

(1962) 01 MAD CK 0018

In the Madras High Court

Case No : S.C. Petition No's. 121 and 122 of 1961

A. Rangaswami Iyengar

APPELLANT

Vs

Pattammal alias Rajalakshmi Ammal and Another

RESPONDENT

Date of Decision : 25-01-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110
Constitution of India, 1950 — Article 133(1), 216, 227

Citation : AIR 1962 Mad 490 : (1962) 75 LW 480

Hon'ble Judges : Veeraswami, J;Ganapatia Pillai, J

Bench : Division Bench

Judgement

Veeraswami, J.

(1) These are petitions for leave to appeal under Article 133(1) of the Constitution from the judgment of a Division Bench of this Court, to which

one of us was a party, reversing the orders of Basheer Ahmed Sayeed, J., by which the learned Judge, on appeals had himself allowed them, set-

ting wide the orders of the court of the learned Subordinate Judge of Chingleput and the execution sale held in September 1954, in favour of the

first plaintiff. The first plaintiff and her daughter, the second plaintiff, who were the respondents, obtained a maintenance decree against the

petitioner, the husband of the former and the father of the latter. The question of setting aside the sale in execution of the decree turned upon

whether there was default on the part of the first plaintiff under Order 2i Rule 86 Civil-Procedure Code, and depended upon the true scope of the

order dated 23-3-1955 of the Subordinate Judge in I. A. No. 230 of 1954 permitting her to bid and set off the total arrears due to both the

plaintiffs under the decree. The executing court considered that it was a case of

joint decree and that although the first plaintiff applied for permission to bid and set off and permission was granted to her alone, the amount that was intended to be set off was the entire amount and not the amount due to her alone. Basheer Ahmed Sayeed. J., differed from that court and on the view that it was not a joint decree, held that it was only the amount due to the first plaintiff that was Permitted to be set off. On further appeals, under the Letters Patent, the Division Bench felt that the question was not so much whether the decree was a joint decree and came to the conclusion, with reference to the terms of the affidavit and petition filed by the first plaintiff for herself and as next friend of her minor daughter for leave to bid and set off, that the entire amount due to both the plaintiffs under the decree was allowed to be set off. The result was the Division Bench restored the orders of the court of first instance upholding the execution sale, though for different reasons.

(2) Leave to appeal was sought first under Article 133(1)(a) on the basis that the judgment of the Division Bench was a reversing judgment. The suit out of which the appeals arose having been instituted prior to January 26, 1950, the test of pecuniary value of the subject-matter is undoubtedly satisfied, the value at material times being above Rs. 10,000. Equally is it clear that the judgment of the Division Bench in point of fact reversed the orders of Basheer Ahmed Sayeed, J. Nevertheless, the point is whether the judgment of the Division Bench sought to be appealed against being that of the High Court, notwithstanding that it reversed the decision of Basheer Ahmed Sayeed, J., is not one of affirmance because the decision of the Court immediately below the High Court could only be that of the learned Subordinate Judge. In other words, what is the ambit and effect of "the decision of the Court immediately below" in Article 133(1). The same phraseology is also found in section 110 Civil Procedure Code. Though at first sight it may not appear so, Article 133(1) closely read as a whole, to our minds, postulates that where the High Court in relation to the decision appealed against is not the court of first instance, the nature of the judgment of the High Court appealed against as to whether it is one of affirmance or reversal, has to be ascertained for the purpose of the Article only with the reference to the decision of the court immediately below it and not to the judgment of a single Judge of the High

Court. This position is necessarily, in our opinion, explicit in the words "the decision of the Court immediately below" and is irresistible from the set up of the High Court under the Constitution and the provisions of the CPC as to the gradation of Civil Courts and the nature of the appellate jurisdiction of the High Court under the Letters Patent.

(3) Under Article 216 of the Constitution, the High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint and under Article 215 every High Court shall be a court of record. Under Article 227, the High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises its jurisdiction. The next Article deals with the power of the High Court to withdraw to its file any case pending in a court subordinate to it on the grounds mentioned therein. Chapter VI of Part VI of the Constitution contains provisions regarding courts subordinate to High Courts. A scrutiny of these articles makes it clear beyond doubt that the High Court functions as such and a single Judge sitting in second appeals is as much a High Court as a Division Bench disposing of appeals under the Letters Patent from judgments in such second appeals. There is no warrant or room in the provisions of the Constitution to refer a Judge of the High Court as a Court below that court whatever the nature of the jurisdiction he may exercise at a particular time or in a case or appeal.

We think therefore, that "the court immediately below" in Article 133(1) refers to a Court which is subordinate to the High Court. This view is further supported by the provisions of the Civil Procedure Code. That the same words in section 110 of the Code refer only to courts subordinate to the High Court is clear from a reference to section 3 of the same Code which provides for gradation of Courts subordinate to the High Court.

Nowhere in the Code is any provision made for an appeal from a single Judge of the High Court to a larger Bench of Judges of this Court.

Sections 113 and 115 of the Code make it further clear that "the court immediately below" has reference to the Court only subordinate to the High Court. The provision for appeals from the judgments of a single judge under clause 15 of the Letters Patent in the classes of cases mentioned therein does not certainly in itself, and it has never been held, so, have the effect of an appellate Court, as such, within the High Court.

(4) It is, however, contended for the petitioner that the words "the decision of the court immediately below" in Article 133(1) mean no more than,

in the context of the instant case, the decision of a single Judge which is reversed. We are unable to accept this view of the import of those words.

Article 133(1) itself uses the words "a High Court" and "a Court". This distinction between "a High Court" and a "Court" is also to be found in

some of the other articles of the Constitution of which a few have already been noticed. Even if we equate the word "Court" to "a judge" we cannot

justifiably hold that he is "below" or "immediately below" any other Bench of Judges disposing of appeals under the Letters Patent from his

judgments. It is manifest that we can attribute no such sense to the words "the court immediately below" in section 110 CPC and we see no reason

to take a different view of the identical words in Article 133(1) of the Constitution. In our opinion, the decision of a single Judge of this court which

is reversed by a Division Bench of the same court under the Letters Patent is not a decision of "the court immediately below" within the meaning of

Article 133(1) of the Constitution.

(5) In taking the above view, we also feel fortified by authority. Debendra Nath Das v. Bibudhendra Mansingh, ILR 43 Cal 90: AIR 1916 Cal

973, seems to us to be directly in point where Jenkins, C. J., and Chatterjea, J., upheld the principle that a single judge in circumstances as in this

case, is not a court "immediately below". There a judgment of a single Judge, which reversed the decree of a lower appellate court was itself

reversed by the same High Court on appeal under the Letters Patent. Jenkins, C. J., pointed out that the result of the reversal under the Letters

Patent was that the only effective judgment of the High Court affirmed the decision of the court below. The reason was put thus:

This appears to me to be the true result of the Letters Patent and the Code, for, the Code makes no provision for an appeal within the High

Court, that to say, from a single Judge of the High Court. This right of appeal depends on Clause 15 of the Charter.

And here I may point that a judge sitting alone is not a Court subordinate to the High Court but performs a function directed to be performed by

the High Court (clause 36 Letters Patent). And thus no decision of a single Judge can be revised u/s 115 of the Code.

(6) We are in respectful agreement with this reasoning which, as we think, with equal force, governs the construction of the words in question in

Article 133(1) of the Constitution. Mootham. C. J., and Srivastava, J., in *Deoki Nandan Vs. State of U.P. and Others*, , were of the same view,

though, of course, the learned Judges went further and considered that no real distinction could be drawn between a judge sitting singly in the

exercise of original jurisdiction and in the exercise of appellate jurisdiction and that in either case he was exercising a function which was directed to

be performed by the High Court. They said,

It is logically untenable to hold that the High Court is not one Court and, if that be so. then, the court immediately below within the meaning of

clause (1) of Article 133 of the Constitution must be a Court other than the High Court.

(7) So far as the position of a single Judge sitting on the Original Side is concerned, a Division Bench of this Court consisting of Ramaswami and

Subrahmanyam, JJ., in *S. RM. AR. S. SP. Sathappa Chettiar Vs. AR. RM. Umayal Achi and Another*, took a different view and thought that the

High Court on the Original Side presided over by a single Judge is the court immediately below the High Court on the appellate side. We are not

called upon in this case to express our opinion, if we may say so with due respect, as to the propriety or otherwise of this view. There the learned

Judges were concerned with a petition for leave to appeal from a judgment of a Division Bench on appeal under the Letters Patent confirming the

judgment of a single judge sitting on the original side. With reference to this case it suffices to say that the learned Judges themselves, though they

were not concerned with the point, expressed their agreement with the principle of *Debendranath Das. v. Bibudhendra Mansingh*, ILR 43 Cal 90:

AIR 1916 Cal 973, and *Sk. Wahid-ud-Din v. Makhan Lal*, AIR 1944 Lah 458, and opined that the High Court when presided over by a single

Judge and exercising its appellate jurisdiction, was not a Court immediately below the Division Bench of the High Court to which an appeal might

be preferred under the Letters Patent from his judgment. The same learned Judges also recorded their dissent from *Kishanlal v. Vithal*, (S) AIR

1956 Nag 276. in the last case, the Nagpur High Court was of the view that a single Judge by the leave granted by him created a superior Tribunal

for reconsidering his own decision and should to the extent of its reversal be treated as a court below the High Court. With respect, we are unable

to share this view particularly in regard to the effect of the leave granted by a single Judge. It follows from our discussion so far that for purposes of

Article 133(1) the judgment of the Division Bench against which leave to appeal is sought was in effect so far as this High Court as such is

concerned, one of affirmance because as the only effective judgment of this High Court, it restored the orders of the court of first instance

upholding the execution sale.

(8) This, therefore, leads us to the next argument for the petitioner that the proposed appeals involve a substantial question of law. But it is obvious

that no question of construction of Order 21 Rule 86 of the CPC arose before the Division Bench, and, as will appear from its judgment, the

decision that the executing court granted leave to bid and set off the entire amounts due to the plaintiff under the decree in their favour was arrived

at from and rested on the terms of the affidavit and petition filed for the purpose and the orders made thereon by the court of first instance. In our

opinion, no substantial question of law at all is involved.

(9) The petitions are dismissed with costs in one of them.

(10) Petitions dismissed.