APPELLATE CIVIL.

Before Sir Stanley Batchelor, Kt., Acting Chief Justice, and Mr. Justice Heaton.

ANANT NARAYAN DESHPANDE *alias* ANANT DATTATRAYA BOPARDIKAR (ORIGINAL DEFENDANT No. 1), APPLICANT *v.* RAMCHANDRA GANGADHAR DESHPANDE AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 2), OPPONENTS.*

1918. *February* 6.

Civil Procedure Code (Act V of 1908), section 110, Order XLV, Rule 5—Leave to appeal to the Privy Council—Certificate—Second appeal—Substantial point of law—Dispute as to the value of property involved—Finding of the trial Judge acquiesced in—Finding cannot be re-opened for the purposes of a certificate.

In an application for leave to appeal to the Judicial Committee of the Privy Council in a second appeal, the applicant contended that the appeal involved a substantial point of law and asked for a remand to the lower Court for enquiry as to the amount or value of the subject-matter under Order XLV, Rule 5 of the Civil Procedure Code, 1908, on the ground that a dispute between the parties had arisen on the point. The trial Judge had, on enquiry, found that the value of the property was Rs. 4,000 and this finding was acquiesced in by the applicant till the disposal of the second appeal.

Held, that the applicant was concluded by the result of the enquiry already made and he could not be allowed to re-open a finding as to the value of the property in order to provide him with the means of taking the litigation to the Privy Council.

APPLICATION praying for leave to appeal to His Majesty's Privy Council against the decision of the High Court in Second Appeal No. 433 of 1916.

The facts material for the purposes of this report are fully stated in the judgment.

Jayakar with *D. A. Tuljapurkar*, for the applicant.

M. V. Bhat, for opponent No. 1.

BATCHELOR, Acting C. J.:—The present applicant, who was the first defendant in the original suit, has obtained a Rule to show cause why he should not be allowed to

* Civil Application No. 622 of 1917.

1918.

ANANT NARAYAN v. RAMCHANDRA GANGADHAR.

appeal to the Judicial Committee of the Privy Council against our judgment of the 7th February 1917. The suit was filed to obtain possession of certain property, and for an injunction restraining the 1st defendant from interfering with the plaintiff's possession. The only contested matter with which we are now concerned, is the adoption of Datto by Savitri, his aunt. It appears that in 1864, Savitri went on pilgrimage with her brother Dadambhat and his nephew Datto, and in February 1864, she purported to adopt Datto, who, according to her account, was given in adoption by Dadambhat. In 1879, Datto, a married man, had a son, who is the present applicant, the 1st defendant. There was prolonged litigation concerning the validity of this adoption during the years 1882 and 1888. Ultimately in 1891, Savitri again went through the ceremonies appropriate to the adoption of Datto. Indeed the lower Courts have found, and in our judgment we accepted that finding, that there was no valid adoption of Datto in 1864, but that the adoption must be referred to the ceremonies gone through by Savitri in 1891.

The learned counsel for the present applicant does not seek to disturb this finding, but contends that upon the assumption that the adoption was made in 1891, his client has a substantial point of law under section 110 of the Civil Procedure Code. That point of law is that, as the applicant contends, when a Hindu married man is adopted, a son born to him prior to the adoption passes with him into the adoptive family, and his rights are to be ascertained upon that footing. The contention is that under Hindu law, the son of the adopted man does not remain in his natural family. Precisely the opposite was decided by this Court in *Kalgavda Tavanappa* v. *Somappa Tamangavda*.[a] Mr. Jayakar, however, contends that the question is a

[a] (1909) 33 Bom. 669.

substantial question of Hindu law, such as would justify the granting of a certificate to his client. Assuming that that argument is well-founded, and it is unnecessary to pronounce whether it is so or not, the applicant has still to satisfy another condition imposed by section 110 of the Code, that is, he has to satisfy us that the amount or value of the subject-matter of the suit in the Court of first instance was Rs. 10,000 or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council is the same sum or upwards. Mr. Jayakar admits that at present he is not in a position so to satisfy us, but he contends that under Order XLV, Rule 5, he is entitled to an order remitting the case to the lower Court for inquiry as to the amount or value of the subject-matter, seeing that a dispute upon this point has arisen between the parties. But I do not think that the present applicant can now be heard to say that there is a dispute upon this point which would justify an order of remand. In the trial Court Issue No. 8 framed by the learned Subordinate Judge was, what is the value of the claim for the purpose of assessing pleader's fees? In other words, that issue raised the exact question, what was the value or amount of the subject-matter of the suit. The learned trial Judge decided that this value was Rs. 4,000, and it is instructive to notice the reasons upon which that determination is based. The trial Judge says "the parties have said nothing, nor have they given any evidence on this issue. Taking into consideration the assessment and the area of the suit lands and also the market value of the house in dispute, I find that the value of the suit properties for the purpose of assessing the Vakil's fee is Rs. 4,000." In other words, though a distinct issue as to the value of these properties was raised by the defendants, they did not elect to give any evidence whatever upon it. They failed in the

1918.

ANANT NARAYAN v. RAMCHANDRA GANGADHAR.

trial Court, and it was they who appealed to the District Court, yet in the District Court, they made no objection to the trial Judge's finding upon this issue. On the contrary they clearly acquiesced in it, as is shown by their own estimate of the value of these properties. This estimate was the Rs. 4,000, which had been determined by the trial Judge. Similarly, in the appeal before the Court, no question was raised as to the value of the properties involved in the suit. In these circumstances, it seems to me that it is too late for the 1st defendant to reopen a finding which he has consistently acquiesced in, in order now at the eleventh hour to provide him with the means of taking this litigation to the Privy Council. I think he ought to be held to be concluded by the result of the inquiry which has already been made. On these grounds, I would refuse the certificate and discharge the Rule with costs.

HEATON, J.:—I also would refuse a certificate. I think that there is a dispute between the parties as to the amount or value of the subject-matter of the suit, a dispute, that is, of the kind provided for in Rule 5 of Order XLV of the Code. That being so, it is for us to determine whether we think fit to refer this dispute to the Court of first instance. Personally I do not think fit to make any such reference. From the reasons stated by my learned brother it is clear that the point has already been decided, and the decision has been accepted by that very party who now wishes to obtain a very materially different decision on the same point. I am wholly disinclined to, in any way, encourage or facilitate efforts of this kind.

Rule discharged.

J. G. R.