

(1936) 03 MAD CK 0036
In the Madras High Court

A. Venkataswami Chettiar and Others	APPELLANT
Vs	
Sekkutti Pillai and Another	RESPONDENT

Date of Decision : 31-03-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110

Citation : 166 Ind. Cas. 251

Hon'ble Judges : Venkatasubba Rao, J;Cornish, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—This is an application by the plaintiff for leave to appeal to His Majesty in Council. One Sandaram Pillai died in 1919, leaving his widow the forth defendant and two sons, the first and second defendants. The third defendant is the son of the 1st. The suit was brought on a mortgage bond executed in 1923 by 1st and 4th defendants. The trial Court passed a decree for the full amount claimed, against the executants of the bond, namely, defendants Nos. 1 and 4. As regards defendants Nos.2 and 3, they were held liable only for a fraction of the debt. The plaintiff filed an appeal to the High Court and the result of it was, that the lower Court's decree against defendants Nos. 1 and 4 was confirmed, the 3rd defendant's share in the joint property was held liable almost for the full amount claimed, that is to say, so far as he was concerned, the lower Court's decree was practically reversed; lastly, in regard to the 2nd defendant, the High Court confirmed the first Court's decree. The plaintiff's present application is for leave to appeal to His Majesty in Council against the High Court's judgment in so far as his claim against the 2nd defendant was disallowed. The principal question to be determined is, whether the High Court's judgment is an affirming one or not.

2. It is not disputed that the requirement of the section as regards the value of the subject matter, both of the suit and of the appeal, is fulfilled. It has been urged that some substantial question of law is involved in the appeal, but we are decidedly of the opinion that is contention cannot prevail. The 2nd defendant was

a minor when the debt sued on was incurred by his brother, the first. One of the points urged in the appeal was, that the 2nd defendant should be held to have ratified the transaction after he had become a major. Applying certain well settled legal principles to the facts of the case the High Court rejected that contention and we are clearly of the opinion, as already stated, that the appeal raises no question of law, which can be considered substantial within the meaning of Section 110, Civil Procedure Code.

3. The main question then is, whether when the intended appeal is directed as against the portion of the decree which pertains to the 2nd defendant, the High Court's decree should be regarded as one of affirmance or of reversal. The applicant's contention shortly is, that where the decree, as passed, is on its face single, it should always be regarded as one and entire, irrespective of it's dealing with several subject matters for disposing of claims against several defendants. The argument is put thus; taking the High Court's decree as a whole, has it or has it not varied the lower Court's decree? So far as the 3rd defendant is concerned, it has undoubtedly done so. Therefore it is immaterial that the decree as against the 2nd defendant has been confirmed. This contention, as we shall presently show, is hardly sound in principle and would not have been put forward, it is conceded, but for the supposed effect of the decision of the Judicial Committee in *Annapurnabai v. Rup Rao* 51 C 969 : 86 Ind. Cas. 504 : 51 I.A 319 : AIR 1935 P.C. 60. As a question of construction, we fail to see why, when there are several decisions in respect of several subject matters, the decree embodying those decisions should, by some faction, be regarded as one and entire. Leaving over the question of parties for the moment, we shall first deal with the contention as it bears on the question of various subject matters. Suppose there is a suit filed in respect of ten loans of ten different dates, representing ten different transactions. The trial Court passes a decree in respect of the first loan, but negatives the plaintiff's claim in regard to the other nine alleged loans. The High Court reverses the trial Court's decree as to the first loan but maintains it as to the remaining loans. The argument is that the plaintiff can, taking advantage of the High Court's partial reversal, file an appeal questioning every one of the concurrent findings. Again, let us suppose, that upon a man's death, his heir files a suit for recovery of six items of movable property. The defendant denies that he took possession. The trial Court on evidence finds, that the defendant's case is true in regard to items Nos. 4 to 6 and passes a decree in respect of items Nos. 1 to 3 alone. The High Court reverses the trial Court's decree as to item No. 4 and upholds it as regards the remaining items. The argument is, that the plaintiff can file an appeal for attacking the concurrent findings in respect of items Nos. 5 and 6. The defendant can likewise claim the right of appeal for getting rid of the concurrent findings as regards Nos. 1 to 3. The effect of this contention is that although the items are distinct, the case in regard to each of them is distinct, the findings are distinct, the accident of there being a partial reversal, enables either party to challenge the findings, as to which both the Courts are agreed. This is a startling result, and the question is,

whether there is anything in the wording of the section which compels us to uphold contention of this sort.

4. We shall next examine the appellant's contention as it bears on the question of parties. First, let us for the purpose of illustrating the point, vary the facts of the present case. Instead of the 2nd defendant having won (as he has done) in both the Courts, let us suppose that he had lost the suit by a concurrent finding. According to the argument, the reversal of the decree so far as the 3rd defendant is concerned, gives the 2nd defendant a right to appeal. Then again, let us take the facts as they are. The effect of the contention is, that even defendants Nos. 1 and 4, against whom the decree has been confirmed, can prefer an appeal. This contention, if accepted, would lead to anomalies of the most serious kind.

5. Two further illustrations will serve to bring out clearly all that is involved in the argument. Where the trial Court passes a decree against a debtor and his surety, but the Appellate Court exonerates the surety, on the ground that there has been a variation of the contract without his consent, the debtor is on this contention enabled by reason of the part reversal of the decree, to file an appeal and attack the concurrent finding. Again, for money borrowed by A, the trial Court passes a decree against A and B on the ground that B was A's partner but rejects the claim against G and D, finding that they were not his partners. If the Appellate Court reverses the trial Court's finding so far as C is concerned, it will be open to the plaintiff (on this contention) to attack the concurrent finding that D was not a partner, B will be likewise enabled to get rid of the finding against himself, though that finding also is a concurrent finding.

6. Not a single case decided previous to *Annapurnabai v. Rup Rao* 51 C 969 : 86 Ind. Cas. 504 : 51 I.A 319 : AIR 1935 P.C. 60 on which the applicant so strongly relies, lends the slightest support to this view. On the strength of that Privy Council ruling, an argument similar to the present one was in a recent case put forward; but a Bench of the Calcutta High Court repelled it with great force, observing that:

The enormity of the opposite view is so very great that a far more clear and express pronouncement of the Judicial Committee would be necessary to uphold it.

Bibhuti Bhusan Dutta Vs. Sreepati Dutta and Others, .

7. We with great respect, entirely agree. There, it was held that where the appellate decree modifies the original decree upon a single point and that completely in the applicant's favour, so that he has no further grievance in that matter he cannot, because of that modification, have a right to appeal on other points on which Courts have concurred (see p. 260 Page of 62 Cal.--[Ed.]). To the same effect is a decision of another Bench reported in *Narendra Lal Das Chaudhury Vs. Gopendra Lal Das Chaudhury and Others*, . Where the lower Court granted a certain share and the High Court increased it further, the plaintiff

cannot, without showing a substantial question of law, have a right to litigate upon other points, upon which both the Courts have been in agreement. What is to be regarded, according to both these cases, is not the decision as a whole, but the decision as it affects the subject matter in dispute, and we think this is the proper test. The right way of construing Section 110 is to read the words "decree or final order" in Clause (3) in conjunction with, and to treat them as relating to, "the subject-matter" mentioned in Clause (1). The authorities on this subject have been so fully adverted to in the two cases mentioned above, that no useful purpose will be served by our covering the same ground.

8. Now, turning to Annapumabai's case 51 C 969 : 86 Ind. Cas. 504 : 51 I.A. 319 : AIR 1935 P.C. 60 does it really support the petitioner's contention? There a person died leaving two widows. The plaintiff claimed to have been adopted by the senior widow. The 1st defendant was the junior widow; the 2nd defendant claimed to be her adopted son. The plaintiff denied the 2nd defendant's adoption and both the debts, the plaintiff's adoption. In the suit, the plaintiff's claimed certain property. Not only did the two defendants deny, as already stated, his adoption but the 1st defendant claimed for herself maintenance at Rs. 3,000 per annum. The District Judge held that the plaintiff's adoption was proved and that the adoption alleged by defendant No. 2 was not. He held further, that the plaintiff was bound to provide maintenance for defendant No. 1 at the rate of Rs. 800 per annum. On appeal to the Court of the Judicial Commissioner, the decree was modified by the maintenance being increased from Rs. 800 to Rs. 1,200 per annum; in other respects the decree was continued. Special leave to appeal was applied for by defendants Nos. 1 and 2. The petitioner's Counsel is reported to have argued.

Having regard to the concurrent findings the petitioners desire to appeal only with regard to the amount of the maintenance.

9. Their Lordships, holding that the petitioners had a right of appeal, observed that the appeal should be limited to the question as to the maintenance allowance. The respondent was unrepresented and their Lordships disposed of the matter in two brief sentences. It is difficult to believe that the order was intended to be a considered pronouncement upon a subject of such great importance. Indeed, there is reason to think, in view of the difference in the wording of the order as reported in the volume of Indian Appeals and that of the Indian Law Reports, Calcutta, that their Lordships did no more than grant special leave, observing that the petitioners had a right of appeal. Is it to be inferred that the Judicial Committee left it open to the defendants to attack the concurrent finding as regards the plaintiff's adoption? Is it to be further held that their Lordships, without saying so, abrogated the principle, which till then, the Indian Courts had, without question, applied? Not infrequently are attempts made (attended as is well-known, with unfortunate results) to read, into the Privy Council judgments much more than is to be found in them. This is one such attempt, and we are perfectly clear that it ought not to be allowed to succeed.

10. It must be admitted, as Rankin, C.J. observes in Narendra Lal Das Chaudhury Vs. Gopendra Lal Das Chaudhury and Others, . Already cited, that the judgment of the Privy Council has the effect of overruling the principal on which the well-known case of Sree Nath Roy Bahadur v. The Secretary of State for India 8 C.W.N. 294 rested. That arose under the Land Acquisition Act, and the applicant claimed Rs. 77,000 odd. The Judge granted him about Rs. 28,000 and the High Court on appeal increased the amount by Rs. 7,000. The plaintiff applied for leave to appeal to the Judicial Committee, which was refused. The line of reasoning seems to have been, that in regard to the balance of the plaintiff's claim namely Rs. 42,000, both the Courts agreed in disallowing it and the High Court's judgment should, therefore, be deemed to be an affirming one. This view, as already stated, can no longer prevail; but it must be observed, and that is very important, that that case comprised only one subject matter, namely, the amount of compensation claimed. The Privy Council ruling is authority for the position, that if as regards the subject-matter in dispute, the Appellate Court has varied the lower Court's decision, the appellate decree is not an affirming one; incidentally this statement involves that it makes no difference, whether the lower Court's decree has been varied, to the prejudice of the applicant, or in his favour.

11. There are in some cases (to which it is unnecessary to refer) observations, which seem to lend support to the applicants' contention, with which, with great respect, we disagree. There is, however, one case of our Court. Which requires special notice P.R.M.P.R. Perichiappa Chettiar Vs. Nachiappan, . That was a suit for an account against an agent, the claim having been valued at Rs. 40,000. The first Court passed a decree for about Rs. 5,600 the result of the High Court's decree was that the amount awarded to the plaintiff was reduced to about Rs. 2,000 He applied for leave to appeal. The argument negative by the learned Judges was, that there should be deemed to be as many subject matters as there were items in dispute. This appears clearly from more than one passage in the judgment of Anantakrishna Ayyar, J. The learned Judge observes:

On behalf of the 2nd defendant (respondent in this petition), his learned Advocate argued that the question in dispute between the parties related really to various items in the account rendered by the agent, that the value of none of the items exceeded Rs 10,000..." (p. 210 Pages of 35 L.W.?[Ed]).

and again

Farther, in a suit for an account by the principal against his agent, it could not, in our opinion, be said that each objection raised by the plaintiff or the defendant to the Commissioner's report is a different subject-matter", (p. 216 Pages of 35 L.W.?[Ed]).

12. This is precisely what we have been trying to show, there is a distinction, between the decree taken as a whole and the several decisions in respect of the various subject matters comprised in that decree. When a general account is

claimed by an agent, the question is, is there a single subject matter or are there as many subject matters as there are items in dispute? This case decides that the subject matter is single and cannot be split up. It is unnecessary in this case to express any opinion on this matter, but the observations of the learned Judges in regard to other matters, such as the effect of the Privy Council decision in Annapumabai's case 51 C. 969 : 86 Ind. Cas. 504 : 51 I.A 319 : AIR 1935 P.C 60 are, we must point out with great respect, obiter. In the result, the plaintiff's application fails and is dismissed with costs with costs.

C.M.P. No. 6791 of 1932

13. This application is made by the 1st defendant in his character as the 3rd defendant's representative, for leave to appeal against the decree of the High Court in so far as it affects the 3rd defendant. The application is not opposed. The High Court's decree, to the extent to which it affects the 3rd defendant, is a reversing one; further, the requirement of Section 110, Civil Procedure Code, in regard to the value of the subject-matter is fulfilled. Leave is granted.