar Rao. Patel and that the petitioner No. 2 was not the adopted son. It further held that the petitioner No. 1 was entitled to have maintenance from the plaintiff at the rate of Rs. 800 per annum.
On appeal by the petitioners the Judicial Commissioner affirmed the decision of the court of the first instance on the question of adoption but modified the decree by increasing the amount of the maintenance of the petitioner No. 1 to Rs. 1200 per annum. Thereafter, the petitioners made an application to the Judicial Commissioner for leave to appeal to His Majesty in Council. That application having been rejected the petitioners applied for special leave but having regard to the

concurrent findings on the question of adoption the petitioner desired to limit the appeal only with regard to the amount of maintenance. The argument put forward on their behalf was that the Judicial Commissioner did not affirm the decree of the Additional District Judge but varied it and consequently the petitioners had the right to appeal to the Privy Council. Their Lordships accepted this contention and granted special leave to them. Lord Dunedin who delivered the judgment of the Board by a very short judgment held as follows :

> "In the opinion of their Lordships the contention of the petitioner's counsel as to the effect of Section 110, Civil Procedure Code 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 'maintenance allowance'".

11. The judgment of their Lordships in the Privy Council case referred to above has been differently interpreted by the various High Courts in India and conflicting views have been expressed by them. One view is that if there has been a variation of a portion of the decree of the Court below in favor of the proposed appellant, he is entitled as of right to go in appeal to the Privy Council or to the Supreme Court even against the other portion of the decree on which the two Courts are in agreement.
This view has been taken in *'Ali Zamin v. Mohammad Akbar Ali[6]',* (F); *'Homeshwar Singh v. Kameshwar Singh[7]',* (AIR V 20) (G); 1941 Pat 269 (AIR V 28) (A); *'Purnendu Nath Tagore v. Radhakanta Jew[8]',* (H); *'Kedar Nath v. Sree Iswar Kalimata of Kalighat[9]',* (AIR V 37) (I); *'Jaggo Bai v. Harihar Prasad[10]',* (AIR V 23) (FB) and *'Viraraghava Rao v. Narasimha Rao[11]',* (K). The other view is that in such a case no appeal will be maintainable against the affirmed portion of the decree unless some substantial question of law was involved in the proposed appeal. This view has been expressed in *'Mahabir Prasad v. Brijmohan Prasad[12]',* (AIR V 23) (L); *'Narendra Lal Das v. Gopendra Lal Das[13]',* (M); *'Bibhuti Bhusan Dutta v. Sreepati Dutta[14]',* (N); *'Fateh Kunwar v. Durbijai Singh[15]',* (O); *'Venkata-swami Chettiar v. Sekkutti Pillai[16]',* (P); *'Subba Rao v. Chellamayya[17]',* (Q); *'Kapurji Magniram v. Pannaji Debichand[18]',* (R); *'Govind Dhondo v. Vishnu Keshav[19]',* (S); *'Brahma Nand v. Sanatan Dharm Sabha[20]',* and *'Wahiduddin Sheikh v. Makhan Lal[21]',* (U). The third view is that if the decree of the lower court has been varied in part to the prejudice of the proposed appellant, he is entitled to prefer an appeal to the Privy Council or to the Supreme Court if the proposed appeal embraces both the affirmed and the varied portions of the decree. This view will appear from *'Jamna Prasad Singh v. Jagarnath Prasad[22]',* (V); *'Nathu. Lal v. Raghubir Singh'[23],* All 942 (AIR V 39) (O); *'Perichiappa Chettiar v. Nachiappan[24]',* (X); *'Gangadhara Ayyar v. Subramania Sastrigal[25]',* and *'Abdur Samad v. Mt. Aisha Bibi[26]',* (Z). The fourth view is that in such a case the appeal has to be limited to the varied portion of the decree only : vide *'Abdul Majid Khan v. Dattoo Raoji[27]',* It has now to be examined as to which view is correct.

12. In '1928 Pat 609 (AIR V 15), the proposed respondent, who was one of the heirs of one Badshah Nawab, filed a suit in substance for setting aside certain wakf deed and a supplementary deed executed by Badshah Nawab. His case was (i) that the deeds in question were executed under the undue influence of the petitioners, Syed Ali Zemin and Bibi Zainia, the wife of Badshah Nawab, (ii) that they were wholly illusory and have no substance in point of fact and (iii) that there was never such complete transmutation of possession as is required under the Shia law to complete a wakf. He also claimed a house in Calcutta as appertaining to the estate of

Badshah Nawab and denied that it ever belonged to Bibi Zainia. The Subordinate Judge decided all these points in favor of the plaintiff and gave him a decree substantially as claimed by him. He also gave him a decree for mesne profits against Syed Ali Zamin who claimed to have succeeded, to the office of the Mutwali after the death of Badshah Nawab. On appeal the High Court varied the decision of the Subordinate Judge with regard to the house in Calcutta and held that it belonged to Bibi Zainia and did not, form part of the estate of Badshah Nawab. This Court also set aside the decree for mesne profits passed against Ali Zamin but directed him to account to the plaintiff for the management of the wakf property from the time he took possession till he gave up possession of the one third of the property to the plaintiff. The findings of the trial court on the question of undue influence and the deeds being illusory were also set aside by this Court. The decree passed by the trial court with regard to the effectiveness of the wakf deed, however, was affirmed and this Court held that there was no such transfer of possession as the Shia law requires and that consequently wakf could not be given effect to. Syed Ali Zamin applied for leave to appeal to His Majesty in Council. That application was opposed on the ground that the variations made by this Court were entirely in favor of the appellant and such variations could not give him the right to appeal to His Majesty in Council, since the appellant was

really appealing from that portion of the decree of the appellate court which affirmed
the decree of the trial court. This argument was held by this Court to be wholly inadmissible and it was held that the fact that the appeal to the Privy Council was in respect of that portion of the High Court's decree which affirmed that of the trial court was immaterial under Section 110, Civil Procedure Code. Their Lordships further observed that in order to see if the decree or the final order appealed from, affirms the decree of the court immediately below one has only to read the two decrees, one passed by the court of first instance and the other passed by the appellate court, and reading the two decrees, their Lordships held that neither in point of form nor in substance could it be said that the decree appealed from affirmed the decree of the Subordinate Judge. Relying on the case of '1925 PC 60 '(AIR V 12), their Lordships gave leave to appeal to the Privy Council. This Privy Council case was sought to be distinguished by the respondent on the ground that in that case the defendant was the counter applicant who put forward a claim of Rs. 3,000 per annum for maintenance but the court of first instance gave her Rs. 800 whereas the court of the Judicial Commissioner gave her Rs. 1,200 and as her claim was for Rs. 3000 she was entitled to appeal to His Majesty in Council, the decree by the Judicial Commissioner having varied the decree passed by the court of first Instance. This argument was not accepted by their Lordships and Das, J., who delivered the judgment, Wort, J. agreeing, made the following observation in this connection :

> "The only question is whether a decree of the High Court may be said to affirm the decision of the Court immediately below where the High Court varies the decision of the court immediately below. Lord Dunedin in the case to which I have referred found that in such a case it cannot be said that the decree of the High Court affirmed the decision of the court immediately below."

13. In the case of 1933 Pat 262 (AIR V 20) (G) the decree of the trial Court was modified by the High Court to this extent that the decree with respect to about Rs. 90,000 was held to be a money decree and not a, mortgage decree and the amount of decree with regard to certain items was reduced by Rs. 5,000. The defendants filed an application for leave to appeal to the Privy

Council to which two objections were raised by the plaintiff-respondent, namely, (i) that the decree of the appellate court is one of affirmance and (ii) that the decree reducing the amount by Rs. 5,000 was in favor of the defendants, and it was contended that the defendants could, therefore, have no right of appeal unless some substantial question of law was involved in it.
Their Lordships repelled both these objections, and relying on the case of 1925 PC 60 (AIR V 12) (E) held that the case came within Section 110, Civil Procedure Code, in that the decision of this Court does not affirm the decision of the Court immediately below this Court and leave to appeal was granted. The reasons that their Lordships gave for rejecting the two objections raised by the plaintiff-respondent are, in my opinion, very weighty. With regard to the first objection their Lordships observed –

> "Whether the judgment of this Court was a judgment of affirmance or not may clearly be seen by considering the position of the respondent in this case. Had it been the wish of the respondent to appeal he could without difficulty have claimed that the effect of the modification effected by the judgment of this Court was to deprive him of a remedy, that is to say, the remedy by way of a mortgage decree and to substitute in place of it a remedy by way of a money decree only, and the question of whether the judgment of this Court is a judgment of affirmance or not cannot depend upon whether the appellant is the plaintiff or the defendant; it depends upon whether the judgment is one affirming the judgment of the lower Court."

And as regards the second objection they held that it is immaterial whether the effect of the modification is in favor of the appellant or adds to his detriment, that is the effect of the wording of the section and that had the Legislature chosen to lay down a criterion of the right of appeal depending upon whether the appellant would suffer by the modification or not, if would have said so. In this connection Courtney Terrel, C.J., who delivered the judgment, Kulwant Sahay, J., agreeing, observed :

> "The view we are taking is, I think, supported by the way in which the Privy Council in the case that I have mentioned (his Lordship was referring to the case of 1925 PC 60 (AIR V 12), deal with the particular facts before it in which case although the appellant had positively benefited by the modification effected under the lower court's order, he was none the less held entitled to appeal by reason of the fact that the order appealed from did not affirm the judgment of the lower court".

14. A contrary view was taken in the case of 1936 Pat 553 (AIR V 23) (L). I will deal with this case when I will consider the correctness of the second view as stated above. For the present it is enough to say that on account of the conflicting decisions in this case the matter was referred to a Special Bench in 1941 Pat 269 (AIR V 28) (A) and this case was overruled by the Special Bench. In that Special Bench case the facts were these. A suit was instituted by the plaintiffs for a declaration that they were the owners of certain lands in villages Olaver, Balarampur and Jagulaipara and for confirmation of their possession or, in the alternative, for recovery of possession over the same, if they were found to be out of possession. The defendant denied the plaintiff's title and possession over the suit lands and claimed to have acquired title by adverse

possession. The trial court substantially dismissed the suit of the plaintiffs but, on appeal, the High Court decreed their suit with regard to the lands of village Olaver. The dismissal of the plaintiffs' claim with regard to the lands of the other two villages, however, was affirmed by the High Court but on grounds different from those given by the trial Court for dismissing the plaintiffs' claim with respect thereto. The result, therefore, was that the decree of the High Court reversed that of the trial court as regards the lands of village Olaver and affirmed it so far as the lands of the other two villages were concerned. The plaintiffs applied for leave to appeal to His Majesty in Council. The question raised was whether, on account of the variation of the trial court's decree with regard to the lands of village Olaver, the plaintiff could, as of right, prefer an appeal to the Privy Council in respect of the lands of the other two villages regarding which the High Court had affirmed the decree of the trial Court.

Their Lordships after considering various authorities of the different High Courts accepted the contention raised on behalf of the proposed appellants, held that the decree of the High Court was not one of affirmance within the meaning of Section 110, Civil Procedure Code and gave leave to the appellants to appeal to the Privy Council. Their Lordships laid down the true test to be whether the decision of the court below as a whole has been affirmed by the High Court and not whether the decision on the point or points left in dispute have been affirmed by the High Court.

The expression 'decision of the court immediately below the court passing such decree' as used in Section 110, Civil Procedure Code was interpreted as meaning the same as the expression 'decree of the Court below'. The reason for holding so, as given by their Lordships, to quote the language of Harries, C.J., who gave the judgment in this case is :

> "Once an appeal has been decided, the decree of the Court below is merged in that of the appellate court and strictly there is no longer in existence a decree of the trial court. There is only a decision, and in my view the word 'decision' means the decision of the trial court taken as a whole. It must be remembered that an appeal is not preferred against any item or items in a decree. The appeal must be preferred against the whole decree, though for the purposes of valuation the subject-matter in dispute in appeal only is valued".

In coming to this conclusion, their Lordships placed reliance on the case of 1926 PC 93 (AIR V 13) (C) a reference to which has already been made above. Referring to the case of 1925 PC 60 (AIR V 12) (E) it was contended on behalf of the respondent that the effect of this decision is that the proposed appellants were given leave to appeal only on the question of maintenance because the value of that relief alone amounted to over Rs. 10,000. Their Lordships rejected this contention and observed :

> "It is true that leave to appeal was limited to the question of maintenance, but it is to be observed that Counsel stated that his clients desired lea ye to appeal only upon that issue. Lord Dunedin does not in terms confine his observations to this question of maintenance. He expressed the view that the petitioner's contention as to the effect of Section 110 of the Code was correct and that as the value of the suit and the subject-matter of the proposed appeal exceeded Rs. 10,000 the petitioners had an appeal as of right by reason of the fact that the appellate court did not affirm the decree of the first court".

Thereafter coming to the facts of the case under consideration their Lordships finally held as

follows :

> "In the present case the proposed appellants have to appeal against the decree as a whole, and they will have a right to do so if that decree as a. whole does not affirm the decision of the court below. The appeal is not confined to such part of the decree as affirms a part of the decision of the court below but is preferred against the decree as a whole. Clearly the decree as a whole does not affirm the decision of the court below taken as a whole, and that being so, the appellants, in my view, are entitled to appeal as of right without showing that a substantial question of law is involved".

15. The recent view of the Calcutta High Court is also to the same effect. In 54 Cal WN 538, the proposed respondent filed a suit on behalf of a deity for administration of a debutter estate, for accounts and for framing a scheme on the allegation that various difficulties in the administration of the debutter properties had arisen on account of differences existing between the shebaits. Certain property known as No. 36, Darpanarain Tagore Street, Calcutta, and some zemindary properties were claimed to be debutter properties. The defence of the proposed appellant was that the property known as No. 36, Darpanarain Tagore Street was their secular property. The Subordinate Judge found both the properties referred to above, to be debutter properties. On appeal by the proposed appellant, the High Court affirmed the decree at the trial court with regard to the property known as No. 36, Darpanarain Tagore Street but it varied it with respect to the rights of the deity in the zeimindary properties. The zemindary properties, thereafter, were no longer in dispute. The defendant applied for leave to appeal to His Majesty in Council with respect to the property known as No. 36, Darpanarain Tagore Street. An objection to maintainability of the appeal was raised on the ground that the decree of the High Court had affirmed the decree of the trial court with respect to this item of the properties and, though there had been a variation as regards the zemindary properties, the defendants could have no right to appeal with respect to the affirmed portion of the decree unless a substantial question of law was involved in the appeal. This argument was rejected by their Lordships with the following observation :

> "Whether such a decree as exists in this case is a decree of affirmance has been the subject of much litigation. Undoubtedly, the earlier view of this court was that it was a decree of affirmance, though in fact the actual decree had been varied. Other courts have held a different view. However, the later practice of this court is to treat a decree of this kind as a decree not of affirmance but a decree varying the decree of the trial court". Their Lordships, therefore, gave leave to appeal. It may be noted that the judgment in this case was given by Harries, C.J. who was a party to the Full Bench decision of this Court in 1941 Pat 269 (AIR V 28) (A) and his Lordship felt inclined to stick to the view that he had taken in that case. This view was reaffirmed in 1950 Cal 341 (AIR V 37) (I).

16. Similar view was taken by a Full Bench of the Allahabad High Court in 1941 All 66 (AIR V 28) (J). In that case the plaintiff instituted a suit against the defendant-petitioner for specific performance of a deed of assignment of certain mortgagee rights. The plaintiff claimed to have paid Rs. 26,000 as being half the purchase price. An alternative prayer was made for the refund

of the said amount with interest. At the trial, prayer for specific performance was withdrawn. The trial court decreed the suit for refund of Rs. 26,000 with interest at 6 per cent, per annum, which amounted to Rs. 18,700. On appeal by the defendants, the High Court reduced the rate of interest to 4 per cent, per annum, according to which the amount of interest came to Rs. 12,380. Thus the liability of the defendant was reduced by Rs. 6,320. The defendant applied for leave to appeal to the Privy Council which was granted. In support of the application for leave to appeal, it was contended on behalf of the petitioner that the decision of the trial court had not been affirmed by the High Court and, as such, she was entitled, as of right, to get leave to appeal in accordance with the provisions of Section 110, Civil Procedure Code. Their Lordships accepted this contention and held that the question under consideration was concluded by the decision of the Judicial Committee in 1925 PC 60 (AIR V 12) (E).

17. In 1950 Mad 124 (AIR V 37) (K) the plaintiff instituted a suit for the eviction of the defendants from a certain house. The suit was contested mainly on the ground that the defendants were entitled to remain in possession according to the provisions of the Madras Buildings, Lease and Rent Control Act. being Act 15 of 1946. The District Judge decided the suit in favor of the plaintiff and decreed it for eviction as well as for damages at the rate of Rs. 200 per day. On appeal the High Court affirmed the finding with regard to the eviction but reduced the amount of damages. The defendants applied for leave to appeal to the Federal Court. Here the variation was in favor of the petitioner. Their Lordships relying on the case of 1925 PC 60 (AIR V 12) (E) gave leave to appeal. Raghav Rao, J. in his concurring judgment observed that it was not open to any court in India to whittle down or eviscerate that decision in any manner, or to recognize any implied extension of the exceptions to Section 103(a) which are not to be found in the statute itself. One of the arguments raised against the granting of leave was, as has also been raised here by Mr. Singh, that the expression 'judgment, decree or final order' used in the last clause of Section 110, Civil Procedure Code, must be read in conjunction with the expression 'the subject-matter of dispute' used in clause (1) of that section. This argument was rejected by their Lordships and the reason for rejecting it has been given by Raghav Rao, J. as follows with which I fully agree.

> "The collocation of the words 'the subject-matter in dispute on appeal to His Majesty in Council' of clause (1) of Section 110, Civil Procedure Code and of the words in Clause (3) 'the decree or final order appealed from' is not such as to necessitate the reading together of the two sets of words so as to curtail a right of appeal which, on the only mode of construction justified by the plain positions in the section occupied by the two sets of words or at any rate on an equally possible manner of construction of which they are susceptible, is available to the litigant. This mode of reading together of the two sets of words is that lay at the root of the doctrine of *Raja Sreenath Roy v. Secy. of State*[28], which admittedly stands overruled by 1925 PC 60 (AIR V 12) (E)."

Another argument advanced on behalf of the respondent was that there are bound to be a number of anomalies resulting from this view. Similar argument was advanced by Mr. Singh before us also. I have not the least hesitation in rejecting this argument as was done in this case, on the simple ground that a consideration of possible anomalies is not a ground for construing the plain words of a statute in a manner opposed to their plain reading.

18. The view taken in the case cited above is, in my opinion based on sound principle and rules of construction of statutes, and is in consonance with the spirit of Article 133(1) of the Constitution of India and Section 110, Civil Procedure Code. I fully agree with this view, and, in my opinion, the petitioner is entitled, as of right, to get the necessary certificate for leave to appeal to the Supreme Court. I now, proceed to consider the other views.

19. A contrary view was taken, as already stated, in the case of 1936 Pat 553 (AIR V 23) (L). In that case the plaintiff instituted a suit for possession on declaration that title to the suit land did not pass to the defendant under a certain deed. The trial Court held in favor of the plaintiff and decreed the suit for possession. It also held that the defendant had forfeited the amount of money which he had paid as earnest money.
On appeal, the High Court affirmed the judgment of the trial court as regards the main question of title and possession but reversed it as regards the earnest-money and held that it was not forfeited. The defendant filed an application for leave to appeal to the Privy Council and contended that the decree of the High Court was one of reversal inasmuch as the High Court held that the earnest-money paid was not forfeited.
The application was opposed on the ground that the variation that was made in the decree of the trial Court was in favor of the defendant and he by reason of it could not be entitled to prefer an appeal to the Privy Council as against the portion of the decree which had been affirmed by the High Court. Their Lordships accepted this argument and refused to give leave to appeal to the Privy Council. The case of 1925 PC 60 (AIR V 12) (E) was distinguished on the ground that the amount of the maintenance allowed by the appellate Court was still short of the original claim which the petitioners had made. The case of 1933 Pat 262 (AIR V 20) (G) was distinguished on the ground that there was still a substantial point from which by way of appeal the appellant might benefit. These two cases, in my opinion, were distinguished without there being any real distinction. In both these cases leave to appeal was granted on the ground of variation of the decree though it was in favor of the proposed appellant. The leading judgment in the cases of 1936 Pat 553 (AIR V 23) (L) was given by Wort, A.C.J. who was a party to the earlier Bench decision of this Court in the case of 1928 Pat 609 (AIR V 15), already referred to, in which also, as in the present case, the variation was in favor of the proposed appellant. Similar argument was advanced in that, case as was advanced in this case, namely, that the variation in favor of the proposed appellant could not give him the right of appeal with regard to the affirmed portion of the decree. Das, J. who delivered the judgment in that case, Wort, J. agreeing, overruled this argument as being inadmissible. The case of 1928 Pat 609 (AIR V 15) (F) was not brought to the notice of their Lordships who decided the case of 1933 Pat 553 (AIR V 23) (L).

20. In 1927 Cal 543 (AIR V 14), the petitioner instituted a suit for partition of joint family properties and account. A preliminary decree was passed. The petitioner appealed to the High Court and he complained (1) that the share that was given to him was smaller than he was entitled to get, (2) that he had an insufficient opportunity of examining the accounts and (3) that the decision of the trial court with regard to certain reserve fund was not correct. The High Court affirmed the decision of the trial Court on the last two items, but, with respect to the first item, the share given to the plaintiff was increased so that he got what he contended for. The plaintiff applied for leave to appeal which was refused, as their Lordships held that the petitioner could not, without showing a substantial question of law, have a right to litigate upon other points upon which both the Courts have been in agreement simply because, on a totally different point,

namely, a point about the share, the petitioner had succeeded in getting the decree varied so as to get all that he wanted without having any further grievance in that matter. Referring to the case of 1925 PC 60 (AIR V 12) (E) Rankin, C.J. observed :

> "It appears to me that the case of Annapurnabai v. Ruprao is not in itself a sufficient authority to justify this Court in abandoning the principle which it has with other High Courts acted upon; that is to say, I do not think that it shows that it is an erroneous view that we have to look to the substance and see what is the subject-matter of the appeal to His Majesty in Council.

I have, I confess, some doubt as to whether in the end even that principle would be found to be in accordance with the construction to be put upon Section 110, but this Court and other High Courts have for many years acted upon that principle and I am not prepared to accept the case of *Annapurnabai v. Ruprao* as going further than this that where there is a dispute as to the amount of decree or as to the amount of damages the reasoning of Sree Nath Roy's case is not a correct application of that principle". The case of 1935 Cal 146 (AIR V 22) (N) follows the case of 1927 Cal 543 (AIR V 14) (M). In that case also their Lordships observed :

> "The Court, however, has refused on the strength of Annapurnabai's case to break away from a long course of decisions of Courts in India, which have firmly laid down the principle that when the appellate Court modifies the original decree upon a single point and that completely in the applicant's favor, so that he has no further grievance in that matter, he cannot, because of the modification, have a right to an appeal on the other points on which the Courts have concurred, without a substantial question of law."

From the above observations it appears that their Lordships of the Calcutta High Court felt bound to follow the earlier decisions of that Court as well as of the other High Courts and they did not want to abandon the principle on which they had been acting from a long time. The view taken by them, however, suffers from the defect of dissecting the decision by holding it to be one of affirmance with regard to one item and then again to be one of reversal with regard to the other items. Moreover, Rankin, C.J. in 1927 Cal 543 (AIR V 14), has himself doubted the correctness of the above principle to be in accordance with the construction to be put upon Section 110, Civil Procedure Code.

21. In 1952 All 942 (AIR V 39) (O) a Full Bench of that Court held that if the proposed appeal is in respect of only that matter upon which the High Court has affirmed the decree of the trial Court, there is no right of appeal unless there is a substantial question of law involved. I will deal with this case later on in connection with the consideration of the third view as stated above. Suffice it to say for the present that the reason given for this conclusion does not go further than that given in 1936 Pat 553 (AIR V 23)

22. In 1936 Mad, 881 (AIR V 23), a mortgage suit was brought against four defendants. The trial Court decreed the suit in full against the first and the fourth defendants and for a fraction of debts against the second and the third defendants. On appeal, the High Court confirmed the decree of the trial Court as against the first, second and fourth defendants and varied it as against the third

defendant inasmuch as it was held that he was liable for almost the full amount. The plaintiff filed an application for leave to appeal to the Privy Council in regard to the portion of the decree relating to the second defendant. Their Lordships took the view that, where there are several decisions In respect of several subject-matters the decree embodying these decisions should not be regarded as one and entire and that the right way of construing Section 110, Civil Procedure Code is to read the words "decree or final order" in clause (3) in conjunction with, and to treat them as relating to "the subject-matter" mentioned in clause (1). Reliance was placed in support of this decision on the case of 1935 Cal 146 (AIR V 22) (N) and the case of 1927 Cal 543 (AIR V 14) (M) which have already been dealt with, and their Lordships deduced from these decisions the principle that what is to be regarded is not the decision as a whole but the decision as it affects the subject-matter in dispute and approved this test. Since the decree against the second defendant was one of affirmance, leave to appeal was refused.

> 'Decree' has been defined in the Code of Civil Procedure as being the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the right of the parties with regard to all or any of the matters in controversy in the suit. A decree, in my opinion, is one and must be taken as one unit, and it would be against the definition that has been given to it if it is held that there are as many decrees in a suit as there are the subject-matters decided therein.

Each subject matter decided by a court in a suit cannot constitute a separate decree in that suit. So far as the reasoning of their Lordships that the words 'decree or final order' in clause 3 must be read in conjunction with and treated as relating to 'the subject matter' mentioned in clause (1) is concerned, I have already expressed my agreement with the view taken by Raghav Rao, J. in 1950 Mad 124 (AIR V 37) (K) against this contention.

23. in 1952 Mad 771 (AIR V 39), A Full Bench decision of the Madras High Court, the respondent instituted a suit for declaration that a will dated 23-12-1944, alleged to have been executed by Sambamurthi in favor of the appellant was false and forged and that the appellant obtained no right thereunder and for possession of properties described in schedules B and C to the plaint, for recovery of mesne profits and for accounts of the monies of Sambamurthi in his hands and he himself claimed under a will dated 26-11-1944, said to have been executed by the said Sambamurthi in his favor. The trial court held that the will alleged by the plaintiff was the last will and testament of the said Sambamurthi and the Will propounded by the appellant was not a true Will. It, therefore, decreed the suit for possession of the schedule B properties and for account of the monies of Sambamurthi in his hands. The prayer for recovery of possession of schedule C properties was rejected. On appeal the High Court set aside the decree for account but affirmed the finding as regards the Will. The defendant No. 1 applied for leave to appeal to the Supreme Court. It was held in that case that if the modification is in respect of a matter not compromised in the subject-matter still in dispute on appeal to the Supreme Court the appellant is not entitled to leave as of right. It appears that their Lordships took this view on the principle of reasonable construction of statutes. Rajamannar, C.J. who delivered the judgment of the Full Bench observed as follows :

> "I do not think that the letter of the statutory provisions should compel a court to an unreasonable construction if it is possible to take a reasonable view by taking the letter of

the provisions along with its substance".

In my opinion, where the language is clear, no extraneous considerations are admissible even though the result of the construction be unreasonable. In this connection I may, better, quote the observation, of their Lordships of the Supreme Court in *Annagouda Nathgouda v. Court of Wards, Satara*[29], which runs as follows :

> "Whether this distinction between male and female propositus is at all reasonable is another matter but the language of the Act (their Lordships were referring to Hindu Law of Inheritance Amendment Act, II of 1929) makes this distinction expressly and so long as the language is clear and unambiguous, no other consideration is at all relevant."

24. In 1929 Bom 359 (AIR V 16) (R) the High Court reversed the decree of the trial court to a certain extent in favor of the plaintiffs who filed an application for leave to appeal. Both the courts were in agreement with regard to the item on which the plaintiffs wanted to go in appeal to the Privy Council. Their Lordships held that on the true construction of Section 110, Civil Procedure Code, the plaintiffs could not appeal as of right with regard to that item as the decree appealed from affirmed the decree of the court below in this respect. The case of 1925 PC 60 (AIR V 12) (E) was distinguished on the ground that there the appeal was limited to the question of maintenance on which there was variance in the two decrees. The report of the Privy Council case, however, does not show that their Lordships gave the leave because the appeal was confined to the question of maintenance only. Their Lordships accepted the contention of Sir George Lowndes, the Counsel for the petitioners, that the appellate court did not affirm the decree of the first court but varied it and consequently it was not material under Section 110 whether any substantial question of law was involved. Having regard to the concurrent findings of the Court in India on the question of adoption the petitioners themselves confined the appeal to the amount of maintenance only.

25. In 1949 Bom 164 (AIR V 36) (S) the plaintiff instituted a suit for partition and based his claim on adoption. The trial Court held that though the factum of adoption was proved it was invalid and that the suit properties were joint family properties. The suit was, however, dismissed on the ground of the invalidity of adoption. On appeal the High Court held the adoption to be valid, but with regard to the suit properties it held that only a portion constituted joint family properties. As a result the plaintiffs' suit was decreed with respect to some of the properties and dismissed with regard to the others. The plaintiff applied for leave to appeal to the Privy Council which was rejected. Their Lordships felt bound by the decision in 1929 Bom 359 (AIR V 16) (R) and held that the decree of the High Court was one of affirmance.

26. There are two Full Bench decisions of the Lahore High Court reported in 1944 Lah 329 (AIR V 31) (T) and the other 1944 Lah 458 (AIR V 31) (U) both of which
have taken the similar view.

27. In the case of 1944 Lah 329 (AIR V 31) (T) the plaintiff instituted a suit under Section 92, Civil Procedure Code against the defendant claiming accounts from 1932 to 1937 as well as his removal from the Mahantship of Shivala Bela Basti Ram, a religious institution. The defendant contested the suit mainly on the ground that there was no public trust and he was not liable to

render accounts. The trial Court held that the property in dispute was a public trust and decreed the suit for the removal of the defendant and for account as claimed by the plaintiffs and appointed one of the plaintiffs as the new trustee for the management of the trust property. On appeal the District Judge confirmed the findings of the trial Court. The defendant preferred a Second Appeal in the High Court. In order to cut short the controversy the plaintiffs abandoned their claim for accounts and contested the appeal in the High Court on other points. The High Court maintained the concurrent findings of the Courts below about the property in suit being the trust property and dismissed the appeal but the decree drawn up by the High Court varied the decree of the Courts below in view of the abandonment of the claim for accounts. The defendant applied for leave to appeal to the Privy Council. Their Lordships refused to give leave as in their opinion refusal of leave in such cases was more reasonable than its grant. For the reasons already given as regards the rejection of the principle of reasonable interpretation the ground of refusal being reasonable is not, in my opinion, relevant. Moreover, this case, as observed by Din Mohammad, J., himself, is distinguishable inasmuch as here the respondents had of their own accord withdrawn their relief in respect of accounts and consequently any variation that followed in the decree of this court was not the result of an adjudication by this Court but of the parties' own action and it was as if that part of the case had been entirely removed from the adjudication of this court and consequently it had ceased to have any concern with it whatever. In 1944 Lah 458 (AIR V 31) (U) eight items of properties belonging to the judgment-debtor were sold in eight different lots. Two of them were purchased by the decree-holders and six by the outsiders. An application under Order 21 Rule 90, Civil Procedure Code, was filed by the judgment-debtor for setting aside the sales which was rejected and sales were confirmed. On appeal to High Court, which was heard by a Single Judge, the sales of three items were set aside and those of the rest maintained. A Letters Patent Appeal against this decision was dismissed in limine. The judgment-debtor then applied for leave to appeal to His Majesty in Council. The application was objected on the ground that the decision of the lower Court with regard to the subject matter in dispute before the Privy Council was affirmed by the High Court. Their Lordships relying on the previous Full Bench decision referred to above, accepted the objection and refused to give leave.

28. With utmost respect to the learned Judges who decided the cases referred to above in favor of the view that where a decree is varied in part in favor of the proposed appellant, he cannot as of right prefer an appeal to the Privy Council or to the Supreme Court against the other portion of the decree in respect to which both the Courts, are in agreement, I entirely disagree with them. These decisions, in my opinion, are not based on the pure construction of the plain language employed in Article 133(1) of the Constitution or in Section 110. Civil Procedure Code and are the result of extraneous considerations which are absolutely inadmissible.

29. The third view as already stated is that where the High Court varies the decree of the court immediately below it only in part, the aggrieved party is entitled as of right to go in appeal to the Privy Council or to the Supreme Court if the appeal embraces both the subject-matters, one in respect to which the decree is of affirmance and the other regarding which there has been a variation. This view would not have been in conflict with the first view if it had gone only to the extent of laying down that in such cases the proposed appellant could appeal against both the affirmed and the varied portions of the decree. But some of the cases have gone further and laid down that he could prefer an appeal against the affirmed portion of the decree only if the varied portion is also in dispute in the proposed appeal. According to this view, therefore, where the variation is in favor of the proposed appellant to such an extent that he has no further grievance

in respect to that matter, he cannot claim as of right to get leave to appeal with regard to the affirmed portion of the decree only. The cases in support of this view will have to be examined in this light.

30. In 1929 Pat 561 (AIR V 16) (V) the mortgagees brought a suit to enforce the mortgage. The trial court decreed the suit but disallowed interest pendents lite. The defendants preferred an appeal to the High Court and the plaintiffs preferred a cross appeal with regard to the interest disallowed. The High Court dismissed the appeal but allowed the cross appeal and the decree of the trial court was, accordingly modified. The defendants filed an application for leave to appeal to His Majesty in Council. On behalf of the plaintiffs-respondents an objection was taken to the maintainability of the appeal and it was contended that the portion of the decree of the lower court affirmed by the High Court could not be the subject matter of appeal to the Privy Council and the appeal must be limited to the question of interest only upon which point alone there had been variation between the decree of the High Court and that of the court below just as the appeal in the case of 1925 PC 60 (AIR V 12) (E) was limited to the question of maintenance only upon which point the learned Judicial Commissioner had varied the amount decreed by the Additional District Judge. Their Lordships did not accept this contention and referring to the Privy Council case observed as follows :

> "It seems to us that the leave in that case was limited not because in other respect the decree of the High Court had affirmed the decree of the Subordinate Court, but because Sir George Lowndes did not want to appeal on other points by reason of the concurrent findings of the court on those points."

31. In 1932 All 65 (AIR V 19) (SB) (W) the plaintiffs instituted a suit for setting aside a sale on the ground of fraud. The defendants denied the allegations of fraud and pleaded that they had paid the consideration money to the plaintiffs. The trial court found that fraud had been established. It also, found that a sum of Rs. 1,760 had been paid as being part of the consideration money. The suit was, therefore, decreed on condition of payment of the said amount by the plaintiffs to the defendants. One of the defendants, Nathu Lal, appealed to the High Court without impleading the other defendants. The plaintiffs filed a cross-objection. The High Court affirmed the finding of the trial Court on the question of fraud but reversed its finding as regards the payment of Rs. 1,760. It held that this payment was not proved. Accordingly, the High Court dismissed the appeal but allowed the cross objection. The defendant Nathu Lal applied for leave to appeal to His Majesty in Council and he was held to be entitled to appeal, as of right, even though no substantial question of law was involved in the appeal. Sulaiman, A.C.J. who delivered the leading judgment of the Full Bench, observed as follows :

> "The language used in Section 110, Civil Procedure Code is simple and makes it clear that if the decree appealed from affirms the decision of the Court below there would be no right of appeal unless a substantial question of law is involved. There is no reason why we should introduce new words in the Section and say that the expression 'affirms the decision of the court below' necessarily means 'affirms the decision substantially' or means 'affirms the decision on grounds other than costs'. If the decree of the court below has been varied, no matter to what extent, the decree cannot be one of affirmance".

Mukerji, J. in his concurring judgment observed as follows :-

> "In my opinion the decision of the question must be given on an interpretation of the third paragraph of Section 110, and on no other consideration. There, the law says; 'where the decree ..... appealed from affirms the decision of the court immediately below the court passing such decree .... the appeal must involve some substantial question of law', to give a right to appeal. Here we have got a decree which is being appealed from, and the decree does not affirm the decree of the court below. It should follow, in such a case, without further argument, that an appeal would be maintainable".

Boys, J. who entirely agreed with Sulaiman, A.C.J. and Mukherji, J. observed :-

> "I am of opinion that on the wording of the last paragraph of Section 110 there can only possibly be one answer to the question referred to us".

32. In the case of 1932 Mad 46 (AIR V 19) (X) the plaintiff instituted a suit for account against the agent and valued his claim at Rs. 40,000. The trial court decreed the suit for about Rs. 5,682. The defendant preferred an appeal in the High Court and the plaintiff filed a cross objection valuing the same at Rs. 20,000/-. The High Court allowed the appeal in part and reduced the amount by about Rs. 4,000 and allowed the cross objection also with respect to a very small item of Rs. 150. The plaintiff applied for leave to appeal to the Privy Council. Leave was. granted as it was held that he was entitled to prefer an appeal to His Majesty in Council as of. right. With regard to the construction of Sections 109 and 110, Civil Procedure Code, Reilly, J., observed as-follows :

> "Section 109(a), Civil Procedure Code, gives a right of appeal to. His Majesty in Council from any decree made on appeal by a High Court, Section 110, Civil Procedure Code, qualifies that right of appeal by making two exceptions to it. First there is no appeal under Section 109(a) if the amount or value of the subject-matter of the suit in the court of first instance or in dispute in the proposed appeal is less than. Rs. 10,000 and the decree does not involve directly or indirectly some claim or question to or respecting property of that amount or value. Secondly, there is 110 appeal under Section 109(a) if the decree of the High Court affirms the decision of the Court immediately below the High Court and the proposed appeal does not involve any substantial question of law. These two exceptions, as they partially take away the right of appeal given by Section 109(a), must be strictly construed".

Ananta Krishna Aiyar, J. while referring to the argument that where there were concurrent findings of fact with reference to some of the items included in the valuation, the decree of the appellate court should be taken to affirm that portion of the decree of the trial court relating to those items and that unless a substantial question of law be involved in the proposed appeal to the Privy Council in so far as those items are concerned, the value of these items should not be taken

into account in considering the valuation of the subject matter of the appeal to the Privy Council, and that only the amounts involved in the other items in respect of which the decision of the trial court was reversed by the High Court should be taken into account in considering the limit of Rs. 10,000 prescribed by Section 110 of the Code, observed as follows :

> "The argument advanced on behalf of the respondent necessitates that very many words should be implied in Section 110 to justify the interpretation of the Section contended for by him. We feel that it is not open to us to do so. Section 109 gives a right of appeal to the Privy Council. Section 109 is a proviso to Section 109. It is a rule of law that a proviso should receive a strict construction. It is not open to the court to add words to a proviso with a view to enlarge the scope of the proviso. The proviso must be restricted to the scope reasonably conveyed by the words used therein".

33. The question came to be considered by a Full Bench of the Madras High Court in 1946 Mad 539 (AIR V 33) (Y). In that case, the plaintiff claiming to be a reversioner of the last male holder, instituted a suit for declaration that eleven, items of property formed part of the estate of the last male holder and a deed of settlement executed by his mother was void. The trial court gave him a declaration in respect of six items only and dismissed his suit for the rest. The petitioners, who were defendants 4 to 6 in the suit, preferred an appeal to the High Court and the plaintiff filed a cross objection with regard to four out of five items of property. The High Court dismissed the appeal but allowed the cross objection. The petitioners, therefore, applied for leave to appeal to the Privy Council for all the ten items of property. It was held that as the decree of the High Court had varied the decree of the trial court in respect of four of the items, the decree was one of variation and not one of affirmance and the petitioners were entitled to get leave as of right even though they wished to challenge in the appeal to the Privy Council the validity of the claim of the plaintiff to all the ten items of the property.

34. The view of a Pull Bench of the Chief Court of Oudh in 1948 Oudh 76 (AIR V 35) (Z) is also to the same effect. In that case the plaintiff instituted a suit for possession of one sixth share In the properties of her parents by partition on the basis of inheritance. The trial court decreed the suit except with respect to certain properties. Two of the defendants appealed and the plaintiff filed a cross-objection.
The appeal was dismissed but the cross-objection was allowed as a result of which the entire suit of the plaintiff was decreed. The two defendants thereafter filed an application for leave to appeal to the Privy Council which was granted. With regard to the interpretation of Section 109, Section 110, Civil Procedure Code their Lordships observed as follows : -

> "On a plain reading of the provision it would be impossible to attach any qualifications to the affirmance except that it must be by the decree against which the appeal is preferred. Apparently regard is not to be had to the manner in which the affirmance is made or to the person at whose instance it is brought about. The extent of affirmance is also not a matter to be considered. The sole question which arises under the clause is whether the appellate decree affirms or varies the decision of the court immediately below on merits.

This question scarcely presents much difficulty where there is only one decree passed by the

High Court. Where an appeal is sought to be preferred against a decree which varies the decision of the Court immediately below whether the variance is brought about at the instance of the appellant or at the instance of the respondent, it cannot be said that the appellate decree affirms the decision of the first court. The section does not conceive of the decree as partly affirming and partly varying the original decision. The Legislature appears to have envisaged an appellate decree either at upholding that decision or as varying or modifying it, and if an appeal is permissible, it is against the decree as a whole and not against the findings or adjudications on the controversies involved in the suit".

35. These cases, in my opinion, fully support the contention of the petitioner about the meaning of the word "affirmance" used in Article 133(1) of the Constitution and Section 110 of the Code of Civil Procedure . They take out the decree of a High Court from being one of affirmance if it has varied the decree of the court immediately below it even in part. They do not make any distinction between a case where the proposed appeal is only against the affirmed portion of the decree and a case where the appeal is sought to be preferred against its affirmed as well as varied portions.
No doubt in these cases the variations were made to the prejudice of the proposed appellants who made their grievances in the proposed appeal against all the items, varied and affirmed. There is not the slightest indication in the judgments of those cases to support the view that an aggrieved party could not appeal on matters on which the High Court has affirmed the decree of the court below unless the appeal embraces also the matters over which there has been variance in the decree of that court. Two later Full Bench decisions, one of the Allahabad High Court reported in 1952 All 942 (AIR V 39) (O) and the other of the Madras High Court reported in 1952 Mad 771 (AIR V 39) (Q) have, however, expressed their views in support of the above proposition.

36. In the case of 1952 All 942 (AIR V39), the facts stated shortly are these. Raja Ram Chandra Singh, owner of Rampur Raj, an impartible estate, died leaving a widow, Rani Krishna Kuar, and a daughter, Munni Saheba. Rani Krishna Euar came in possession of the Raj after the death of her husband. Later on she also died, and on her death, a dispute arose between the applicant, Rani Fateh Kuar, widow of Lal Durga Saran Singh, and the opposite party, Durbijai Singh. The applicant instituted a suit for a declaration that she was the owner of the Rampur Raj which, at that time, was under the management of the Court of Wards. Her case was that there was a litigation between Rani Krishna Kuar and her husband's brother in which, ultimately, a family settlement was arrived at by which it was agreed that Rani Krishna Kuar could adopt Lal Durga Saran Singh, whose right of possession was deferred till after her death. Thereafter, Lal Durga Saran Singh died, leaving the applicant, and she claimed to be entitled to the Raj in as much as her husband had vested interest in it on account of the adoption. She also pleaded custom in support of her claim. The opposite party, Raja Durbijai Singh, contested the suit on the ground that, being the reversioner of Raja Ram Chandra Singh and also under the custom, he was entitled to the Raj. He denied the factum of the family settlement and the right of Rani Krishna Kuar to adopt. The court of first instance held that Lal Durga Saran Singh was the validly adopted son of Raja Ram Chandra Singh and Rani Krishna Kuar but that the alleged family settlement was not proved. It also held that Rani Krishna Kuar had no right to nominate a successor. The applicant, however, was held to be entitled to maintenance at the rate of Rs. 3,000 per year. Her suit was, therefore, dismissed with a declaration that she was entitled to get from the defendant a maintenance at the above rate. The decree, also, directed that she would continue to live where she was living then. The defendant was held to be the owner of the Raj. He filed an

appeal in the High Court and the applicant filed a cross-objection. The High Court allowed the appeal and set aside the order of the trial court granting to the applicant a maintenance of Rs. 3,000 per year and affirmed its finding on title and dismissed the cross-objection. The result was that the suit was dismissed in its entirety. The plaintiff applied for leave to appeal to the Supreme Court. The applicant originally appears to have confined the appeal to the question of title only as she made no specific reference in her petition for leave about the maintenance. She, however, made an application for amendment of her leave application whereby the question of maintenance was also sought to be the subject-matter of the appeal to the Supreme Court. The appeal satisfied the requirement of valuation but it was conceded that no substantial question of law was involved in it. The only point for determination, therefore, was whether the judgment, decree or order appealed from affirmed the decision of the court immediately below. The majority decision of the Full Bench took the view that the expression 'judgment, decree or final order appealed from' does not necessarily refer to the judgment, decree or final order of the High Court in its entirety but means that part of the judgment, decree or final order of the High Court which is the subject-matter of the proposed appeal. If the whole of the judgment, decree or final order is the subject-matter of the proposed appeal then obviously it is the whole of the judgment, decree or final order that has to be taken into consideration, but if only a part of the judgment, decree or final order of the High Court is challenged in the proposed appeal then it is that part alone which is covered by the expression "judgment, decree or final order appealed from." The reason for taking this view is given by Agarwala, J., who gave the leading judgment of the majority decision, as follows :

> "It may be observed that the enquiry about valuation is in respect of the subject-matter of the proposed appeal. The valuation of the subject-matter no longer in dispute in the proposed appeal is not to be taken into account. Again, the enquiry about substantial question of law is also in respect of the subject-matter of the proposed appeal and not in respect of the subject-matter not included in the proposed appeal. There is no reason why the affirmance or variance of the decision of the Court below should have to be seen in respect of the subject-matter with which the proposed appeal is not concerned .....

If the expression 'judgment, decree or final order appealed from' means that portion of the judgment, decree or final order of the High Court which is the subject-matter of the proposed appeal, it necessarily follows that the expression "decision of the court immediately below" must have reference to that portion of the decision of the court below which corresponds with the subject-matter of the proposed appeal. This must be so in the nature of things. When the question is whether in respect of the subject-matter of the judgment, decree or final order appealed from the decree of the High Court has affirmed or varied the decision of the court below, there is no point in looking at that portion of the decision of the court below with which we are not concerned and which is not the subject-matter of the proposed appeal." Thereafter, his Lordship made a distinction between a case in which the subject-matter of appeal to the Privy Council included the matter in which there was variance and a case in which the matter on which there was variance was not the subject matter of the proposed appeal and held that in the latter case there could be no appeal as of right. Applying these principles to the facts of the case under consideration his Lordships further held that, if the proposed appeal relates merely to the question of title to the property and does not relate to the question of maintenance allowance, there is no right of appeal, even though the valuation of the subject-matter is not less than Rs.

20,000, because there is no substantial question of law involved. Ultimately, the amendment application was allowed and leave to appeal to the Supreme Court was granted. P.L. Bhargava, J. though agreed with him in regard to the order proposed, gave a dissenting judgment. He did not agree with Agarwala, J. with regard to the interpretation of Article 133 of the Constitution of India and Section 110 of the Code of Civil Procedure and the view taken by him as regards the affirmance or variance of the decree. In that connection his Lordship observed as follows :

> "The appeal against the judgment and decree or order may be directed against the grounds upon which the formal expression of the adjudication is based, and in the appeal the determination of the rights of the parties with regard to all or any of the matters in controversy may be challenged. The extent to which the formal expression of the adjudication is or can be challenged in the appeal will determine the cope of the appeal, but it will have no bearing on the right of appeal against the judgment or decree. Thereafter, the right of appeal to the Supreme Court allowed by Article 133 of the Constitution is quite distinct and separate from the scope of the proposed appeal with reference to the matter in controversy arising therein." Referring to the question whether the expression 'appealed from' limits the expression 'judgment, decree or final order,' his Lordship observed as follows:
>
> "The said expression in Article 133 of the Constitution contemplates three separate documents, viz., the judgment which is the statement given by the Judge of the grounds of a decree or order, the decree or final order, which contains a formal expression of any adjudication which so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. The words 'appealed from' therefore, qualify the word 'judgment' as also the words 'decree or final order." And the expression 'judgment appealed from' will mean the judgment against which the appeal is proposed to be filed.

Similarly, the expression 'decree or final order appealed from' will mean the decree or final order against which the appeal is preferred. On account of the qualifying words 'appealed from' the said expression cannot be taken as referring only to that part of the judgment, decree or final order which deals with the particular matters in controversy in the proposed appeal." Thereafter his Lordship considered the question whether leave to appeal should be granted where the appeal is confined only to the affirmed portion of the decree and expressed his view in support of the desirability of granting leave With the following observation :

> "It may be argued that according to the interpretation which I have placed upon the expression 'where the judgment, decree or final order appealed from affirms the decision of the Court immediately below' an appellant will be entitled to a certificate even when he desires, to challenge in appeal only the concurrent findings of the two courts. In considering this argument we will have to disabuse our minds of the idea that the appeal is allowed against particular findings recorded by either or both the courts and to treat the appeal as distinct from the scope of the appeal.

As already pointed out above, under Article 133 of the Constitution of India an appeal is provided and has to be filed against the judgment, decree or final order and not against particular findings incorporated in the judgment. If the High Court grants the certificate prescribed by Article 133, it will have the effect of permitting an appeal to the Supreme Court and will not entitle the appellant to challenge the concurrent findings of fact if he is otherwise not entitled to do so. A certificate will not in any manner interfere with the discretion of their Lordships of the supreme Court to decide what matters are concluded by findings of fact and what matters can legitimately be raised in the appeal." The view taken by P.L. Bhargava, J. seems to me to be natural and consistent with the language employed by the framers of the Constitution and the Legislature and I fully agree with it. The view expressed by Agarwala, J. appears to be artificial and laboured and I cannot but make a notice of dissent with it.

37. Similar view has been taken on this point in the case of 1952 Mad 771 (AIR V 39) (Q) and the reason given by their Lordships are practically the same as given by Agarwala, J. in the case just referred to above. I have already dealt with this Madras case in the earlier portion of my judgment (See Para 23) and it is not necessary to refer to it any more. Suffice it to say that Rajamannar, C.J. who gave the judgment in this case was a party to the earlier Full Bench decision in 1946 Mad 539 (AIR V 33) (Y) in which a contrary view was taken.

38. The last view is expressed by the Nagpur High Court in the case of 1946 Nag 307 (AIR V 33) (Z 1). In that case the plaintiff instituted a suit for the partition, of his 1/4 th share in the joint family properties and for declaration that certain debts incurred by defendant 1, the karta of the joint family, were not binding on him. Apart from the other members of the joint family the creditors were also made parties. The suit was contested by the creditor-defendants. The trial court held that the plaintiff was entitled to his 1/4th share. As regards the debts it held that one of the two items of debts was not binding on him but he was liable to pay the other debt. The creditors-defendants filed an appeal to the High Court and the plaintiff filed a cross-objection. The defendant's appeal was dismissed and the plaintiff's cross-objection was allowed. The defendants then filed an application for leave to appeal to the Privy Council. Their Lordships interpreted the case of 1925 PC 60 (AIR V 12), to mean that the special leave limited the appeal strictly to the point on which there have, in fact, been variation and disallowed the appeal on the unrelated point on which the judgment was an affirming judgment, namely, the question of adoption, and hence they held that the appeal must be limited to the matter on which the two courts were at variance. I have already dealt with this point earlier and held that the appeal in the above Privy Council case was not limited to the amount of maintenance by their Lordships but it was confined to that matter as the counsel for the petitioner, in view of the concurrent findings on the other point, himself desired to do so.

39. On a very careful consideration of the language employed in Article 133(1) of the Constitution and Section 110 of the Code of Civil Procedure as well as the various authorities discussed above I hold in favor of the first view that if the judgment, decree or final order of the High Court varies a portion of the decree or order of the court immediately below, then a party is entitled as of right to go in appeal to the supreme Court against that portion of the decree or order, only in respect to which the High Court has concurred with the court below if the proposed appeal satisfies the requirements of valuation and it is immaterial whether the variation is in favor of or to the prejudice of the proposed appellant. In this view of the matter it is not necessary to

examine whether the proposed appeal in the case before us involves some substantial question of law. The result is that leave to appeal is granted and the usual certificate will be given to the petitioner. He is also entitled to the costs. Hearing fee Rs.150.

Das, C.J.

40. In this case my learned brother Choudhary, J., was kind enough to prepare his judgment first, and I have had the advantage of reading the judgment which he proposes to deliver. I was a party to the order as a result of which this case has come before a larger Bench, and I must confess that at that stage I was impressed by the reasons given by Rajamannar, C.J. in the Full Bench decision in '1952 Mad 771 (AIR V 39) (Q) and the reasons given by the majority of judges in the Full Bench decision of the Allahabad High Court in '1952 All, 492 (AIR V 39) (O).'

41. The question of the correct interpretation of the relevant provisions in Article 133(1) of the Constitution Section 109, Section 110, Civil Procedure Code with regard to the point under consideration in this case, is not one which is entirely free from difficulty, and I have still some doubt in my mind if the test laid down in '1941 Pat 269 (AIR V 28), is quite correct. Most of the other High Courts in India have now accepted a view, as expressed in their latest decisions, which is different from the view' expressed in '1941 Pat 269 (AIR V 28) (A). I have already referred to the Full Bench decisions of the Madras and Allahabad High Courts. The Bombay and the Lahore view also seems to be against the view expressed in '1941 Pat 269 (AIR V 28) (A). (See 1949 Bom 164 (AIR V 36) (S) and 1944 Lah 329 (AIR V 31) (T) and 1944 Lah 458 (AIR V 31) (U)). In Calcutta also a different view was expressed till Harries, C.J. (who gave the leading judgment in 1941 Pat 269 (AIR V 28), departed from the earlier view of the Calcutta High Court in 54 Cal WN 538 (H). In Nagpur also a different view was expressed in '1946 Nag 307 (AIR V 33) . The short and cryptic judgment of the Privy Council in '1925 PC 60 (AIR V 12), has been interpreted differently in different High Courts.

42. Speaking personally, I am inclined to agree with Rajamannar, C.J. in the principles which he laid down in '1952 Mad 771 (774) (AIR V 39) (Q) and for the reasons given by him. Even applying those principles, the petitioner in this case is entitled to a certificate. The High Court judgment varied the order passed by the insolvency court on two points, namely, (1) with regard to the "direction of the division of the second house, and (2) with regard to the order as to the reversion of the left over properties to the decree. By the proposed appeal the petitioner challenges the order of this Court, both with regard to the annulment of the deed of gift on which the two courts are in agreement as well as with regard to the direction leaving open the question of reversion of the left over properties to the donee, on which the order of this Court is at variance with that of the insolvency court. That being the position, the present case comes within the first two principles laid down by Rajamannar, C.J. 'at page 774' in '1952 Mad 771 (AIR V 39) (Q). The present case also comes within the principles laid down by Agarwala, J. in '1952 All 942 (AIR V 39) (O)'. Agarwala, J. laid down four principles 'at page 951' of the report, and the present case comes under principle (b) laid down by I him.

43. Therefore, I agree to the order proposed by my learned brother that the usual certificate for leave to appeal should be granted to the petitioner in this case, and I do not consider it necessary to add anything more to the very exhaustive survey and examination of the case-law on the subject which my learned brother Choudhary, J. has been good enough to make. I only express

the hope that if and when an occasion arises at a future date, there will be some pronouncement of the Supreme Court of India to settle the question once for all. The recognized practice with regard to the Privy Council was to apply for special leave, when leave to appeal was refused by the High Court; and that practice continues with regard to the Supreme Court of India.
The occasion for considering whether leave was wrongly refused may, therefore, seldom occur. The right of appeal given under Article 133(1) of the Constitution and Sections 109 and 110 of the Code of Civil Procedure is an important right and it is unfortunate that there should be so much divergence of judicial opinion on the question. That is the reason why I hope that on a suitable occasion there will be some pronouncement by the Supreme Court to set the matter at rest.

Ramaswami, J.

44. It was contended by Mr. Sushil Kumar Jha on behalf of the petitioner that the judgment of the High Court was not a judgment of affirmance within the meaning of Article 133(1) of the Constitution, and, therefore, the petitioner is entitled as a matter of right to get a certificate for leave to appeal to the Supreme Court. It was argued by learned Counsel that the High Court had varied the order of the insolvency court with regard to the left over properties. It was also contended that the High Court had varied the order of the insolvency court with regard to division of the house. The argument of Mr. Harinandan Singh on behalf of the opposite parties was that the judgment of the High Court is a judgment of affirmance and no leave to appeal ought to be granted to the petitioner unless a substantial question of law was involved. The argument was put forward that the order of the High Court with regard to the division of the house was an order in favor of the petitioner and was no longer the subject-matter of dispute in the proposed appeal to the Supreme Court. As regards the variation with regard to the left over properties, the contention of Mr. Harinandan Singh was that that question had no relevancy to the proposed appeal to the Supreme Court which was really concerned with the order of annulment. It was argued that the petitioner's right to claim the left over properties was not affected by the order of annulment and the petitioner could take recourse to proper proceedings for vindicating his claim. The question for determination in this case, therefore, depends upon the interpretation of Article 133(1) of the Constitution which states :

> "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 sums as may be specified in that behalf by Parliament of law; or
> (b) that the judgment, decree or final order involved directly or indirectly some claim or question respecting property of the like amount or value; or
> (c) that the case is a fit one for appeal to the Supreme Court;

and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law." On behalf of the petitioner the argument is put forward that the expression "decision of the court immediately

below" means the same thing as the expression "decree of the court below" and the true test to find out whether in a particular case the decree of the High Court is one of affirmance or not is to find whether the decision of the court below as a whole has been affirmed by the High Court and not whether the decision on the point or points left in dispute has been affirmed by the High Court. In support of his argument, Counsel relied upon the decision of the Full Bench in '1941 Pat 269 (AIR V 28) (A). The opposite view point was put forward by Mr. Harinandan Singh on behalf of the opposite parties. It was contended that the judgment of the High Court is a judgment of affirmance because the High Court affirmed the order of the District Judge with regard to the question of annulment and that is the main subject matter in controversy between the parties in the High Court and also in the insolvency court. It was contended by Mr. Harinandan Singh that in the proposed appeal to the Supreme Court the question of annulment was the principal matter in controversy and the judgment of the High Court on that subject-matter being a judgment of affirmance, there was no right of appeal to the petitioner under Article 133(1) of the Constitution. In support of his argument Mr. Harinandan Singh relied upon the decision of the Full Bench of the Madras High Court in '1952 Mad 771 (AIR V 39), and also upon the majority decision of the Full Bench of the Allahabad High Court in '1952 All 942 (AIR V 39) (O). In my opinion the argument put forward by Mr. Sushil Kumar Jha on behalf of the petitioner is correct. In my opinion, the words "appealed from" in the last paragraph of Article 133(1) do not restrict or qualify the meaning of the expression "judgment, decree or final order". The words "appealed from" are merely descriptive. The reason is that there could be no appeal from any particular item or subject-matter of a decree; the appeal lies against the whole decree as pronounced by the Court and not from certain portions of it. That was the view expressed by the Judicial Committee in '1926 PC 93 (AIR V 13) (C). At page 94 Viscount Dunedin observed:

> "The appellant's counsel strenuously urged that the appeal was not against the decree, but only against the items in the decree. This is a complete misunderstanding. An appeal must be against a decree as pronounced. It may be rested on an argument directed to special items, but the appeal itself must be against the decree, and the decree alone."

The word "decision" in Article 133(1) must, therefore, be construed to mean the decision of the trial court taken as a whole. In '30 Ind App 35 (PC), it was held by the Judicial Committee that the words "decision of the Court" in Section 596 of the Code of Civil Procedure must be construed to have the same meaning as attributed to the expression "decree" in the interpretation clause. I, therefore, consider that the true test of affirmance in Article 133(1) of the Constitution is to find out whether the decision of the trial court as a whole has been affirmed by the High Court and not whether the decision on any particular point or subject matter of controversy has been affirmed by the High Court. I respectfully agree with the reasoning and conclusion of Harries, C.J. in '1941 Pat 269 (AIR V 28) (A)'.

45. It was argued by Mr. Harinandan Singh on behalf of the opposite parties that the phrase

> "judgment, decree or final order appealed from" in second paragraph of Article 133(1) of the Constitution should be interpreted with reference to the phrase "subject-matter of the dispute" occurring in Article 133(1)(a). I am unable to accept this argument because there is no collocation or context between these two expressions. I see no reason why as a

matter of construction the words "judgment, decree or final order appealed from" should be read with reference to "subject-matter of the dispute" which occurs in an earlier clause namely Article 133(1)(a).

An argument similar to that of Mr. Harinandan Singh was the basis of reasoning in '8 Cal WN 294 . But the doctrine propounded in that case has been overruled by the Judicial Committee in '1925 PC 60 (AIR V 12) (E)'. I am unable, therefore, to accept the argument of Mr. Harinandan Singh on this point.

46. In '1952 Mad 771 (AIR V 39), Rajamannar, C.J. expressed the view that if the decree of the court of first instance is modified substantially by the decree of the High Court, there would be a right of appeal if the matter in respect of which there has been a modification was still a matter in dispute before the Supreme Court, but if the modification was in respect of a matter not comprised in the subject-matter of appeal to the Supreme Court, the petitioner was not entitled to leave as of right. 'At page 774' the learned Chief Justice states :

> "If the judgment or decree of the High Court varies the decision of the lower court in respect of a matter in controversy in the proposed appeal to the Privy Council, then there is a right of appeal not only to the persons against whom the variation has been made, but even to the party in whose favor the variation has been made. But it is necessary that the matter in respect of which there has been a variation should be the subject-matter of the proposed appeal to the Privy Council.
> "A matter in controversy cannot be split up or analysed or dissected into component parts or arbitrary divisions. The true test will be to determine the nature of the dispute or controversy.
> "If the matter in respect of which there has been a variation is not the subject-matter of the proposed appeal, then such variation would not confer a right of appeal. As regards matters unconnected with the matter in respect of which there has been a variation 'Ex hypothesi' this will be the case when the variation has been completely in favor of the applicant."

I am unable to accept this view as to the interpretation of Article 133(1) for the reasons which I have already expressed. 'At page 775' of the report the learned Chief Justice has said that unreasonable construction should not be adopted "if it was possible to take a reasonable view by taking the letter of the provision along with its substance". But I see no reason why the right of appeal given to the litigant under Article 133(1) should be cut down if the meaning of the language is plain. You cannot put in a constitutional provision like Article 133 words which are not expressed and which cannot be implied by any recognised principle of construction. That would obviously be the work of legislation and not of interpretation and is outside the province of the Court. With great respect, therefore, I differ from the view taken by the learned Chief Justice in '1952 Mad 771 (AIR V 39) (Q). For the same reasons I also differ from the view of the majority Judges in '1952 All 942 (AIR V 39) (O).

47. In my opinion, the decision of the Full Bench in '1941 Pat 269 (AIR V 28), is still good law. I

accordingly agree with the opinion expressed by Choudhary, J. as regards the interpretation of Article 133(1) of the Constitution and Section 110 of the Code of Civil Procedure and hold that the petitioner should be granted a certificate for leave to appeal to the Supreme Court.

Jamuar, J.

48. I also agree with the conclusions reached by my learned brother Choudhary, J. and with the reasons given by him. I have nothing further to add.

Kanhaiya Singh, J.

49. I agree.

Application allowed.

Cases Referred.

[1]1941 Pat 269 (AIR V 28)
[2]30 Ind App. 35 (PC)
[3]1926 PC 93 (AIR V 13)
[4]10 Haw. 398
[5]1925 PC 60 (AIR V 12)
[6]1928 Pat 609 (AIR V 15)
[7]1933 Pat 262
[8]54 Cal WN 538
[9]1950 Cal 341
[10]1941 All 66
[11]1950 Mad 124 (AIR V 37)
[12]1936 Pat 553
[13]1927 Cal 543 (AIR V 14)
[14]1935 Cal 146 (AIR V 22)
[15]1952 All 942 (AIR V 39) (FB)
[16]1936 Mad 881 (AIR V 23)
[17]1952 Mad 771 (AIR V 39)
[18]1929 Bom. 359 (AIR V 16)
[19]1949 Bom 164 (AIR V 36)
[20]1944 Lah 329 (AIR V 31) (FB)
[21]1944 Lah 458 (AIR V 31) (FB)
[22]1929 Pat 561 (AIR, V 16)
[23]1932 All 65 (AIR V 19) (SB) (W); 1952
[24]1932 Mad 46 (AIR V 19)
[25]1946 Mad 539 (AIR V 33) (FB)
[26]1948 Oudh 76 (AIR V 35)
[27]1946 Nag 307 (AIR V 33)
[28] 8 Cal WN 294
[29]1952 SC 60 (AIR V 39)