

1969

Present : Sirimane, J., and de Kretser, J.

THE SINHALESE FILMS INDUSTRIAL CORPORATION LTD.
Petitioner, and H. M. C. MADANAYAKE, Respondent

*S. C. 318/69—Application for Conditional Leave to appeal to the
Privy Council*

*Appeals (Privy Council) Ordinance (Cap. 100), Schedule, Rule 1 (a)—“ Final
judgment ”.*

Plaintiff's claim for specific performance of an agreement for the sale of certain immovable property was dismissed by the Supreme Court on appeal, and the case was sent back to the District Court with directions to assess the amount to which the plaintiff would be entitled as compensation in respect of improvements effected by him on the property.

Held, that the judgment of the Supreme Court was a final judgment within the meaning of Rule 1 (a) of the Schedule to the Appeals (Privy Council) Ordinance and that the assessment of the amount of compensation was only a subsidiary matter.

APPPLICATION for conditional leave to appeal to the Privy Council.

B. J. Fernando, for the plaintiff-petitioner.

H. W. Jayewardene, Q.C., with *Ben Eliyatamby*, for the defendant-respondent.

Cur. adv. vult.

October 4, 1969. SIRIMANE, J.—

This is an application for Conditional Leave to appeal to the Privy Council.

The plaintiff claimed that he was entitled to specific performance of an agreement for the sale of immovable property. That was his principal claim. In the event of that claim being disallowed, he prayed for compensation for certain improvements that he had effected on the property of which he was in possession.

The District Court held that the plaintiff was entitled to specific performance and, therefore, did not assess the quantum of compensation to which the plaintiff might have been entitled had the plaintiff's principal claim failed.

In appeal, this Court reversed the finding of the District Court and held that the plaintiff was not entitled to claim specific performance. A decree has been entered on that basis. This Court also decided on the improvements for which the plaintiff was entitled to compensation and sent the case back to the District Court with directions to assess the amount to which the plaintiff would be entitled.

The plaintiff applies for Conditional Leave to Appeal to the Privy Council against the judgment refusing specific performance, and the defendants object.

It is contended for the defendants that the judgment of this Court is not a final judgment within the meaning of Rule 1 (a) of the Schedule to the Appeals (Privy Council) Ordinance, Chapter 100. Whether a judgment is final or not in relation to the matter in dispute between the parties is a question of fact. But it is not always an easy question to decide.

In *Perera v. Mohamed Yoosof*¹ relied on by the defendant, the plaintiffs claimed that the land sold to the defendant's predecessors was subject to a fidei commissum in their favour; there were other questions involved, e.g., questions relating to improvements, compensation and damages. The parties had agreed that certain issues should be tried first.

The District Court held that there was no fidei commissum, and that the defendant had acquired title by prescription. In appeal it was

¹ (1931) 32 N. L. R. 285.

held that there was a valid *fidei commissum*, and the case was sent back for a decision on the other matters. In an application for leave to appeal Lyall Grant, J. (with whom Drieberg, J. agreed) held that the judgment of the Supreme Court was not a final judgment. He said—

“ In the present case very much more remains to be done than mere accounting ”

and made it clear that the view expressed on the question of the finality of the judgment referred to the facts of that case only.

Thereafter this question had been referred to a Bench of three Judges in *Mohamed Sheriff v. Muttunatchia*¹.

Garvin, J. said in the course of that judgment—

“ Now, there is ample authority for the proposition that a judgment of this Court may be a final judgment within the meaning of Rule 1 (a) notwithstanding that before the action or proceeding is completely disposed of some further inquiry may be necessary, such, for instance, as taking of an account or the computation of the amount payable by one party to the other upon the basis of their respective right or rights as determined by the judgment of this Court.”

He also said—

“ Similarly, an order which finally determines the rights of the parties, though it does not completely dispose of the action in that it necessitates further proceedings upon the basis of the rights as determined by the judgment in appeal, may be a final judgment.”

Drieberg, J. was one of the Judges in that case.

That decision was followed in *The Ceylon Exports Ltd. v. Abeyesundere and another*². The Appeal Court decided the question of title and sent the case back to the lower Court for further inquiry as to the precise identity of certain parcels of land, and whether the defendant was entitled to compensation. The Court held that the principal point in issue was the question of title, and the decision on that point was a “ final judgment ”.

Mr. Jayewardene, for the defendants, also relied on a decision of the Privy Council in a case from Rangoon, *Abdul Rahuman v. Cassim and Sons*³, but I think the facts in that case are quite easily distinguishable. A Company brought a suit for damages against two named defendants, but became insolvent during the pendency of the suit. According to the procedure of the courts in that country,

¹ 33 (1932) N. L. R. 379.

² (1933) 13. C. L. R. 80.

³ (1963) A. I. R Privy Council 38.

a Deputy Registrar had directed that the Official assignee "be brought on the record as plaintiff". The Official Assignee stated that the insolvent had not furnished him with security, and the case had been placed before the Judge for an order of dismissal, which was accordingly entered. There was, therefore, no adjudication at all of the rights of the parties. The Company appealed against the order of dismissal and contended that it was entitled to continue the suit as the claim for damages was not property which vested in the assignee under the Insolvency Act. The High Court thereupon set aside the order of dismissal and remitted the case for trial on the merits.

One of the defendants applied for leave to appeal to the Privy Council against this order. It was in these circumstances that the Privy Council said (at page 60) :

"If, after the order, the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it under section 109 (a) of the Code."

But that very judgment shows that when "the cardinal point" in a case is decided and only subsidiary points remain for decision, an appeal would lie.

In the present case, only the question of the quantum of compensation remains to be determined. If the petitioner is satisfied with the amount awarded, it would be futile for him to appeal against that order and an appeal against the present judgment at that time may very well be out of time as provided by Rule 2 of the Schedule to Chapter 100.

We might also mention that when Counsel for the defendant expressed a fear that he may have to face another appeal to the Privy Council on the quantum of damages, plaintiff's Counsel gave an undertaking that there would be no such appeal as his real claim was one for specific performance.

We are of the view that the finality contemplated in Rule 1 (a) of the Schedule to Chapter 100 refers to the finality of "the matter in dispute", which must exceed Rs. 5,000 in value. It does not mean that in every case the party affected by the judgment must await the assessment of the amount of compensation which is a subsidiary matter, and does not affect the judgment sought to be appealed against.

We think that the application should be allowed, and Conditional Leave to Appeal is granted subject to the usual conditions.

The petitioner is entitled to costs of this application.

DE KRETZER, J.—I agree.

Application allowed.