

(1956) 09 AP CK 0018
In the Andhra Pradesh High Court
Case No : Case No. 866/B5/2 of 1955

Eramma and Another

APPELLANT

Vs

Veerpanna and Others

RESPONDENT

Date of Decision : 24-09-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 110
Constitution of India, 1950 — Article 133, 133(1), 135(1)

Citation : (1956) 09 AP CK 0018

Hon'ble Judges : Manohar Pershad, J;Kumarayya, J

Bench : Division Bench

Advocate : Govind Das Mehta and Vinayak Rao Vaidya, for the Appellant;
Bhimsenachari and S.R. Kagalkar, for the Respondent

Judgement

1. These are two separate petitions for leave to appeal to the Supreme Court one on behalf of Eramma under Article 133(1)(a) of the Constitution of India, and the other on behalf of Sidamma under Article 133(1)(a) and Sections 109 and 110, Code of Civil Procedure.

2. The Petitioners are the widows of the father of Baswan Gowda in relation to whose property consisting of lands, houses, ginning factory etc. the non-Applicant Plaintiffs had brought a suit for possession as his heirs. Each of the Petitioners set up in defence a plea that in pursuance of the authority given exclusively to her by her husband, she had adopted a son. While Eramma entirely depended on oral authority to adopt, Sidamma produced a will showing permission granted to her by her husband. The trial Court disbelieved the story of Eramma and on the evidence adduced, on behalf of Sidamma held her adoption as proved and valid in law and thus dismissed the suit of the Plaintiffs.

Two appeals were preferred to this Court. On behalf of the Plaintiffs and the other on behalf of Eramma. This Court differed from the conclusion of the trial Court and held that the authority to adopt alleged to have been given to Sidamma was also disproved and consequently decreed the suit of the Plaintiffs 1

and 2. In the result, the appeal of Eramma was disallowed. It is, in these circumstances, that both the widows have filed separate; petitions for leave to appeal to the Supreme Court.

3. So far as the petition of Sidamma is concerned we are of the opinion that it should be allowed. Admittedly, the valuation of the subject matter in dispute both in the Court of first instance and in appeal is over Rs. 20,000/-. The judgment of this Court is not of affordances. The Petitioner is, therefore, entitled to leave under Article 133(1)(a) of the Constitution. We, therefore, allow the petition. A certificate may accordingly be given to the Petitioner.

4. In the petition of Eramma Shri Govind Das Mehta, relying on the cases of Abraham v. Hyderabad Construction Co. Ltd. ILR 1956 Hyd 377 : AIR 1956 Hyd 145 (A) and Chitrapur Subbayamma Vs. Chitrapur Buchi Venkayya and Others, , argued first that the Petitioner was entitled to leave under Article 133(1)(a) of the Constitution. It was submitted that inasmuch as the judgment of this Court varied the judgment of the Court below by passing a decree in favour of Plaintiffs 1 and 2, it cannot be said to be one of affordance and as the value of the subject-matter of the dispute in the Court of first instance as well as in appeal was over Rs. 20,000/- she was entitled to appeal as of right and a certificate of leave, therefore, ought to be granted to her. It was further argued in the alternative that when similar question of adoption was in dispute in the connected appeal of Sidamma and leave to appeal to the Supreme Court has been granted to her (Sidamma) leave ought not to be withheld from the petition.

5. On behalf of the other side, it is contended that the only point for determination in the appeal of Eramma was whether the alleged adoption was proved and when this Court agreed with the view of the original Court that adoption was not proved, no leave can be granted unless substantial question of law was shown. It was further urged that the fact that leave was granted to Sidamma cannot be a sufficient ground to grant leave to the Petitioner also.

6. We will first consider whether the Petitioner is entitled to leave under Article 133(1)(a). The value of the subject-matter of the dispute in the Court of first instance admittedly was over Rs. 20,000/-, but, it was not so in the appeal filed by the Petitioner. Even if we assume that the value of the subject-matter of dispute in appeal was and is still Rs. 20,000/- or over, the Petitioner could only be entitled to leave if she shows further that the judgment of this Court was not one of affirmance.

It is contended, however, that since the suit of the Plaintiff which was dismissed by the trial Court, has been decreed by this Court; it cannot be deemed to be a judgment of affordance. In our opinion, that is not the true test for determining the nature of the judgment, decree or final order for purposes of Article 133 of the Constitution. The matter in dispute in appeal was whether the adoption alleged to have been made by Eramma was valid and proved according to law. The trial Court held the adoption of Eramma as not proved and on appeal we also

agreed with that view. It follows, therefore, that in relation to the claim or dispute of the Petitioner in appeal, our judgment was one of affirmance.

7. We have carefully considered the cases relied on by the learned advocate in support of a contrary view. We are clear in our mind that they do not help the contention of the Petitioner. In ILR 1956 Hyd 377 : AIR 1956 Hyd 145 (A) the petition for leave to appeal to the Supreme Court was against a decree of this Court which varied the decree of the trial Court. That" was a suit for the recovery of a sum of Rs. 29,263/4/8. The trial Court had decreed the claim only to the extent of Rs. 2,270/11/8 with costs and future interest.

On appeal, the High Court awarded a decree for a sum of Rs. 3,111/11/4 with costs and future interest. The sum awarded being less than the amount claimed, the Plaintiff applied for leave to appeal to the Supreme Court. The question arose Whether the judgment of this Court was one of affirmance or variance. It was observed that whether the decree of the High Court is of variance or not may be judged by the fact whether the High Court has differed from the lower court on as, principle. Following the principle laid down in AIR 1925 60 (Privy Council) by the Privy Council to which reference is invariably made in almost all the decisions of various. High Courts on the subject, it was held, since the-High Court had under its decree granted enhanced amount in appeal, it could not be said to be a decree of affirmance.

Obviously, there is nothing in the observations made in the case relied on to support the contention of the Applicant that the expression "judgment, decree or final order appealed from" used in Article 133 of the Constitution does not refer to the part of the decree or order or judgment which is the subject-matter of the proposed, appeal, but must of necessity refer to the decree or order in its entirety passed in the case.

It must be noted however, in the Privy Council case AIR 1925 PC GO (C) where the suit for possession of the adopted son was decreed with a direction to pay maintenance to the widow of the deceased which shall be a charge upon the estate and in appeal this decree was modified to the extent of the quantum of maintenance, the Privy Council granting special leave limited it to the question of maintenance only. The final decree appealed from was a decree of affirmance in all other respects and the Petitioners also had desired to appeal only with regard to the quantum of maintenance.

8. A question almost identical with the one in the case before us had arisen in Fateh Kunwar Vs. Durbijai Singh, . In that case an application for leave to appeal to the-Supreme Court was filed against the judgment of the High Court which allowed the appeal of the Defendant and set aside the order of the trial Court granting maintenance, and dismissed the cross?objections filed by the other side. In that petition, a question arose as to what was meant by the expression "judgment, decree or final order appealed from". The majority view of the Full Bench was expressed in the following words:

The expression judgment decree or final order appealed from" in Article 133 does not necessarily refer to the judgment, decree or final order of the High Court in its entirety but means that part of the judgment, decree or final order of the High Court which is the subject-matter of the proposed appeal. If the whole of the judgment, decree or final order is the subject-matter of the proposed appeal then obviously it is the whole of the judgment, decree or final order that has to be taken into consideration; but, if only a part of the judgment, decree or final order of the High Court is challenged in the proposed appeal then it is that part alone which is covered by the expression "judgment, decree or final order appealed from".

9. It was further observed that variance on or affirmance of one out of several matters decided by the Court below should be considered with reference to the decision of that particular matter which is the subject-matter of the proposed appeal & not with reference to the other matters. It was also held that if there are two appeals in the High Court from one decree of the lower Court then the decree of the High Court in each of the appeals will be separately considered and if the proposed appeal to the Supreme Court arising out of one of such decrees relates to a matter on which the decree of the High Court has affirmed the decision of the Court below; the Petitioner will not be entitled to leave unless some substantial question of law is shown.

Following this authority a Division Bench of this Court in the case of Bansilal v. Mukund Das AIR 1955 Hyd 216 (E) refused to grant leave to appeal to the Supreme Court on a matter on which the decree of the High Court was one of affirmance and no substantial question of law was involved. In the light of these authorities, if we were to consider the petition of Eramma, we find that in her appeal the only point to be considered is whether the adoption was proved and valid. Both the Courts have held against her.

In other words, this Court had affirmed the judgment of the Court below to the extent of adoption. Under the provisions of the Constitution, therefore, she is not entitled as of right to leave to appeal to the Supreme Court unless the dispute which is the subject-matter of appeal involves a substantial question of law; but, admittedly there is no such question of law involved.

10. It is next contended that It is otherwise a fit case within the meaning of Article 133(1)(C) where leave ought to be granted inasmuch as leave to appeal in relation to similar question was granted to the other party. Reliance is placed on the case of Chitrapur Subbayamma Vs. Chitrapur Buchi Venkayya and Others, . But this does not help the contention of the Petitioner. No doubt, in this case leave was granted under Article 135(1)(c), but, it was evidently, because a common question was involved. Justice Mack observed:

When leave was granted to one party, the other party should not be denied.

Whereas Krishnaswamy Naidu J. observed:

It cannot be laid down as a general principle of law that when leave is granted to one of the parties to appeal to the Supreme Court, the other party also was entitled to appeal as a matter of course.

11. It would, therefore, appear that leave was granted not on the ground that when one party was given leave, the other party should also be given, but, because of the fact that common question was in controversy in both the appeals. Apart from cases where a common question is in controversy there can also be cases falling within the ambit of Article 133(1)(c) of the Constitution wherein the value of the exact character of the dispute may be incapable of determination in terms of money or they may relate to questions of wide public importance as has been observed by Lord Buck master in *Radhakrishna v. Swami Nitha* AIR 1921 PC 25 (P).

The present case does not satisfy any of these tests so as to be regarded as a fit case where leave ought to be granted. For the above stated reasons, it cannot be laid down as a general proposition of law that in all cases where leave is granted to one of the parties to appeal to the Supreme Court, the other party also is entitled to leave as a matter of course. We are clearly of the view that this is not a fit case under Article 133(1)(c) of the Constitution. The petition is, therefore, rejected. This order shall govern the other connected petition.