
(1946) 03 MAD CK 0011
In the Madras High Court

Gangadara Ayyar and Others

APPELLANT

Vs

Subramania Sastrigal and Others

RESPONDENT

Date of Decision : 26-03-1946

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109

Citation : AIR 1946 Mad 539 : (1947) ILR (Mad) 6 : (1946) 59 LW 387 : (1946) 2 MLJ 69

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The petitioners seek a certificate permitting an appeal to His Majesty in Council. They were the second,

third and fourth defendants in the suit. The plaintiff (the first respondent) sued for a declaration that the eleven items of property described in the

schedules annexed to his plaint belonged to the the estate of one Sundaram Ayyar, who died on the 14th September, 1937 and that a deed of

settlement executed by Sundaram Ayyar's mother on the 3rd November, 1938 in respect of these properties was void. The plaintiff was the

reversioner to the estate and he claimed to be entitled to all the properties. The trial Court gave him a declaration in respect of six of the eleven

items of property but dismissed the rest of the claim. The petitioners appealed to this Court on the ground that the trial Court had erred in giving the

plaintiff a declaration in respect of the six items. The plaintiff filed a memorandum of cross objections in which he said that the Subordinate Judge

should have declared him to be entitled to four of the remaining five items. The appeal was dismissed, but the memorandum of cross objections

was allowed. The petitioners wish to appeal to the Privy Council in respect of all

the ten properties awarded to the plaintiff. In the trial Court the total value of the eleven properties in suit was stated to be Rs. Rs. 31,304. The value of the six properties in respect of which the Subordinate Judge gave the plaintiff a decree was Rs. 21,214. The value of the four properties referred to in the memorandum of cross objections was Rs. 9,190.

2. The application is opposed by the plaintiff. He says that as there were concurrent findings so far as six of the properties are concerned, the petitioners can only appeal with regard to the four items awarded to the plaintiff by this Court on appeal and that they in themselves do not fulfil the requirements of the CPC with regard to value. The petitioners say that the value of the four items is immaterial, because the subject matter of the proposed appeal will be the ten items of property in respect of which the plaintiff has succeeded and their value is and has been at all material times far in excess of Rs. 10,000. The application has been placed before a Full Bench because there is a conflict of authority in this Court on the question whether there is a right of appeal in circumstances such as we have here.

3. Appeals to the Privy Council are governed by the provisions of Sections 109 and no of the Code of Civil Procedure. Where the case fulfils the requirements of the Code with regard to value, a party has a right of appeal if the decree of the appellate Court varies the decree of the trial Court.

Where the appellate Court affirms the decision of the Court below, an appeal lies only when it involves some substantial question of law. In this

case it is admitted that there is no substantial question of law. Undoubtedly the decree of this Court varied the decree of the trial Court in an

important respect, because it gave four more items of property to the plaintiff.

4. Before turning to the decisions of this Court which have been quoted in argument, it is necessary to refer to the judgment of the Judicial

Committee in *Annapurnabai v. Ruprao* (1924) L.R. 51 IndAp 319 : ILR 51 Cal. 969 as it is referred to in many of the reported cases. There the

plaintiff claimed to be entitled as an adopted son to property valued at more than Rs. 10,000. One of the defendants, the widow of the alleged

adoptive father, denied the adoption and claimed to be entitled to Rs. 3000 per annum by way of maintenance. The trial Court held that the plaintiff

had substantiated his plea of adoption and gave the widow maintenance at the rate of Rs. 800 per annum, which was charged upon the estate. On

appeal by her the decree of the trial Court in so far as it concerned the adoption was confirmed, but the rate of maintenance was varied. Instead of

Rs. 800 per annum the widow was awarded Rs. 1,200 per annum. She and a defendant who had also claimed, but unsuccessfully, to be an

adopted son wished to appeal to His Majesty in Council. The appellate Court refused leave and the petitioners applied to the Judicial Committee

for special leave, at the same time intimating that they did not propose to question the concurrent findings that the plaintiff was the adopted son.

Their Lordships granted the petitioners special leave. In delivering the judgment of the Board, Lord Dunedin said that the contention of their

counsel that they were entitled to leave by virtue of the provisions of section no of the Code was correct. They had a right of appeal. Lord

Dunedin added that the petitioners' chance of success was not material to their application. As the petitioners accepted the finding with regard to

the plaintiff's adoption, the special leave given was limited to the question of maintenance. There is here a pronouncement of the Judicial

Committee that where there is a variance of the decree passed by the trial Court, the party affected thereby is entitled as of right to a certificate

subject, of course, to the requirements of the Code being fulfilled with regard to value.

5. There are two decisions of this Court which support the petitioners' application for leave to appeal. They are *Shunmuga Sunday a Mudaliar v.*

Ratnavelu Mudaliar (1928) 56 M.L.J. 476 : ILR 52 Mad. 521, and *Perichiappa Chettiar v. Nachiappan* (1930) 35 L.W. 206. In the former case

the plaintiff sued for a general account against a trustee alleging specific instances of malversation. The trial Court held that only two of the eight

charges had been proved. The value of the account was stated to be Rs. 14,4.58. The two charges in respect of which the plaintiff succeeded

represented Rs. 7000. The defendants appealed in respect of the two charges which had been proved and the plaintiff filed a memorandum of

cross objections relating to the other six charges. This Court dismissed the suit in its entirety on the ground that accounts had been rendered and

had been suppressed and, therefore, it did not consider the appeal or the memorandum of objections in detail. The plaintiff applied for leave to

appeal to the Privy Council. The application was opposed on the ground that the case did not fulfil the requirements of the Code with regard to

value, because the appellate decree had in effect confirmed the trial Court's decree with regard to two of the charges and the remaining six charges

represented less than Rs. 10,000. Phillips and Odgers, JJ., held that the subject matter of both the appeal and the memorandum of cross

objections was the same, namely, the liability to account, and the decree of the High Court could not be construed as embodying two distinct

decrees. There was a single decree in respect of a single subject matter and it did not affirm the decree of the first Court within the meaning of

section no of the Code of Civil Procedure.

6. In *Perichiappa Chettiar v. Nachiappan* (1930) 35 L.W. 206, a similar decision was given by Reilly and Ananthakrishna Aiyar, JJ. That was a suit

for accounts against an agent. The plaintiff valued his relief at Rs. 40,000. The trial Court gave him a decree for Rs. 5,682. The defendant

appealed to the High Court and the plaintiff preferred a memorandum of cross objections, claiming a decree for a further sum of Rs. 20,000. This

Court allowed the defendant's appeal in part and reduced the amount decreed by the trial Court by some Rs. 4,000. It allowed the memorandum

of cross objections to the extent of only Rs. 150. On an application by the plaintiff for leave to appeal to His Majesty in Council it was held that

this Court's decree had varied the decree of the trial Court to his prejudice and as the subject-matter of the suit in the trial Court and in the appeal

to the Privy Council was upwards of Rs. 10,000, he was entitled to a certificate.

7. The decisions of this Court which are relied upon by the other side are those given in *M.L.M. Ramanathan Chetti Vs. V.K.N.S.P. Subramanian*

Chetti and Others, , A. Venkitaswami Chettiar and Others Vs. Sekkuti Pillai, , Chavali Velayya Vs. The President of the Board of Commissioners

for Hindu Religious Endowments, , and P.R.N.S.M. Chokkalingam Chetti Vs. The Official Assignee of Madras, .

8. *M.L.M. Ramanathan Chetti Vs. V.K.N.S.P. Subramanian Chetti and Others, ,* was also decided by Phillips and Odgers, JJ., but two years

before they decided *Shanmuga Sundara Mudaliar v. Ratnavelu Mudaliar* (1928) 56 M.L.J. 476 : ILR 52 Mad. 521. In *M.L.M. Ramanathan*

Chetti Vs. V.K.N.S.P. Subramanian Chetti and Others, the appeal was dismissed

in its entirety, but a memorandum of objections filed by the respondent was allowed to the extent of Rs. 300. The appeal involved a pure question of fact. It was held that the memorandum of objections was in effect a cross appeal and as the decree of this Court affirmed the decree of the trial Court in so far as the defendant's appeal was concerned, no leave to appeal could be granted. In the first place, this judgment is in conflict with the judgment of the same learned Judges in Shanmuga Sundara Mudaliar v. Ratnavelu Mudaliar (1928) 56 M.L.J. 476 : ILR 52 Mad. 521. In the second place, we consider that they erred in separating the appeal from the memorandum of objections and treating the orders of this Court thereon as embodying two separate decrees. Only one decree was drawn up and it certainly varied the decree of the trial Court. In these circumstances the appellant was entitled to a certificate granting leave to appeal and we must hold that that case was wrongly decided.

9. When the facts are appreciated, A. Venkitaswami Chettiar and Others Vs. Sekkuti Pillai, , is not really in point. The facts are these. A

mortgagee brought a suit on a mortgage bond which had been executed by the first and fourth defendants, the first defendant being a son and the fourth defendant the widow of a deceased Hindu. The second defendant was the brother of the first defendant and the third defendant was the son of the first defendant. The trial Court gave a decree against the first and fourth defendants for the full amount claimed, but held that the second and third defendants were liable only for a small part of the debt. The plaintiff appealed to this Court, which affirmed the trial Court's decree in so far as it affected defendants 1, 2 and 4, but reversed it in so far as the third defendant was concerned. It was held that he was liable for almost the full amount claimed. The plaintiff applied for leave to appeal against the second defendant. It was held by Venkatasubba Rao and Cornish, JJ., that he was not entitled to a certificate because this Court's decree in respect of the second defendant was one of affirmance. A distinction was drawn between the words "" decree or final order "" in Clause (3) of section no and the term "" the subject-matter"" mentioned in Clause (1). There all that the plaintiff was wanting to do was to challenge in the Privy Council the finding that the second defendant was only liable for a small portion of the decree. The appellate decree had certainly affirmed the trial Court's decree so

far as the second defendant was concerned and the application for leave did not travel beyond him. Although we do not accept all the observations made in the judgment, we see no reason to question the correctness of the decision on the peculiar facts of the case.

10. The decisions in Chavali Velayya Vs. The President of the Board of Commissioners for Hindu Religious Endowments, , and P.R.N.S.M.

Chokkalingam Chetti Vs. The Official Assignee of Madras, do not go beyond A. Venkitaswami Chettiar and Others Vs. Sekkuti Pillai, and

therefore it is not necessary to discuss them in detail.

11. In our judgment the petitioners are entitled under the provisions of Section 110 to the certificate asked for by them. As we have indicated, they

wish to challenge in the appeal to the Privy Council the validity of the plaintiff's claim with regard to ten of the eleven items of property and this

Court's decree varied the decree of the trial Court in respect of four of the items. This being a decree of variation and not of affirmance, the

petitioners are entitled as of right to a certificate and one will issue.

12. The proposed appeal does not involve any question of interpretation of the Constitution Act or any Order in Council passed thereunder.