

(1957) 01 AP CK 0003
In the Andhra Pradesh High Court
Case No : S.C.C.M.P. N. 218 of 1957

Boppana Satyanarayana and Another	APPELLANT
Vs	
Chalagulla Ramachandrayya and Others	RESPONDENT

Date of Decision : 18-01-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 110
Constitution of India, 1950 — Article 133, 133(1)

Citation : (1957) 01 AP CK 0003

Hon'ble Judges : Krishna Rao, J;Chandra Reddy, J

Bench : Division Bench

Advocate : C. Rama Rao, M. Ramachandra Raju and G. Pooraiiah, for the Appellant; B. Manavala Chowdary and P. Rama Rao, for the Respondent

Judgement

Chandra Reddy, J.—This is an application for leave to file an appeal in the Supreme Court against a part of our judgment and decree bearing on the mesne profits claimed by the Petitioner.

2. The circumstances leading up to this petition may be briefly referred to. The Petitioners in this petition brought an action claiming the properties of one Boppana, Chandrappa alleging to be the reversionary to his estate. The porosities died in December, 1894, leaving behind him the bulk of the properties involved in the suit, him surviving his Widow Ramamma. This Chandrappa brought Vi one Mangamma, his wife"s sister"s daughter and married her to his sister"s son, Nagayya, the father of Defendants 1 and 2.

3. On the death of Chandrappa, properties were mutated in the name of Nagayya and were being enjoyed by him and on his death, Defendants 1 and 2. The widow Ramamma died on 22nd January, 1944. Thereafter, the Petitioners filed the suit for the recovery of 5/6ths of the properties left by Chandrappa and for mesne profits from the date of the death of the widow.

4. The answer to the suit was that Chandrappa took Nagayya in adoption, and on

his death, all tire properties devolved on the son-in-law. The Defendants also disputed that the Plaintiffs were the reversioners to Chandrappa.

5. The trial Court dismissed the suit in the view that the father of Defendants 1 and 2 was the illation son-in-law of Chandrappa and as such was entitled to the whole of inheritance while upholding the case of the Plaintiff that they were reversioners. On appeal against that decision, we reversed the judgment of the trial Court on the question" of the validity of the illation adoption. As regards the mesne profits, we disallowed the claim for the past profits but granted them at the rate of Rs. 500 in regard the future profits.

6. The Defendants filed an application for leave to appeal to the Supreme Court and we called for a finding as to the value of the subject matter of the suit in the Court of first instance. The finding submitted was that the value exceeded Rs. 20,000 and accepting this conclusion we granted the leave asked for. The Plaintiffs-Appellants (i.e., for the Petitioners herein) also seek leave to appeal to the Supreme Court in regard to the part bearing the mesne profits contending that the future profits should have been fixed at a higher figure find that the past profits ought to have been. It is urged by Mr. Ramachandraraju that irrespective of whether the requirements of Article 133 of the Constitution are complied with, or not his clients are entitled to leave by reason of our having granted leave to the Defendants. The foundation for this "argument is the judgments of Justice Mack in Chitrapur Subbayamma Vs. Chitrapur Buchi Venkayya and Others, . The opinion expressed by the learned Judge there was that when leave was granted to one party to the decree who was entitled to it as of right, it could not be refused to another party asking for the same relief notwithstanding that if they had applied individually the application would have been negatived if it did not satisfy the requirements of Article 133 (1) (b). The learned Judge thought that the other party was automatically entitled to get the relief asked for as an appeal before the Supreme Court could not be "compartmentalized, bisected or trisected." He proceeded on the assumption that there were several observations in the judgment of Rajamannar, C.J., in Chittam Subba Rao Vs. Vela Mankanni Chelamayya, which support" the view taken by him. He also thought that the judgment of the Allahabad High Court in Aisha Begum Vs. Mt. Kundan Jan and Another, , is in consonance with that view.

7. We are unable to accept the reasoning of the learned Judge. There are no observations, in the judgment of Rajamannar, C.J., who spoke for the Court in Chittam Subba Rao Vs. Vela Mankanni Chelamayya, , which lend any countenance to the theory propounded by Justice Mack. The question that was referred to the Pull Bench in view of the divergence of judicial opinion in regard to the circumstances under which leave should be granted was whether an appeal would lie as of right to the Supreme Court from any judgment, decree or final order of the High Court if the decree of the first Court is modified in favour of the applicant but in other respects confirmed and if the requirements of the pecuniary valuation are satisfied, but no substantial question of law is involved.

The learned Judges answered it in the affirmative laying down the proposition that an Appellant was entitled as of right to leave to appeal to Supreme Court if the High Court modified or varied the decree of the trial Court where the matter In respect of which it has been so varied or modified was also a matter in controversy in the Supreme Court whether the modification was in favour of the applicant or not and though it did not fall within Article 133 (1)(c), provided the requirements of pecuniary valuation are complied with. The principles governance the grant of leave to appeal to the Supreme Court are summarised in the judgment thus:

1. If the judgment or decree of the High Court varies the decision of the lower Court in respect of a matter in controversy in the proposed appeal to Privy Council, then there is a right of appeal not only to the person against whom the variation has been made, but even to the party in whose favour the variation has been made. But it is necessary that the matter in respect of which there has been a variation should be the subject-matter of the proposed appeal to the Privy Council.

2. A matter in controversy cannot be split up or analysed or dissected into component parts of arbitrary divisions. The true test will be to determine the nature of the dispute or controversy.

3. If the matter in respect of which there has been a variation is not the subject-matter of the proposed appeal then such variation would not 1 confer a right of appeal. As regards matters unconnected with the matter In respect of which there has been a variation "ex hypothesis" this will be the case when the variation has been completely in" favour of the applicant.

We have searched in vain for any remarks of the learned Judges which would, in any way to substantiate the proposition laid down by Justice, Mack in Chitrapur Subbayamma Vs. Chitrapur Buchi Venkayya and Others, .

8. It is interesting to note that Justice Krishnaswamy Naidu who was another member of the, Bench did not share the view of Justice Mack. He thought that leave is not automatically granted in such cases and it would be given only if it was a fit case as envisaged in Article 133(1)(c). The learned Judge on the facts of that case agreed with Justice Mack that leave should be given under Article 133(1)(c).

9. In Aisha Begum Vs. Mt. Kundan Jan and Another, which was relied on Justice Mack in support of his conclusion, the Division Bench thought it was a lit case for granting leave as it was a matter of great importance to the applicant because their decision not only decided the fate of that appeal but seriously affected the appeal that was about to go to the Privy Council and also because in their opinion the case fulfilled the requirement of Clause (c) of Section 109, CPC Code.

10. It is thus seen that no support can be had for the view taken by Justice Mack either from authority or from any of the statutes. If the interpretation placed by

Justice Mack on Article 133 is to be accepted as sound it would be conceding a right of cross appeal as cross-objection to a party. We feel that there is no warrant for importing such a right. Neither the provisions of Article 133 nor Section 109 or Section 110, CPC Code, contemplate such a right and there would be no justification to introduce into these provisions this right. We feel that merely because leave was granted to one of the parties to the appeal who was entitled as of right by virtue of one or other of the provisions of Article 133 it does not follow that it should automatically be granted to the other party if the requirements as to pecuniary valuation are not fulfilled or if the matter in controversy in the appeal for the filing of which leave has been granted is not the same as that which is raised in the appeal in which leave is sought.

11. The type of cases in which normally a certificate is issued is indicated by the Judicial Committee in Radhakrishna "v. Swaminatha AIR 1921 P.C. 25 (D). Lord Buckmaster stated the rule thus:

Cases in which it is impossible to define in money value the exact character of the dispute; there are questions as for example, those relating to religious rights and ceremonies, to caste and family rights, or such matters as the reduction of the capital of companies as well as Questions of wide public importance in which the subject-matter in dispute cannot be reduced into actual terms of money.

So, in order to attract the provisions of Article 133(1)(c), the test laid down by the learned Law Lord should be satisfied. Leave also may be granted if there is only one matter in controversy in both the appeals. But, if the questions involved in both the appeals are altogether different and no common question arises in these appeals leave will be granted only if the other terms of Article 133 are complied with.

12. In this context, the observations of Rajamannar, C.J., in Chittam Subba Rao Vs. Vela Mankanni Chelamayya, are pertinent.

But I do not see how it follows from the seasoning in P.R.M.P.R. Perichiappa Chettiar Vs. Nachiappan, that a party who feels aggrieved by the decisions of a High Court on a particular matter is entitled as of right to appeal to the Supreme Court, in respect of that matter on the ground that in respect of some of them there has been variation made by "the High Court, though no substantial question is involved as regards the matter in dispute on appeal to the Privy Council", The principle that emerges from this discussion is that leave will not be granted to a party if the provisions as to pecuniary valuation are not satisfied, merely because one of the parties to the appeal was granted leave and a part of the decree in appeal in the High Court is attacked in the appeal before the Supreme Court, if a common question is not involved in both* the matters.

13. Now, bearing this principle in mind, we have to see whether the present application comes within the purview of Article 133. The learned Counsel does not put it on the ground that the application satisfies the requirements as to pecuniary valuation. In fact, if that test is satisfied there is no necessity to invoke

the dictum of Justice Mack in Chitrapur Subbayamma Vs. Chitrapur Buchi Venkayya and Others, . Though a tabular statement is annexed to the application showing the value of profits claimed in the plaint excluding taxes on land no reliance is placed on that by the counsel for the Petitioner. Moreover, the value of the subject-matter in the first Court also should be over Rs. 20,000. Even If the statement annexed to the application is accepted as correct, the subject-matter in dispute in the trial Court would be very much less than Rs. 20,000 because most of the profits that are said to have accrued relate only to a period subsequent to the disposal of the suit.

14. Moreover, as regards the profits subsequent to the filing of the suit the parties requested us to fix the quantum at a reasonable figure as they did not want the matter to go back to the trial Court for the purpose of an inquiry and we fixed it at Rs. 500 per year having regard to the circumstances of the case and as it was not seriously objected to by either of the parties. The allegation made in the counter-affidavit by the Respondent to this petition in this behalf is that "it was suggested by the advocate for the Appellants himself that it was unnecessary for the suit to be sent back to the trial Court for an enquiry into the mesne profits subsequent to the institution of the suit and he suggested that this Honourable Court might fix the quantum of the mesne profits." In reply to this, it was alleged that the Petitioner's advocate had not suggested "that this Honourable Court might fix the quantum of mesne profits instead of sending it back to the trial Court for an inquiry into the mesne profits subsequent to the institution of the suit." Mr. Ramachandraraju stated from the Bar that what is objected to is the statement that it was only the advocate for the Petitioner that made the suggestion and that what was true was that the counsel on either side made the suggestion. As already remarked by us and as stated in the judgment both sides requested us to fix the future profits. As regards the past profits, it is asserted in the counter-affidavit of the Respondent:

As a matter of fact the Appellants' advocate urged before this Honourable, Court that a lump sum of Rs. 1,000 per year since the date of institution of the suit may be awarded towards the entire claim for mesne profits.

This is not accepted by the Petitioner. It is unnecessary for us to consider which of the assertions is true. We thought that having regard to the fact that no notice was issued by the Petitioners claiming the properties after the death of the widow and having regard to the other circumstances of the case, the profits claimed by the Petitioners should not be granted. Further the sum claimed in that behalf was only Rs. 3,425 and even if this is added to the future profits fixed by us, it will not bring it to the figure required by Article 133 of the Constitution. It follows that "leave cannot be granted in this matter and the petition is dismissed. No order as to costs.