

Privy Council Appeal No. 66 of 1927.
Allahabad Appeal No. 9 of 1916.

Shah Zahid Husain and others - - - - - *Appellants*

v.

Mohammad Ismail, since deceased, and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 13TH MARCH, 1930.

Present at the Hearing :

LORD BLANESBURGH.

LORD RUSSELL OF KILLOWEN.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD BLANESBURGH.]

In this case, on the 23rd July, 1923, as the result of an *ex parte* application by the appellants, their Lordships humbly advised His Majesty that special leave should be granted to the applicants to appeal to His Majesty in Council against a decree which had been made against them by the High Court of Judicature at Allahabad on the 22nd of February, 1916. The leave was so advised upon special terms as to the costs of the respondents, who are a very large body of holders of small properties in the *abadi* of the *zemindari* belonging to the appellants. The application was made by the appellants upon the ground that the decree against which they desired to appeal not only directly affected the properties claimed by the respondents, which did not themselves exceed in aggregate value the sum of Rs. 5,100, but that it indirectly affected the title of the appellants to other properties in the *abadi*, the aggregate value of which was far in excess of Rs. 10,000. An application for leave to appeal had on similar grounds been unsuccessfully made by the appellants to the High Court,

but their Lordships make no reflection adverse to the appellants upon the terms in which their further application for special leave to appeal was made to the Board.

The respondents, however, have, in their printed case, stated as their first reason for affirming the decree that special leave to appeal should not have been granted because, as they say, there is no proof that the order appealed against indirectly affected the appellants' title to any property at all. As the result of the full investigation into all the facts and circumstances of an extremely complicated case which, with the assistance of Counsel, their Lordships have now been able to make, they are quite satisfied that no plots of land in the *abadi* of the appellant's *zemindari* other than those claimed by the respondents are in fact affected by the decision appealed against. Indeed there is, in the judgment of the learned Subordinate Judge of Saharanpur, whose decree in their favour of the 27th September, 1913, the appellants seek to have restored by this appeal, a statement which proves that the other plots in the *abadi* to which the appellants have referred, stand, with regard to the *zemindars*, in a position quite different from those of the respondents.

In these circumstances this objection taken to the competence of the appeal, now that it is shown to be well founded, becomes of compelling importance. The respondents, a veritable crowd of people of slender means, have had their titles to their properties upheld by the decree of their own High Court. Only in the most exceptional circumstances would it be right to require them further to defend their title before the Board. No provision for their costs, however adequate, can be their sufficient protection against the risk involved.

It appears, accordingly, to their Lordships, that this appeal against them should not proceed further. Nor, as the objection to its competence is put in the forefront of their case, does it appear to the Board to be necessary that the respondents should be required by petition to apply that the Order in Council giving the special leave should be rescinded. In the circumstances it will suffice if their Lordships advise His Majesty, as they will humbly do, that on the facts as now disclosed this appeal should not be further entertained. In fulfilment of the offer made by the appellants when they obtained special leave to appeal they must now provide for the respondents' costs as between solicitor and client, and the order as to costs will be to that effect.



In the Privy Council.

SHAH ZAHID HUSAIN AND OTHERS

v.

MOHAMMAD ISMAIL, SINCE DECEASED, AND
OTHERS.

DELIVERED BY LORD BLANESBURGH.

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