
(1954) 03 MAD CK 0027

In the Madras High Court

Case No : S.C.C.M.P. No's. 10920, 12347 and 13117 of 1953

Chitrapur Subbayamma

APPELLANT

Vs

Chitrapur Buchi Venkayya and Others

RESPONDENT

Date of Decision : 22-03-1954

Acts Referred:

Constitution of India, 1950 — Article 133, 133(1)

Citation : AIR 1954 Mad 876 : (1955) ILR (Mad) 786 : (1954) 67 LW 541

Hon'ble Judges : Mack, J; Krishnaswami Nayudu, J

Bench : Division Bench

Advocate : K. Bhimasankararao, for the Appellant; P. Somasundaram, N. Bapiraju and G. Chandra Sekhara Sastry, for the Respondent

Judgement

Mack, J.—These are three petitions for leave to appeal to the Supreme Court against our judgment and decree in A. S. Nos. 31 & 491 of 1949. The suit under appeal was one for partition in which the six sons of the late Chitrapur Venkatachalam Pantullu, who was public prosecutor and Government Pleader of East Godavari district for many years, were each given by the Subordinate Judge 1/6 share in plaint items 1 to 40. The suit was filed by four younger sons and was resisted by the eldest son, the first defendant, who claimed the properties as his self-acquisitions. In appeals from this decree, we confirmed the partition decree as regards items 1 to 25 and allowed the appeal of the first defendant and his wife the 3rd defendant as regards items 26 to 40 which, we held, were their self-acquisitions, or separate property.

2. In C. M. P. No. 12347 of 1953, the plaintiffs seek leave to appeal as regards items 26 to 40. The value of these items is admittedly more than Rs. 20,000. As it is a reversing judgment as regards these items, they are entitled to, and are granted leave to appeal.

In C. M. P. No. 13117 of 1953, the first defendant seeks leave to appeal as regards the finding that Items 1 to 24 are liable to partition. The value of these items is admittedly in excess of Rs. 20,000 but as regards them, our Judgment

confirmed the finding of the trial court.

In C. M. P. No. 10920 of 1953, the third-defendant, who is the wife of the first defendant, seeks leave to appeal only as regards item 25, which she claimed as her separate property. In appeal, her right to four other items 26 to 29 were upheld in reversal of the Subordinate Judge's decree. As regards items 26 to 29, the plaintiffs are entitled to appeal and it is necessary for the third defendant to appear in the appeal to the Supreme Court and defend her rights as regards those items. Item 25 by itself is admittedly less than Rs. 20,000 in value and the finding of the Subordinate Judge that this item was liable to partition was confirmed in appeal.

3. The point arises whether we should give leave to the first defendant and the third defendant also to appeal to the Supreme Court, we have been referred to a number of decisions of this court on the scope of Article 133 of the constitution but no decision has been placed before us in which where one party, who has satisfied the financial and other requirements of Article 133(1)(a) so far as his appeal is concerned has been granted leave, which has however been refused to the other parties to the same decree who are not so qualified. We have referred to the Pull Bench decision -- Chittam Subba Rao Vs. Vela Mankanni Chelamayya, , which, in view of conflicts of decisions of Division Benches, answered the following question referred to a Pull Bench.

"Whether an appeal will 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."

I have carefully perused that decision, which does not directly answer the question we have to decide as regards which we have heard lengthy arguments. In that case, leave had not been granted to one party to the decree entitled to it as of right, and it was not a case of another party to the same decree also seeking leave to appeal. There are several observations in the judgment of Rajamannar C. J. which lend strong support to the position that as the plaintiffs have been granted leave as of right to appeal, it is a fit case under Article 133(1) (c) of the Constitution for granting leave to the first defendant and the third defendant also to appeal. As observed by Rajamannar C. J.

"It is well established that an appeal to the Privy Council (Supreme Court) can only be filed against a judgment and decree of this court. Even though only a portion of the judgment or decree is challenged, nevertheless, the appeal is against the judgment and decree."

There was a reference in that decision to the observations of Viscount Dunedin in -- "Jowad Hussain v. Gendan Singh", AIR 1926 PC 93 (B) to the following effect :

"The appellant's counsel strenuously urged that the appeal was not against the

decree, but only against the items in the decree. This is a complete misunderstanding. An appeal must be against a decree as pronounced. It may be rested on an argument directed to special items, but the appeal itself must be against the decree and the decree alone."

In answering the question referred to them, the learned Full Bench emphasised that a matter in controversy cannot be split up or analysed or dissected into component parts or arbitrary divisions, and that the true test will be to determine the nature of the dispute or controversy.

4. In the case before us, the plaintiffs briefly claimed items 1 to 40 in the suit as joint family property liable to partition. The first defendant claimed most of the items as his self-acquisitions and his wife the third defendant some items as her separate property. In -- Aisha Begum Vs. Mt. Kundan Jan and Another, , it was held that in two Interconnected appeals, disposed of in separate judgments, if leave to appeal to the Privy Council was granted to one party, leave should also be granted to the other because the position of the party is likely to be imperilled if no such leave were granted to them.

5. We have been referred to the Pull Bench decision -- Gangadara Ayyar and Others Vs. Subramania Sastrigal and Others, , to which Rajamannar J. (as he then was) was a party. That was a case u/s 110, Civil P. C. in which some defendants in an appeal to the Privy Council sought to challenge the validity of the claim of the plaintiff with regard to 10 out of 11 items of property. The decree of the High Court varied the decree of the trial court in respect of four of the items. It was held that the High Court's decree being one of variation and not of affirmance, the petitioners were entitled as of right to a certificate. Mr. Bhima-sankaram for the first defendant on the basis of this judgment argues that the present appellate decree is not one of affirmance but of variation, and that this being so, the first defendant is entitled as of right to a certificate to appeal, the value of the subject-matter of items, which he seeks to challenge in appeal being more than Rs. 20,000.

I would prefer to base the grant of leave to the first defendant and the third defendant on the ground that the plaintiffs have been on their application granted leave to appeal as a statutory right, which cannot be denied to them. I find it extremely difficult to see how an appeal before the Supreme Court can be compartmentalised, bisected or trisected with defendants 1 and 3 precluded, though compelled to appear there and defend the rights they have been granted in the appal, from a full argument in the case they are called upon to meet. It seems to me unreasonable and impracticable to confine a party defending an appeal to one particular finding in his favour, which if he succeeds In upholding may also have the effect of giving him some further relief denied to him in the appeal.

As I see it, when leave is granted to one party to appeal to the Supreme Court against any decree, leave cannot be withheld from other parties seeking to

appeal from the same decree although it may be that had they individually applied for leave, their applications would have been rightly dismissed for failure to comply with the requirements of Article 133(1)(a) or (b). I would bring this category of cases within the scope of Article 133(1)(c) as being made fit cases for appeal to the Supreme Court for reason of one party to the appeal having been granted leave. In such a case, it is not necessary that the High Court should certify that each appeal sought to be filed against the appellate decree involves a separate substantial question of law.

Krishnaswami Nayudu, J.

6. I have perused the order of my learned brother, and, while I am in agreement with him that leave should be granted in all the three petitions, I prefer to give my own reasons in support.

7. In so far as C. M. P. No. 12347 of 1953 is concerned, the plaintiffs are entitled to leave as they satisfy the requirements of Article 133 of the Constitution.

8. As regards C. M. P. No. 13117 of 1953, the first defendant seeks leave to appeal in respect of items 1 to 24, which have been held to be joint family properties by the trial court and confirmed by us in appeal. Though the value of these items is not less than Rs. 20000 our Judgment affirms the decision of the court below, and as such the first defendant would not be entitled as of right to leave, unless we certify that the appeal involves some substantial question of law. I am unable to find any substantial question of law arising in his appeal. However, in view of the decisions in -- Gangadara Ayyar and Others Vs. Subramania Sastrigal and Others, " and Chittam Subba Rao Vs. Vela Mankanni Chelamayya, , the first defendant should also be granted leave, as our judgment is not completely one of affirmance, but a variation of the trial court's decree.

9. But, as regards the third defendant's petition (C, M. P. No. 10920 of 1953) she seeks leave to appeal only as regards item 25, which she claimed along with items 26 to 34 as her separate properties. She is the wife of the first defendant and the court below rejected her claim to all the items and held that they were also joint family properties. But, in appeal, we upheld her right to items 26 to 34 in reversal of the decree of the lower court and rejected her contentions so far as item 25 was concerned, the same having been held to be one of the joint family properties. The plaintiffs have been granted leave to appeal against our decision in so far as items 26 to 34 are concerned.

The question is whether the third defendant should be granted leave in respect of item 25, the value of which is admittedly less than Rs. 20000. The position therefore in so far as the third defendant is concerned is that the value of the subject-matter of the appeal is less than Rs. 20000 and our judgment affirms the decision of the court below. In such circumstances, she would be entitled to leave only if the appeal involves some substantial question of law; or when the case is fit one for appeal to the Supreme Court under Clause 1(c) of Article 133. No substantial question of law is involved in respect of this appeal relating to

item 25 and unless one could bring it under Article 133(1)(c), she is not entitled to the grant of leave.

10. The question that arose for decision in the suit and in the appeal was whether items 1 to 40, which originally formed part of the estate of the father of plaintiffs 1 to 4 and the first defendant and subsequently acquired in the names of the first, second and third defendants, were joint family properties. The common questions in controversy are whether the purchases of these properties were with joint family funds and whether the sales in the names of the first, second and third defendants were benami for the joint family.

In the present case, leave has been granted to both the plaintiffs and the first defendant and in so far as the third defendant is concerned, her right to items 26 to 34 were upheld in appeal by us, and it is now open to the plaintiffs to have the correctness of that decision tested in the Supreme Court in view of our granting leave to the plaintiffs. The case of the third defendant in respect of items 26 to 34 as well as item 25 is that they are her properties having been purchased in her name with her funds, the plaintiffs' contention being that they were purchased benami in her name with joint family funds and for the benefit of the joint family. Though a distinction may be made between the acquisition of item 25 and the acquisition of items 26 to 34, the common question pertaining to all the items is as to the benami nature of these transactions.

In that view, it becomes necessary, having given leave to the plaintiffs in respect of some of the items, that leave should also be granted to third defendant in so far as item 25 is concerned. The only provision under which this leave could be supported is Clause 1(c) of Article 133, namely, that it is a fit case for appeal to the Supreme Court. I am aware of the view taken by the Privy Council and other courts that Clause 1(c) is intended to meet special cases as for example those in which the point in dispute is not measurable by money though it may be of great public or private importance, and, as observed by Lord Buckmaster in -- "*Radha Krishna v. Swaminatha*", AIR 1921 PC 25 (E)

"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."

But, where, as in the present case, there is scope for the contention that there is a common question in controversy, which would be applicable to the entire case, it will be inequitable to grant leave in respect of a portion of the subject-matter and refuse it in respect of the remaining part, and in such cases nothing would prevent the court from treating the case as a fit one for appeal to the Supreme Court under Clause 1(c) of Article 133. But it cannot be laid down as a general proposition of law that in all cases, when leave is granted to one of the parties to appeal to the Supreme Court, the other parties also are entitled to leave as a

matter of course, even though their applications could not be entertained under Article 133, Clause (1), Sub-clauses (a) and (b). Otherwise, a party, who has no right to a certificate under Article 133 would become entitled to file cross-objections to the appellate decree in the form of an appeal to the Supreme Court, though there is no specific provision to that effect either under Art, 133 of the Constitution or u/s 109 or Section 110, Civil P. C.