

*Judgment of the Lords of the Judicial Committee of the Privy Council on a Petition for special leave to appeal in the matter of Moti Chand and others v. Ganga Parshad Singh and another, from the High Court of Judicature for the North-Western Provinces Allahabad, delivered November 30th, 1901.*

Present :

LORD DAVEY.

LORD LINDLEY.

SIR FORD NORTH.

[*Delivered by Lord Davey.*]

IN this case their Lordships think that the High Court took a correct view of section 596 of the Civil Procedure Code, and rightly held that the case did not comply with the conditions prescribed in that section. The section is in these terms: "The amount, or value, of the subject-matter of the suit in the Court of First instance must be Rs. 10,000, or upwards, and the amount or value of the matter in dispute on Appeal to Her Majesty in Council must be the same sum, or upwards." Their Lordships think that the High Court were quite right in saying that the word "and" means "and," and not "or." In the present case the amount or value of the subject-matter of the suit in the Court of First instance, construing that in the manner most favourable to the proposed Appellant, was at the outside the amount for which he recovered his Decree, which was below Rs. 10,000, amounting, in round numbers, I think, to about Rs. 9,500 only. That really disposes of the question, because it does not fulfil both conditions.

But then Mr. Mayne suggests that their Lordships ought to give special leave to appeal. Now the practice of this Board in advising His Majesty

to exercise His prerogative, and to give special leave to appeal, is well known, and this Board does not advise His Majesty to exercise His prerogative in that manner unless there is some substantial question of law of general interest involved. In the present case there does not appear to be any such question of law involved. It appears to their Lordships that what is decided in the Court below is very fully stated in the Petition. It appears to have been a mere question of fact. The Court below thought that the Plaintiffs were entitled to a Decree. The High Court, not differing from the view of the facts taken by the Court below, thought that it also appeared from the evidence that the Plaintiffs were so far *participes criminis* in the fraud which was alleged that they could not recover against the other parties to the fraud, and on that ground they allowed the Appeal. Their Lordships cannot say, and Mr. Mayne very fairly could not say, that that involved any question of law at all, much less a substantial question of law of general interest. They therefore cannot see their way to advise His Majesty to grant the prayer of the present Petition.

Their Lordships desire only to make one further observation, and it is this: that where a party in an Indian case (and this observation is confined to Indian cases) comes to this Board, and asks for special leave to appeal, the matter being under the appealable value, their Lordships think that he should first apply to the Court below for a Certificate under the second part of section 600, namely, "that it is otherwise a fit one for Appeal to Her Majesty in Council." Section 598 prescribes that: "Whoever desires to appeal under this chapter to Her Majesty in Council must apply by Petition to the Court whose decree is complained of"; and section 600 prescribes what must be stated in the Petition, namely, "that the case fulfils the

“ requirements of section 596, or that it is  
“ otherwise a fit one for Appeal to Her Majesty  
“ in Council.” Their Lordships think it is a  
good rule to lay down, that where a party comes  
for special leave to appeal, the case being under  
appealable value, and, therefore, not an Appeal  
as of right, he should in the first instance apply  
to the High Court for leave to appeal, on the  
ground that it is otherwise a fit one for Appeal  
to His Majesty in Council. Their Lordships  
believe that no rule to that effect has been laid  
down in any previous case, and they, therefore,  
would not act upon it in the present case; but  
their Lordships desire it to be considered that in  
future that rule will be followed, without, of  
course, binding this Board not to advise His  
Majesty to exercise His prerogative in any  
special case, although that course has not been  
taken. As a rule, however, they think that that  
course ought to be followed.

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