
(1919) 08 MAD CK 0005
In the Madras High Court

A.L.A.C.T. Solayappa Chetty

APPELLANT

Vs

R.M.M.L. Lakshmanan Chetty and Others

RESPONDENT

Date of Decision : 28-08-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 44 Rule 1, 151

Citation : (1919) 10 LW 659 : (1920) 38 MLJ 146

Judgement

1. C.M.P. No. 1655 of 1919 is an application, u/s 151 of the CPC praying that the Petitioner may be allowed to continue the appeal as a pauper,

(the appeal having been filed long ago as an ordinary appeal in the regular course) so that the petitioner may be exempted from payment of the

additional court fee of Rs. 2,900 and odd which he would have to pay if the appeal was prosecuted further as an ordinary appeal.

2. Appeal No. 278 of 1914 was filed in the first instance against the so called third preliminary decree passed on the 20th of April 1914 in the

Ramnad Subordinate Judge's Court and the appeal was presented on the 3rd of August 1914. The appeal has since been converted by an order

of this Court dated 6th December 1918 into an appeal against the final decree passed by the Ramnad Court on the 29th October 1914 which

followed the judgment of the same date (29-10-1914), the judgment or order passed (as third preliminary judgment) on the 20th of April 1914

being treated as part of the final judgment of the 29th October 1914. The petitioner (appellant) was directed, on the 6th December 1918 to pay

the. additional court fee within two months, but he has not yet paid the same though it is nearly nine months since that order was passed. He put in

several applications for extensions of time and the latest of those applications is C. M. P. No. 1063 of 1919 which we may at once dismiss, as he

is unable to pay the balance of court fees and as it is therefore not pressed.

3. The present application C.M.P. No. 1655 of 1919 was filed on the 14th July 1919 and it is not disputed that the petitioner is a pauper. This

application does not fall under Order 44 Rule 1 of the Civil Procedure Code, as the appeal has already been filed as an ordinary appeal, and

hence the petitioner has been obliged to invoke our powers u/s 151 of the Code of Civil Procedure. The first question, therefore, is whether we

have got jurisdiction under that section to allow a person to continue an appeal as a pauper. The decisions in *Nirmul Chandra Mookerjee v. Doyal*

Nath Bhattacharya I.L.R (1877) Cal. 130. *Revji Patil v. Sakharam* I.L.R (1884) Bom. 615 and *Thompson v. The Calcutta Tramway Company*

I.L.R (1893) Cal. 319 support the petitioner's contention that we have got the power to allow the prosecution of an appeal to be continued in

forma pauperis. There may, no doubt, result an anomaly in holding that such a power exists because, while under Article 170 of the Limitation Act

a person who puts in an application for leave to appeal as a pauper has got only one month's time from the date of the decree appealed from, an

application u/s 151 for permission to continue an appeal as a pauper would be probably governed by the general Article 181: "three years for

applications for which no period of limitation is provided elsewhere." It seems, again not advisable to express a final opinion on this question

involving liability for payment of court fees due to Government (and in which the Government therefore is interested) without giving notice to and

without hearing the arguments of the Government Pleader. Assuming for the the sake of argument that we have got the power, it is clear that we

should exercise our discretion subject to the conditions imposed by the proviso to Order 44 Rule 1 on a court to which an application is made by a

person to allow him to appeal as a pauper; that is, unless from a perusal of the appeal memorandum and of the judgment and decree appealed

from there is reason to think that the decree is contrary to law, or to some usage having the force of law, or is otherwise erroneous or unjust, the

court is bound to reject the application. We have read through the appeal memorandum and the judgment and the decree appealed from, including

in the word "judgment" the order of the 20th April 1914, and we have also taken the assistance of the Vakils on both sides to understand what we

have read, and we are not satisfied that the decree is contrary to law or to any usage having the force of law or is otherwise erroneous or unjust.

We shall therefore, dismiss this petition also. There will be no order as to costs in either of the petitions.

4. As the extension of time to pay court-fees has expired the appeal will stand rejected with costs.