

Privy Council Appeal No. 28 of 1943

Bai Shevantibai - - - - - *Appellant*

v.

Janardhan Raghunath Warick and others - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 22ND MAY, 1944

Present at the Hearing:

LORD MACMILLAN
LORD CLAUSON
SIR GEORGE RANKIN

[*Delivered by LORD CLAUSON*]

In the suit which gives rise to the present appeal the appellant, as assignee of the purchaser from a member of a joint family of one sixth share in the joint family property, sued for partition of the family property and to have her one sixth share allotted to her. She also sought, as assignee of a mortgage on another sixth share, to have her mortgage enforced; but this part of the suit resulted in a decree in the present appellant's favour for a trifling sum and the only question raised in regard to this part of the case relates to a question of costs. The question remaining in controversy is whether the appellant's claim is barred by the law of limitation. The value of the interest which the appellant claims is well under Rs.10,000, probably about Rs.3,000. The total value of the joint family property exceeds Rs.10,000. There is no controversy as to the identity or extent of the family property, or as to the right of partition to which the appellant would be entitled if the law of limitation were not a bar to her claim.

In the Court of first instance the claim was held to be barred by the law of limitation and the suit, so far as it related to the claim for partition, was dismissed. On appeal to the Appellate Court, that Court dismissed the appeal as well on the question of the present appellant's claim to partition, as also on the question of costs.

The appellant in due course applied to the Appellate Court for the usual certificate for leave to appeal to His Majesty in Council. The power of the Appellate Court to grant the necessary certificate turned upon the true construction, in its application to the present case, of s. 110 of the Civil Procedure Code which is as follows:—

“ 110. In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject matter in dispute on appeal to His Majesty in Council must be that sum or upwards

“ or the decree or final order must involve directly or indirectly some claim or question to or respecting property of like amount or value

" and when the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law."

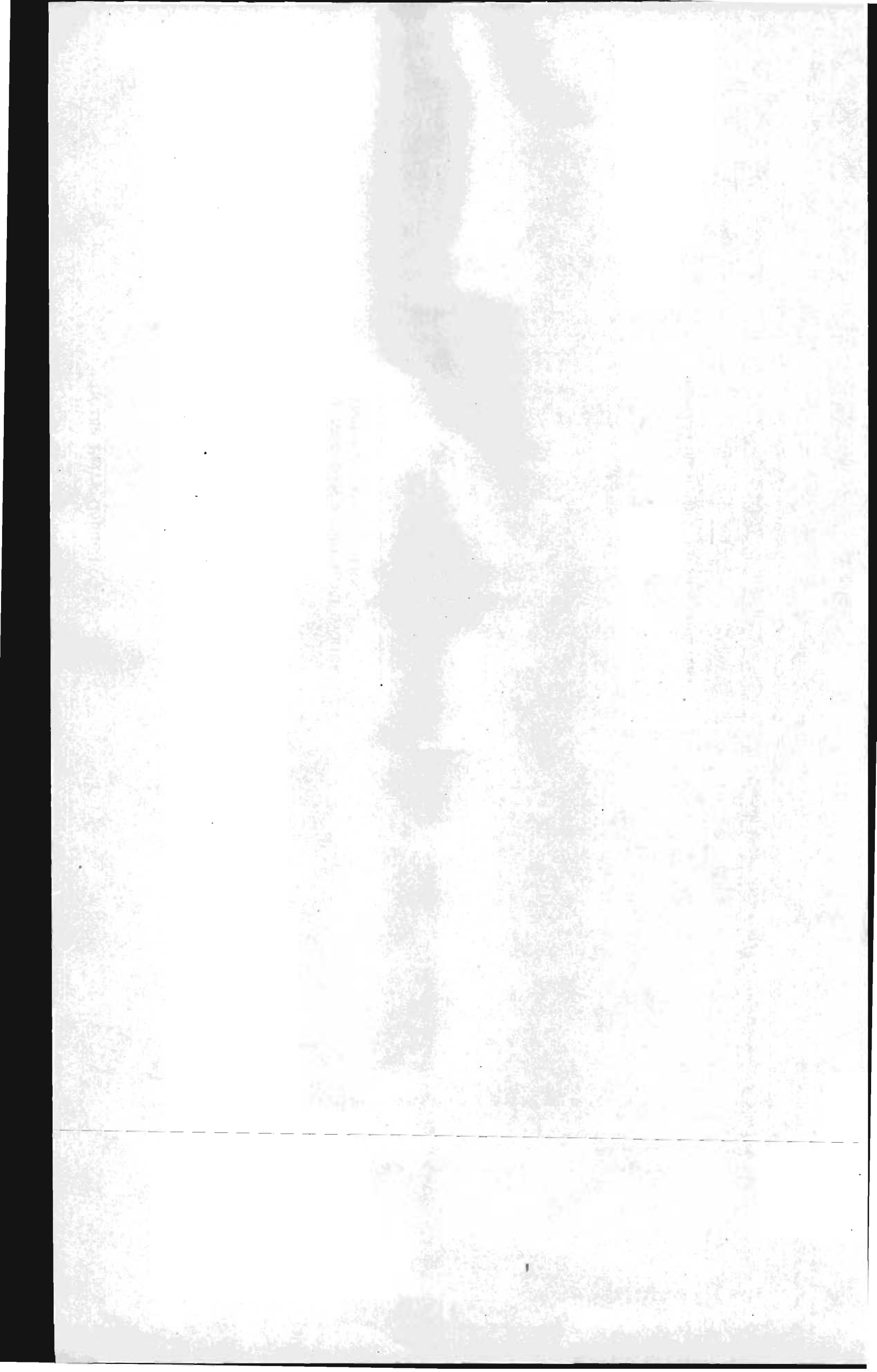
The Appellate Court took the view that there was no question in this case of such a character as to make it a fit case for the grant of a certificate under s. 109 (c), and dismissed the application on the ground that, the share of the appellant in the property of which she sought partition being less in value than Rs. 10,000, the subject matter of the appeal was below the minimum value required by s. 110.

The present appellant thereupon petitioned His Majesty in Council for special leave to appeal and leave was so granted but upon the terms that liberty should be reserved to the respondents to contend that such leave to appeal ought not in the circumstances of the case to have been granted. Upon the appeal coming before their Lordships, the respondents, in exercise of the liberty so reserved, contended, by way of preliminary point, that leave to appeal ought not in the circumstances of the case to have been granted. They contended that the High Court had correctly taken as the " value of the subject matter in dispute on appeal " the value of the interest claimed by appellant. They pointed out that this view of the matter accorded with that taken by the Bombay High Court in *De Silva v. De Silva* (6 Bom. Law Reporter 403), followed by the same High Court in *Raoji Bhikaji v. Laxmibai* (I.L.R. 44 Bom. 104) and in *Nariman Rastomji Mehta v. Hasham Ismayal* (I.L.R. 49 Bom. 149).

The appellant based the contention that the High Court had wrongly refused to grant a certificate on the second clause in s. 110, and argued that the decree in the present case involved directly or indirectly a question respecting the whole of the joint family property, admittedly of a value exceeding Rs. 10,000. They referred to the decision of the Calcutta High Court in *Lala Bhugwat Sahay v. Rai Pashupati Nath Bose* (10 Calcutta Weekly Notes 564) and to the decision of the Allahabad High Court in *Muhammad Asghar v. Abida Begum* (I.L.R. 54 All. 858).

Their Lordships are satisfied that the Appellate Court were correct in holding that the value of the subject matter in dispute on appeal to His Majesty in Council must be taken to be the value of the share of the joint family property in respect of which the appellant is claiming, and indeed this view was not disputed before their Lordships' Board. A further question, however, remains, namely whether the decree refusing partition on the ground that the claim is barred by the law of limitation " involves directly or indirectly some claim or question to or respecting " the joint family property as a whole. Their Lordships do not find it necessary to decide whether the words of the second clause in s. 110 can on their true construction ever refer to any property but that outside the suit. It is enough for the purposes of the present case to say that their Lordships feel no doubt that a question as to the title of the plaintiff to the share which he claims in the joint property does not become a question respecting the whole of the joint family estate merely because if his title is established it will result in the joint family estate being partitioned.

Their Lordships are thus of opinion that the High Court were right in refusing to grant the certificate, and that accordingly the appellant was not justified in asking this Board for special leave to appeal. The contention which the respondents were by the Order in Council of the 7th March, 1940, given liberty to bring forward thus succeeds. In accordance with their Lordships' practice in analogous cases (see *Zahid Husain v. Mohammad Ismael* (57 I.A. 186) and *Mukhlal Singh v. Kishuni Singh* (57 I.A. 279)) no petition to rescind the leave to appeal will be required. Their Lordships will humbly advise His Majesty that the appeal be dismissed. The appellant will be ordered to pay the costs of respondents 8 and 9, who alone appeared.



In the Privy Council

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DELIVERED BY LORD CLAUSON

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