

(1919) 07 BOM CK 0016
In the Bombay High Court

Desai Venechand Rajpal and Others

APPELLANT

Vs

Lakhmichand Manekchand

RESPONDENT

Date of Decision : 24-07-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13

Citation : (1920) ILR (Bom) 272

Hon'ble Judges : Norman Macleod, C.J;Heaton, J

Bench : Division Bench

Judgement

Norman Macleod, C.J.—This is an appeal from the order of Mr. Justice Pratt on an application, made by the plaintiffs on motion that pending the hearing and final disposal of this suit the defendant, his servants and agents, might be restrained by an order and injunction of this Honourable Court from prosecuting the suit filed by him against the plaintiffs in the Court of the Morvi State. The learned Judge held that the motion-failed and directed the plaintiffs to pay the costs.

2. A preliminary point has been taken that no appeal lies against that order. It is admitted that the appeal could only lie under Clause 15 of the Letters Patent and that therefore no appeal lies, unless the order can be considered as a judgment. A "judgment" Clause 15, according to the decision in *The Justices of the Peace for Calcutta v. The Oriental Gas Company* (1872) 8 Ben. L.R. 433, which has been followed in this Court, means a decision which affects the merits of the question between the parties by determining some right or liability. The questions in this suit appear in the prayers of the plaint. It was prayed, first, that it might be declared that the partnership between the plaintiffs and the defendant was dissolved on or about the 26th day of June 1917; that since the date of the said dissolution the plaintiffs were the sole owners of the assets of the said firm; that the defendant had no Interest in the profits of the said firm since the date of the dissolution; and then the plaintiffs further asked that pending the hearing and final disposal of this suit the defendant, his servants and agents, should be restrained from prosecuting the suit he filed in the. Court of

the Morvi State.

3. Now the defendant in this suit filed a suit in the Morvi Court on the 4th January 1919, praying that the Court should take an account of the partnership business and realise its assets, and that on such account being taken the Court would be pleased to pass a decree in the plaintiff's favour for such amount as appears due to him from the defendants or for whatever relief he might be entitled.

4. The plaintiffs in this suit did not file their plaint until the 14th May 1919. Now it is difficult to see how the order of Mr. Justice Pratt, refusing to grant the injunction asked for, is a decision which affects the merits of the questions between the parties by determining any right or liability on either side. It has been suggested that the effect of refusing to grant the injunction would be to oust the jurisdiction of this Court. If the jurisdiction of this Court in this suit is in any way" ousted, it is owing to the fact that the plaintiff in the Morvi suit preferred- to file his plaint there, and might get a decree in that Court which would bar u/s 13 of the Civil Procedure , Code, the plaintiffs" suit in this Court, unless the plaintiffs can succeed on any of the exceptions to that section. We have been referred to the case of Sonabai v. Tribhowandas (1908) 32 Bom. 602 . In that suit Mr. Justice Davar ordered the plaintiff to deposit with the Prothonotary a sum of Rs. 3,000 as security for the first defendant's costs" It was objected on appeal as a preliminary point that no appeal lay against the order, and it was conceded that there could only be an appeal if the order was a judgment within the meaning of Clause 15 of the Letters Patent. Mr. Justice Batchelor said in referring to the case of Hadjee Ismail Hadjee Hubbeeb v. Hadjee-Mahomed Hadjee Joosub (1874) 13 B L.R. 91:

I am of opinion that this reasoning covers the case of the order now under discussion, for the effect of it is, at least conditionally, to deprive the Court of the jurisdiction which it otherwise would have to try the. plaintiff's suit.

5. That is not the case here. If. the order of Mr. Justice Pratt is allowed to stand, the jurisdiction of this Court is not ousted as a direct consequence of that order. It may be ousted in future by the defendant in this Court obtaining a decree in the Morvi Court. But whether that will occur or not remains for future decision. I can see nothing in this order which brings it within the definition of "judgment" above referred to. Therefore in. my opinion the preliminary point is good and no appeal lies.

6. We have heard counsel, however, for the appellants on the merits. I may say that in my opinion the decision of the learned Judge in the Court below was perfectly correct. The appeal will, therefore, be dismissed with costs throughout.

Heaton, J.

7. I agree both that the order of the Court below was correct on the merits, and also that no appeal lies. It may be that the definition of the word "judgment" as

used in Clause 15 of the Letters Patent, which was quoted by my Lord the Chief Justice, is not exhaustive. I gather from the case of Hadjee Ismail Hadjee Habbeeb v. Hadjee Mahomed Hadjee Joosub (1874) 13 Ben. L.R. 91 that if the order directly involves a real question of jurisdiction, if its effect is to give jurisdiction or to take away from the Court jurisdiction, then an appeal will lie. But there is nothing of that kind in this case. It is not disputed in this appeal that the Court had jurisdiction to grant or refuse an injunction. But it is contended that the effect of refusing an injunction was to deprive the Court of its own jurisdiction. To my thinking, if the jurisdiction of the Court can in any way be affected, it is, or rather it will be (because the event has not yet happened), by operation of law. If the Morvi Court makes a decree, then by the operation of Section 13 of the CPC the High Court, here may be debarred from proceeding with the suit. But to refuse to prevent the natural operation of the law in that way, is not to cause an ouster of the jurisdiction. Therefore I agree that the appeal should be dismissed with costs.