

(1943) 08 MAD CK 0012
In the Madras High Court

Gaddam Chinna Venkata Rao and Others	APPELLANT
Vs	
Koralla Satyanarayanamurthy and Another	RESPONDENT

Date of Decision : 16-08-1943

Acts Referred:

Agriculturists Relief Act — Section 9

Citation : AIR 1943 Mad 698 : (1944) ILR (Mad) 147 : (1943) 56 LW 527 : (1943) 2 MLJ 336

Hon'ble Judges : Alfred Henry Lionel Leach, C.J.; Lakshmana Rao, J.; Krishnaswami Ayyangar, J

Bench : Full Bench

Judgement

Alfred Henry Lionel Leach, C.J.—In my judgment the answer to the question referred should be in the affirmative, but before indicating my reasons I will set out the essential facts.

2. The respondents sued in the Court of the District Munsiff of Amalapuram to recover the sum of Rs. 1,450-1-3, which they claimed to be due on

a promissory note executed by the first appellant on the 27th January, 1937. The plaintiffs' case was that the first defendant (the first appellant)

borrowed Rs. 3,000 on a promissory note dated the 12th December, 1934; on the 27th January, 1937, there was due on this instrument Rs.

4,359 ", on that date the first defendant repaid in cash Rs. 3,059 and in respect of the balance of Rs. 1,300 he executed the promissory note in

suit. The first defendant's two sons were joined as defendants. The defence was that the note of the 12th December, 1934, really represented

what was due in respect of a loan of Rs. 2,000 advanced in 1925; on the 23rd October, 1929, the first defendant repaid a sum of Rs. 1,900; by

this payment and the payment of Rs. 3,059 on the 27th January, 1937, he had

repaid altogether more than double the amount borrowed in 1925

and by virtue of the provisions of the Madras Agriculturists' Relief Act nothing was due by him.

3. The main questions which the District Munsiff was called upon to decide were: (i) whether the promissory note dated the 12th December, 1934,

was executed in respect of cash advanced on that date or represented the balance of what was due on an earlier transaction, and (ii) if the

promissory note in suit did not represent a new cash transaction, in what manner was the sum of Rs. 3,059, admittedly paid on the 27th January,

1937, to be appropriated? The District Munsiff found that the promissory note of the 12th December, 1934, represented an entirely new cash

transaction and he held that the Rs. 3,059 should be appropriated u/s 9 of the Agriculturists' Relief Act. On this basis he calculated that the

plaintiffs were entitled to Rs. 2 74-11-4 and he passed a decree for this amount with interest.

4. The plaintiffs appealed to the Subordinate Judge of Amalapuram. The Subordinate Judge reversed the decision of the District Munsiff with

regard to the appropriation of Rs. 3,059 and held that the defendants were not entitled to challenge the District Munsiff's finding that the

promissory note of the 12th December, 1934, represented a new cash transaction because they had neither appealed nor had they filed a

memorandum of cross objections. The result was that he gave the plaintiffs a decree for the full amount claimed.

5. The defendants have appealed to this Court. Their case is that the Subordinate Judge was wrong in not allowing them to challenge the finding of

the District Munsiff that the promissory note dated the 12th December, 1934, represented a new cash transaction. They maintain that they were

entitled to do so by reason of the provisions of Order 41, Rule 22. The appeal came on for hearing before Wadsworth and Patanjali Sastri, JJ.,

who considered that in view of the decision of this Court in Sri Ranga Thathachariar, late a minor by next friend Komalathammal, but now declared

major and next friend discharged Vs. Srinivasa Thathachariar alias Srinivasa Raghavachariar, a reference to a Full Bench was advisable. The

question referred reads as follows

Whether under Order 41, Rule 22, Civil Procedure Code, it is open to a defendant-

respondent who has not taken any cross-objections to the partial decree passed against him, to urge in opposition to the appeal of the plaintiff's contention which, if accepted by the trial Court, would have necessitated, the total dismissal of the suit.

6. In the order of reference the learned Judges have indicated that in their opinion the observations in Sri Ranga Thathachariar, late a minor by next friend Komalathammal, but now declared major and next friend discharged Vs. Srinivasa Thathachariar alias Srinivasa Raghavachariar, went too

far and that on a proper construction of Order 41, Rule 22(1), the defendants should have been allowed to challenge in the Subordinate Court the

finding of the District Munsiff that the promissory note of the 12th December, 1934, represented a cash transaction. Order 41, Rule 22(1) says,

Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided

against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such

objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal,

or within such further time as the Appellate Court may see fit to allow.

7. Sri Ranga Thathachariar, late a minor by next friend Komalathammal, but now declared major and next friend discharged Vs. Srinivasa

Thathachariar alias Srinivasa Raghavachariar, was decided by a Bench consisting of Coutts Trotter, C.J., and Srinivasa Ayyangar, J., who said,

Though the word "decree" has been used in Rule 22, it is clear that what the rule contemplates really is the decision by the Court below and

merely enables the decision arrived at by the lower Court to be supported on grounds other than those on which the lower Court proceeded. We

are satisfied that under that rule it is not open to a respondent to have adjudicated by the appellate Court rights or causes of action which have

been decided against him in the Court below and in respect of which he has filed no appeal or memorandum of objections.

8. It is this passage which Wadsworth and Patanjali Sastri, JJ., have suggested goes too far. I consider that their criticism is well founded. A

respondent may support a decree which has been passed in his favour on any ground on which he opposed the plaintiff's case in the trial Court

notwithstanding that the trial Court had decided the point against him. It is said that to allow the defendants to re-open the question whether the

promissory note of the 12th December, 1934, was executed for a new loan means an attack on the decree, not the support of it. This argument is

based on an observation of Madhavan Nair, J., in Gangama Naik Vs. N.L.V.R. Veerappa Chetti, where the learned Judge followed Sri Ranga

Thathachariar, late a minor by next friend Komalathammal, but now declared major and next friend discharged Vs. Srinivasa Thathachariar alias

Srinivasa Raghavachariar,

9. In wanting to reopen this question the defendants are not really attacking the decree. They cannot do so, because they failed to file in the

plaintiff's appeal to the Subordinate Court cross-objections to the finding that they were liable in the sum of Rs. 274-11-4. So far as they are

concerned, that decree must stand and they admit it. What they desire to do, however, is to demonstrate that the plaintiffs were not entitled to

more than Rs. 274-11-4 by showing that on a proper appreciation of the evidence they ought not to have got anything at all. I can see nothing in

Order 41, Rule 22, to prohibit them from doing so. Stress has been laid by the plaintiffs on the following passage in the judgment of Madhavan

Nair, J., in Gangama Naik Vs. N.L.V.R. Veerappa Chetti, .

If the Court disagrees with the opinion of the lower Court on the point in question, how can the Court doing so allow the lower Court's decree to

stand without setting it aside?" With great respect, I consider that this is not the position. The Court cannot set the decree aside, because it has

become final, but it is open to the defendants to repel the plaintiffs' case for an increased decree by showing that they were not really entitled to a

decree at all.

10. The costs of this reference should be made costs in the appeal.

Lakshmana Rao, J.

11. I agree and have nothing to add.

Krishnaswami Ayyangar, J.

12. I also agree but would like to add a word or two on the true nature of the privilege given to a respondent by Order 41, Rule 22, Civil

Procedure Code. When an appeal is preferred, the appellant is generally

speaking, seeking to get rid of an adverse decision, adverse to him wholly or in part, which means that the opposite party had succeeded wholly or in part. That success might be the result of a decision in his favour on one or some only of several grounds urged by him; the Court negating the other or others. As regards these latter grounds, he cannot and need not appeal, however erroneous the decision, because, there is no right of appeal to a party Who has succeeded. But when the opposite party prefers an appeal, he may find himself in a difficult situation if he is obliged to remain content with supporting the decision on the only point or points on which he had succeeded without resorting to the others on which he had failed. For instance it may turn out on examination that some or all of these other grounds are good, while those accepted by the lower Court are unsustainable. It is to provide for such a contingency, and to avoid injustice to the respondent in such a case that the rule has been enacted giving him liberty to support the decree if necessary by relying on any of the grounds decided against him in the Court below. The use of the word support makes it plain that the right given is limited to the sustaining of the decree in so far as it is in his favour, and does not extend beyond so as to enable him to obtain an alteration, giving him a further advantage. This, he can secure only by an appeal or cross-objection.

13. Where a suit is wholly dismissed or wholly decreed it is open to the respondent to support the decision, by reagitating grounds negated by the lower Court. This is simple enough, and the language of the rule is easily understood and applied. Where however the suit is decreed in part and dismissed as to the rest, we have in reality what may be described as a double or composite decree. There is a decree for the plaintiff in respect of the part decreed, and a decree for the defendant in respect of the part dismissed. If the plaintiff appeals, he does so for the purpose of displacing the decree in so far as it is in favour of the defendant. If the defendant appeals, he again does so for the purpose of getting rid of the decree in so far as it has gone in plaintiff's favour. In either case the party who figures as the respondent has a decree in his favour, which he is allowed to support on any of the grounds decided against him by the Court which passed the decree. When he does this and no more, he is only supporting and not attacking the decree. The principle can be appreciated by

taking a simple illustration or two.

14. Let us take a case where a plaintiff sues for a debt of, say Rs. 1,000, and the suit is contested by the defendant on two grounds, (i) discharge,

and (ii) limitation. Let us assume that the trial Court dismisses the suit on the ground of limitation, while negating the plea of discharge. The plaintiff

in an appeal from that decree may be able to satisfy the appellate Court that the decision on the point of limitation is incorrect. In such an

eventuality Order 41, Rule 22 enables the defendant to sustain the decree by making good the plea of discharge found against by the Court below.

Let us however take a more complex case where the claim and defence are of the same character, as in the last illustration, but the trial Court gives

a decree to the plaintiff for Rs. 600 only disallowing the claim for the balance on the ground of limitation. In essence the decree, as already

explained, bears a double character. There is a decree for the plaintiff for Rs. 600 and a decree for the defendant in respect of the sum of Rs. 400

disallowed by the Court, because to that extent the decision was in his favour. When the matter is taken before the appellate Court by an appeal

by the plaintiff in which, let us say, he asks for a decree for the balance of Rs. 400 disallowed by the Court below it is open to the defendant-

respondent--that is what it seems to me the rule says--to support the disallowance of the claim to the extent of Rs. 400 by making good his plea of

discharge which will avail him to that extent, and no more. In doing so he is only relying on a ground decided against him in the Court below, and

this is precisely, what the rule permits. In other words, where there is a decree for a part only of a claim it means that it is partly in favour of the

plaintiff and partly in favour of the defendant, and when the respondent is given liberty by the rule to support the decree it is to enable him to

support that part of the decree which is really in his favour. In doing so he is not attacking the decree in so far as it is in favour of the plaintiff nor is

he supporting it; for obviously he is not interested in supporting it at all. In fact, he is only attempting to prevent the plaintiff from increasing the

burden of the liability beyond the limit fixed by the decree appealed against.

15. The word ""decree"" in this rule may be taken to mean "decision as held in Sri Ranga Thathachariar, late a minor by next friend Komalathammal,

but now declared major and next friend discharged Vs. Srinivasa Thathachariar

alias Srinivasa Raghavachariar, but that does not solve the difficulty.? What is necessary to bear in mind is that the principle which is applicable to a simple case where a claim is wholly decreed or wholly dismissed, is equally applicable to a case where the claim is allowed in part and dismissed as regards the rest. In the latter class of cases, namely, where there is a decree for a part only of a larger claim, the decision is to be understood as comprising a decree in favour of the respondent to the extent to which the Court below had disallowed the claim of the appellant. So understanding it, there is no difficulty whatever. It is by an omission to see clearly this double aspect when there is a decree for a part only of a claim that errors are likely to occur.