
(1903) 12 MAD CK 0014
In the Madras High Court
Case No : Appeal No. 40 of 1903

Chinnasami Mudali

APPELLANT

Vs

Arumuga Goundan

RESPONDENT

Date of Decision : 22-12-1903

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1903) 12 MAD CK 0014

Hon'ble Judges : S. Subrahmania Ayyar, O.C.J.; Russell, J

Bench : Division Bench

Advocate : K.S. Ramaswami Sastri, for the Appellant; C. Krishnan, for the Respondent

Final Decision : Dismissed

Judgement

1. In this case, the Plaintiff's suit filed on the Small Cause Side of the District Munsif's Court at Salem having been dismissed, the Plaintiff applied

u/s 25 of the Provincial Small Cause Courts Act to have the decree against him revised. On the application coming on before Mr. Justice Boddam,

it was dismissed, and the question is whether in the circumstances of the case, the present appeal, which purports to be an appeal against the

decision of the learned Judge u/s 15 of the Letters Patent, lies.

2. Unless the order of the learned Judge is a "judgment" within the meaning of the said Section 15 there can, of course, be no appeal against it; and

in the absence of anything in the context suggesting the contrary, the word itself has to be understood in its ordinary signification as a legal term. In

Tidd's "Practice" it is stated to mean "the conclusion of law upon facts found or admitted by the parties, or upon their default in the course of the

suit" (page 930). Blackstone explains the word as "the decision or sentence of

the law given by a Court of Justice or other competent tribunal as the result of proceedings instituted therein for the redress of an injury"" (3 Bl. Com., 395). Another writer puts it thus well: ""Litigious contests present to the Courts facts to appreciate, agreements to be construed and points of law to be resolved. The judgment is the result of the full examination of all these."" In other words ""judgment"" necessarily implies the determination of some question of right or liability in issue; between the parties and it is hardly denied that that is the view uniformly adopted with reference to this term in construing the Section referred to. Now there can be no ambiguity with reference to an order passed in a proceeding in which the Court is bound to decide one way or the other any question of right or liability; for every order in such a case, which would have the effect of concluding the parties with reference to the right or liability, would be a judgment irrespective of the form or language in which it is expressed. Where, however, the proceeding is one in which the Court is not necessarily bound to enter upon a consideration of the controversy but may abstain from doing so, an order which expresses such abstention is obviously not a judgment. As a case of revision u/s 25 of the Provincial Small Cause Courts Act is a proceeding of the latter description, no appeal can be held to lie against an order passed thereunder unless it is more than a mere refusal to entertain the case as one fit for revision. And as there may be such a mere refusal notwithstanding the records are called for or the parties heard, neither of those circumstances nor the award of costs against the party applying for revision would necessarily make the order a judgment. Nothing more being relied on in the present case in support of the contention that there was a judgment, it follows there is no appeal.

3. The petition is accordingly dismissed with costs.