
(1926) 12 MAD CK 0040
In the Madras High Court

D.K. Asher

APPELLANT

Vs

V.C. Gopalaratnam

RESPONDENT

Date of Decision : 01-12-1926

Acts Referred:

Citation : AIR 1927 Mad 409 : (1927) 25 LW 483 : (1927) 52 MLJ 192

Hon'ble Judges : Reilly, J;Kumaraswami Sastri, J

Bench : Full Bench

Judgement

Kumaraswami Sastri, J.—This is an appeal against an order of Srinivasa Aiyangar, J., refusing to allow inspection of certain accounts which

were disclosed in the affidavit of documents of the defendant. A preliminary question arises as to whether an appeal lies against such an order and

the question is whether an order in an interlocutory application refusing inspection is a judgment within the meaning of Clause 15 of the Letters

Patent. Mr. G. Krishnaswami Aiyar who appears for the appellant is unable to cite any authority in support of his argument that an appeal lies. He

bases his contention on the ground that such an order is not an order on a mere matter of procedure but deprives the party of a substantive right

and is therefore a judgment I am unable to agree with him.

2. The definition of the word judgment within the meaning of Clause 15 of the Letters Patent has, I think, so far as Madras is concerned, been

settled by the decision of the Full Bench in Tuljaram Row v. Alagappa Chettiar 21 MLJ 1(FB). where Sir Arnold White, C.J., observes as follows:

The test seems to me to be not what is the form of the adjudication but what is its effect in the suit or proceeding in which it is made. If its effect,

whatever its form may be, and whatever may be the nature of the application on

which it is made, is to put an end to the suit or proceeding, so far

as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or

proceeding, I think the adjudication is a judgment within the meaning of the clause. An adjudication on an application which is nothing more than a

step towards obtaining a final adjudication in the suit is not, in my opinion, a judgment within the meaning of the Letters Patent.

I think, too, an order on an independent proceeding which is ancillary to the suit (not instituted as a step towards judgment, but with a view to

rendering the judgment effective if obtained) e.g., an order on an application for an interim injunction, or for the appointment of a receiver is a

"judgment" within the meaning of the clause.

3. This view has been followed in *The Official Assignee of Madras v. Ramalingappa* ILR (1925) M 539: 50 MLJ 361 where the learned Chief

Justice after referring to *Tuljaram Row v. Alagappa Chettiar* ILR (1910) M 1. observes as follows:

Applying that and endeavouring as best as I can to see what is its true application, I think it is this, that a determination, call it what you will, which

has the effect, whether on a technical ground or on the merits, of putting an end to the proceedings as regards the particular people or in toto, is a

judgment and is appealable, but if the pronouncement leaves the suit free to go on, then it is not a judgment within the meaning of the clause.

4. In *Mahalingam v. Natesa Aiyar* (1915) 3 LW 107. Sir John Wallis, C.J., and Seshagiri Aiyar, J., following *Tuljaram Row v. Alagappa Chettiar*

ILR (1910) M 1. held that no appeal lies against an order refusing leave to amend a plaint. In *Savan Durga Bai Ammal Vs. S. Ramanatha Rao*

alias Rama Rao and Another, . it was held that an order refusing leave to amend a written statement is not appealable.

5. It is difficult to see how if an order refusing a commission, or an order refusing to raise an issue or an order refusing leave to amend pleadings

which very often may have far-reaching effects on the defendant's conduct of the suit are not appealable as judgments, an order refusing inspection

can amount to a judgment. I may point out here that it is always open to a party to take out subpoena or give notice for the production of the

document of which inspection is refused and have the matter as to its relevancy

discussed when tendering the document in evidence. The only right which is "denied to him is the right to see the document in advance and prepare his case after such inspection. This is, no doubt, often a very important matter for the plaintiff or the defendant but that by itself could not make the order of refusal a judgment within the meaning of the Letters Patent. I think an order like the present is, to use the words of Sir Arnold White, C.J., merely an adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit and which does not therefore amount to a judgment.

6. Reference has been made by Mr. G. Krishnaswami Aiyar to *Sonachalam Filial v. Kumaravelu Chettiar* where Krishnan and Wallace, JJ., held that an order of a single Judge of the High Court refusing to stay execution of a decree of a mufassal Court pending an appeal therefrom to the High Court is a "judgment" within the meaning of Clause 15 of the Letters Patent. It is only necessary to point out that the application was not in any matter in a pending suit and Krishnan, J., at page 321, while referring to the cases observed that the cases where Letters Patent appeals were refused fell under the second part of the definition of Sir Arnold White, C.J., in *Tuljaram Row v. Alagappa Chettiar* ILR (1910) M 1. as being an adjudication on an application which was merely a step towards obtaining a final decree in the suit. Waller, J., though inclined to proceed on the wider definition of Bittleston, J., in *De Sousa v. Coles* thought that he was bound by the decision of the Full Bench in *Tuljaram Row v. Alagappa Chettiar* ILR (1910) M 1. *Baba Sah v. Purushothama Sah* was also referred to. In that case it was held by Spencer, O.C.J., and Srinivasa Aiyangar, J., that the final order of a Judge of the High Court sitting on the Original Side allowing or refusing to allow a plaintiff to sue as a pauper is a judgment under Clause 15 of the Letters Patent. But this case has no application as the learned Judges were of opinion that the order was not an interlocutory one but was an adjudication of the substantive right of a party given under the Code. I may point out that the learned Judges declined to follow the decision of another Bench in *Appasami Pillai v. Somasundra Mudaliar* where a contrary view was taken. In view of the observations of their Lordships of the Privy Council in *Bindeshwari Prasad Singh v. Kesho Prasad Singh* (1926) LR 53 IA 164: 51 MLJ 587

(PC) as to the desirability of following the constitutional practice of a reference to a Full Bench where one Bench thinks itself constrained to differ

from another Bench the question is likely to be settled by a Full Bench should it arise again.

7. I am of opinion that the order refusing inspection is not a judgment within the meaning of cl 15 of the Letters Patent and that no appeal lies

against that order.

8. The appeal is dismissed with costs.

Reilly, J.

9. I agree.