

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition to discharge Order rescinding previous Order granting leave to Appeal in the case of Mohun Loll Sookul and others v. Debee Doss Dutt and others, from the Sudder Dewanny Adawlut of Calcutta; delivered on the 27th November, 1861.*

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Present :

LORD JUSTICE KNIGHT BRUCE.

SIR EDWARD RYAN.

LORD JUSTICE TURNER.

SIR JOHN TAYLOR COLERIDGE.

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SIR LAWRENCE PEEL.

SIR JAMES W. COLVILLE.

IN this case leave to appeal was granted by an Order of the 22nd February, 1860, but it was provided by the Order that the leave to appeal should be null and of no effect unless satisfactory evidence should be supplied by the Appellants to the Registrar of the Sudder Court, that the real or market value of the land in dispute exceeded the sum of 10,000 rupees. By an Order of the 26th June, 1861, the Order of the 22nd February, 1860, was discharged. The application now before us is to restore the Appeal, and to discharge the Order of the 26th June, 1861, with costs.

The Petition on which the Order of the 22nd February, 1860, was made, alleged that the real or market value of the land in dispute exceeded the sum of 10,000 rupees, the prescribed limit under which the Sudder Court has no power to grant leave to appeal, but that the amount laid in the plaint as the value of the suit for the fiscal purposes being only 3,572 rupees 10 annas 9 pice, three times the amount of the Sudder jumma or rent, the Petitioners were prevented by the rules of practice

of the Sudder Court from obtaining therein the leave to appeal.

The Petition on which the Order of the 26th June, 1861, was made, alleged that the Respondent, in her answer, insisted that the suit ought to have been valued according to Regulation 10 of 1829, that is, at the real or market value of the land, and that the Appellants after this answer filed a Supplemental Plaintiff, stating that the suit had been by mistake valued at three times the Sudder jumma, and that it should have been valued at 4,300 rupees, the real or market value of the land, but that the stamp being sufficient to cover a claim of 5,000 rupees, no objection could exist on that head; and this Petition further stated, that the Petition on which the Order of the 22nd February, 1860, was made, had omitted to state the Respondent's Answer and the Supplementary Plaintiff, and it also stated that the real or market value of the lands did not exceed the sum of 10,000 rupees.

In this state of circumstances, it was of course to discharge the Order of the 22nd February, 1860, that Order having been obtained *ex parte*, and appearing to have been obtained upon an inaccurate statement of the facts, and the Order was discharged accordingly; but it being considered that there had been no intentional misrepresentation on the part of the Appellants, the Order of the 26th June, 1861, by which it was discharged, was made without prejudice to any further application by the Appellants on notice to the Respondent.

The case, therefore, now comes before us unprejudiced by what passed on the previous applications, and it now appears that the Supplementary Plaintiff did not allege the 4,300 rupees to be the real or market value of the land, but stated it to be the auction price of the land, referring, of course, not to any then present auction, for there was none, but to some past auction at which the property had been bought, and meaning, no doubt, to refer to the auction mentioned in the Plaintiff; and it further appears that the Appellants have laid before the Registrar of the Sudder Court satisfactory evidence that the real or market value of the land exceeds 10,000 rupees.

As the case now stands, therefore, there was no fraud practised upon this Court in obtaining the

Order of the 22nd February, 1860, and the condition on which that Order was granted has been fulfilled. There would seem, therefore, *primâ facie*, to be no ground for now refusing to restore the Appeal.

But it was said for the Respondents that the value of the land in dispute was untruly stated in the Plaint in fraud of the revenue laws of India, and that leave to appeal ought not, therefore, to be granted. Their Lordships are far from saying that if they were satisfied that any such fraud was intended they would be disposed to grant the least indulgence to any party in any way participating in it, but in this case they are satisfied that whatever misapprehension there may have been, there was no such fraud intended. It was a mistake on the part of the Court, no less than of the Appellants, to allow the cause to proceed upon such a representation of the value as was contained in the Supplementary Plaint, and their Lordships take this opportunity of suggesting that the terms of the Regulation upon the subject of value should be carefully attended to. They think that as this case now stands, the Order applied for cannot be refused upon the ground suggested.

It was asked by the Respondent that she might be at liberty to go into evidence on the question of value, but their Lordships are not disposed to deviate in this respect from their original Order, which was carefully and designedly confined to evidence to be adduced by the Appellants, with a view to prevent the introduction, for the purpose of a merely fiscal regulation, of a contested issue on the question of value, a result which, in their Lordships' judgment, ought in all cases, as far as justice will permit, to be avoided.

The Petition before us asks that the Order of the 26th June, 1861, may be discharged with costs, but their Lordships think that there should be no costs on either side.

The Order, therefore, which their Lordships will humbly recommend to Her Majesty to be made on this application, will be simply to discharge the Order of the 26th June, 1851, and to restore the Appeal.

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