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In the Madras High Court

A Sonachalam Pillai and Others — APPELLANT

Vs

Kumaravelu Chettiar and Others — RESPONDENT

Date of Decision : 16-11-1923

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 2

Citation : AIR 1924 Mad 597 : (1924) ILR (Mad) 316 : 79 Ind. Cas. 109 : (1924) 19 LW 427 : (1924) 46 MLJ 138

Hon'ble Judges : Waller, J;Krishnan, J

Bench : Full Bench

Judgement

Krishnan, J.—This is an appeal under Clause (15) of the Letters Patent against the order of Wallace, J. sitting as a single Judge in the

Admission Court, refusing to stay execution of the decree in O.S. No. 2 of 1920 on the file of the Subordinate Judge''s Court of Tuticorin pending

disposal of Appeal No. 232 of 1923 which has been filed against that decree and which has been admitted and is now pending in this Court. The

suit was brought by certain Vaniyars of Tiruchendur in the Tinnevelly District for a declaration that they were entitled to enter the well-known

temple there and go up to the figure of the Nandi in front of the inner shrine and for an injunction to restrain the Trustees and others from preventing

them from doing so. The suit was decreed by the Subordinate Judge in their favour, and against that decree Appeal No. 232 of 1923 has, as

already stated, been filed in this Court by the Trustees and others.

2. An application was made to Wallace, J. for stay of execution of the decree pending the disposal of the appeal and that having been refused, this

present appeal is filed against that order.

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3. A preliminary objection is taken to the appeal on the ground that no appeal lies under Clause (15) of the Letters Patent against an order refusing

to stay the execution of a decree. The decision of this question turns on the meaning to be given to the word ""judgment"" in Clause 15 of the Letters

Patents There is nothing in the Letters Patent itself to enable one to say what the exact meaning of the term ""judgment"" is and what orders would be

covered by that term. The word ""Judgment"" is defined in Section 2 of the CPC as meaning ""the statement given by the Judge of the grounds of a

decree or orders"" passed by him. As this definition is intended for the construction of the word ""judgment"" as used in the Code or Civil Procedure

only, it obviously cannot be applied to the word as used in the Letters Patent. The meaning of the word ""Judgment"" in the Letters Patent has been

however the subject-matter of consideration in several reported cases. The earliest one which has been brought to our notice is the case of De

Souza v. Coles (1) where at page 387 Bittleston, J. laid down that "" it must be held to have the more general meaning of any decision or

determination affecting the rights or the interest of any suitor or applicant. "" It was again defined by Couch, C. J. in the leading Judgment on the

point in Calcutta in The Justices of the Peace for Calcutta v. The Oriental Gas Co. (2) as being ""a decision, whether final, or preliminary, or

interlocutory, which affects the merits of the question between the parties by determining some right or liability,"" and this definition was approved

by Markby, J. Since then, the meaning of the term has again been considered by a Full Bench of the Madras High Court in Tuljaram Rao v.

Alagappa Chettiar (3). There the then learned Chief Justice, Sir Arnold White was of opinion that the definition given by Bittleston, J. went too far

and that the one given by the Calcutta High Court was too narrow, and he himself laid down the test to be applied to decide whether any particular

order amounted to a judgment or not within the meaning of the Letters Patent as follows at page 7. "" The test seems to me to be not what is the

form of the adjudication but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever may

be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or

proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a

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judgment within the meaning of the clause. "" And he added, "" An adjudication on an application which is nothing more than a step towards

obtaining a final adjudication in the suit is not, in my opinion, a judgment within the meaning of the Letters Patent. "" Following this latter part of the

definition as to what is not a judgment he held in the particular case before him which was one of an appeal against an order refusing to frame an

issue that no appeal lay, and that view was adopted by the Full Bench. Krishnaswami Aiyar, J. who sat with the learned Chief Justice also agreed

with the view taken by him as to the meaning of the word "" Judgment "" and with the order proposed by him; Ayling, J., the third Judge in the Full

Bench merely contented himself by saying that he agreed that the answer to the question referred for disposal should be in the negative. He did not

discuss the question as to what amounted to a judgment at all. This ruling has been since accepted by this Court as correctly laying down the

meaning of the word "" Judgment "" and has been cited and followed in several subsequent decisions, see for example, the cases in Srinivasa

Aiyangar v. Ramaswami Chettiar (1915) 29 MLJ 12, Kulasekhara Naicker v. Jagadambal Ammal 36 MLJ 351 (FB), Kanyalal v. Paramasukdoss

16 LW 608 and Krishna Reddi v. Thanikachala Mudali (1933) 45 MLJ 153. It has been brought to our notice that the same view has been

accepted and followed by the Lahore High Court in Gokal Chand v. Sanwal Das ILR(1920) Lah 348 , which, it may be noted, was an appeal

against a refusal to stay the execution of a decree, and also in Ruldu Singh v. Sanwal Singh ILR (1922) Lah. 188, where the learned Chief Justice

of the Lahore High Court has considered the authorities and has accepted the view of the Madras High Court as to the meaning of the word ''

Judgment. '' In Tuljaram Rao v. Alagappa Chettiar 21 MLJ 1 (FB) the learned Chief Justice elaborately discussed all the cases on the point and, as

his judgment has been followed, as stated above, by this High Court since then, I think it only right that we should adopt the same definition. In

explaining his meaning, the learned Chief Justice has referred to a number of instances in which he thought an appeal would lie, and one of the

instances he mentions in his judgment is an order refusing a stay of execution. He says at page 8, "" I should be prepared to hold that an appeal lay

from an order refusing a stay of execution;; and he has resiled from his view to the contrary in Srimantu Raja Yarlagadda Prasada Nayudu v.

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Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayudu ILR (1901) M 358 , to which he was a party. No doubt, when the learned Chief Justice

said that an appeal lay from an order refusing a stay of execution in the Full Bench case, his observation was in a sense in the nature of an obiter

dictum; nevertheless we are bound to follow it and we cannot treat the case in Srimantu Raja Yarlagadda Prasada Nayudu v. Srimantu Raja

Yarlagadd Mallikrjuna Prasada Nayudu ILR (1901) M 358 as good law. The case in 24 Mad. 358 as pointed out to us, has been followed in

Vairavan Chettiar v. Ramanathan Chettiar 14 LW 701 by another Bench of this Court, but in that case there is no discussion whatever on the point

in issue as that case merely follows Srimantu Raja Yarlagadda Prasada Nayudu v. Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayudu ILR

(1901) M 358; and if I am right in thinking that 24 Mad. 358 is no longer good law, Vairavan Chettiar v. Ramanathan Chettiar 14 LW 701 cannot

be accepted as good law.

4. On the respondents'' side besides the two cases in 24 Mad. 358 and 14 L. W. 701 above referred to, our attention was drawn to a number of

unreported Letters Patent Appeals, namely, Nos. 24 of 1918, 15 of 1922, 38 of 1921 and 7 of 1923 and it was contended that it was the

practice of this Court not to allow Letters Patent Appeals against orders such as the one before us. But all those cases, on a reference to them, will

be found to be cases where stay of proceedings in the lower Court was refused; they did not deal with stay of execution at all. Those cases stand

on a different footing altogether, for they fall under the second part of the definition of the Chief Justice quoted above, namely, that "" an

adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not, in my opinion, a judgment

within the meaning of the Letters Patent."" In L. P. A. No. 7 of 1923 the appeal was against an order refusing an interim injunction. The learned

Judges held an appeal lay. I have therefore, come to the conclusion that the preliminary objection cannot stand and must be overruled, as an

appeal lies under the Letters Patent against the order of a single Judge refusing stay of execution pending the disposal of an appeal or Second

Appeal in this Court.

5. On the merits 1 quite recognise that the learned-Judge of this Court having

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exercised his discretion in refusing to stay execution, we should not

interfere with such exercise of discretion unless there are strong grounds for it. But in this particular case, unfortunately, the learned Judge seems to

have been led to the passing of the order that he made, by his view that there being a declaration of the rights of the Vaniyars in the judgment of the

lower Court, he could not interfere with the injunction which formed part of the decree. I am unable to adopt this view, if it is adopted in all cases

in which a consequential relief is granted along with the declaration, it would be impossible to stay execution. It seems to me that the issue of the

injunction ordered by the lower Court in the decree could be stated by itself, and whatever rights the decree might have declared, it would not

enable the parties to enter the temple and go to the place where they want to go to. I am, therefore, of opinion that the fact of there being a

declaration is no bar to this Court staying the execution of the decree.

6. On the merits, I think that this is a case in which we should grant a stay with some modification of the order of the lower Court pending the

disposal of the appeal here. On the one hand, the Vaniyars are anxious to enter the temple, see the deity and perform their worship, and it will be a

great hardship to prevent them altogether from doing so pending the appeal which may last for some time in this Court.

7. On the other hand, there may be a good deal of truth in what the appellants say, viz., that, if the respondents are allowed to enter the temple and

go up to the Nandi, the temple will be desecrated and they will have to perform the ceremony of purification at considerable expense if they

succeed in the appeal. I have, therefore, come to the conclusion that the respondents may be allowed to go up from the east to the

dhwajasthambam in the temple just inside the gopuram wherefrom they may have a view of the idol and perform their religious worship there but

that they should not be allowed to go further pending the disposal of the appeal.

8. I would, therefore, order a modified stay of execution by directing the appellants not to prevent the respondents from going up to the

dhwajasthambam at times of worship and also directing them to let the respondents have a view of the idol when such worship takes place. The

order of the lower Court will be stayed with that reservation.

9. In the circumstances, I think the proper order as to costs is to direct each

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party to bear their own costs in the Letters Patent Appeal and of the

petition for stay.

Waller, J.

10. I agree that we should follow the ruling reported in Tuljaram Rao v. Alagappa Chettiar ILR (1910) M 1. Were the question still open to

argument, I should myself be inclined to adopt the view of Bittleston, J. in De Souza v. Coles (1868) 3 MHCR 384 , that it is "" Impossible to

prescribe any limits to the right of appeal founded on the nature of the order or decree appealed against."" The word ""Judgment"" in Section 15 of

the Letters Patent includes decrees and orders. Judgment is defined in Halsbury as "" any decision given by a Court on a question or questions at

issue between the parties to a proceeding properly before the Court. In the CPC an order is described as the formal expression of any decision of

a Civil Court which is not a decree. This description is wide enough to cover all decisions of any kind interpreted and so the Code has provided

that only certain orders can be appealed against.

11. The word "" Judgment"" as employed in Section 15 of the Letters Patent is a very general term. The Statute does not define it or limit its

operation in any way. I venture to doubt whether we are entitled to define it or limit its operation by judicial interpretation. What has been achieved

by that process is an a priori classification of interlocutory orders into interlocutory orders proper and interlocutory orders which amount to

judgments. I think that all orders passed after contest inter parties are judgments within the meaning of Section 15 of the Letters Patent and that, if

it be desired to limit the right of appeal against certain orders, the proper method of achieving that end is by providing as has been done in the CPC

that only certain orders can be appealed against.

12. I agree with my learned brother that the fact that part of the decree is declaratory is no bar to a stay of execution being granted. I understand

that the parties are willing to accept a stay on the terms indicated. I therefore concur in the order of my learned brother.

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