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(1926) 09 MAD CK 0039

In the Madras High Court

(Gutta) Punnayya — APPELLANT

Vs

(Kaza) Parandamayya and Others — RESPONDENT

Date of Decision : 17-09-1926

Acts Referred:

Citation : AIR 1927 Mad 317 : (1927) 25 LW 95

Hon'ble Judges : Sundaram Chetty, J;Sundaram Chetti, J;Devadoss, J

Bench : Full Bench

Judgement

Devadoss, J.—In this case the plaintiffs brought a suit basing their claim on title. Both the lower Courts found against the plaintiffs on the question of title and the lower appellate Court granted them a decree on the ground that they had acquired an easement right over the lane in question. The learned Judge whose order is appealed against found that no specific issue had been raised on the point and that the judgment of the District Judge was not satisfactory and he framed an issue as to easement and ordered the case to be sent down to the lower appellate Court for a. finding on the issue. The 2nd defendant has preferred this Letters Patent Appeal. A preliminary objection is taken to the maintainability of the appeal on the ground that the order appealed against is not a judgment within the meaning of Clause 15 of the Letters Patent. The question for decision is: Is the order of the learned judge a judgment within the meaning of the clause.

2. Mr. T. V. Venkatarama Aiyar for the appellant contends that the learned Judge in framing the issue has decided that the plaintiff should be allowed to set up a case of easement not set up in the plaint and that decision is a judgment within the meaning of Clause 15. I will assume for purposes of argument that the case of easement was not set up by the plaintiff in the plaint and that a new case was set up in the appeal to the lower appellate Court. What has the Judge decided? The question of title being one of fact he accepted the finding of the lower appellate Court and proceeded to consider the case of easement and finding the judgment of the District Judge to be unsatisfactory he raised an issue as to

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easement for a satisfactory disposal of the case and directed the lower appellate Court to record a finding after taking such evidence as the parties may adduce. If the appeal were against that portion of the order which accepts the finding of the Judge it may be contended with some show of reason that that point has been decided by the learned Judge and that decision is final so far as he is concerned. But the appeal is really against the order of the learned Judge framing an issue and calling for a finding on it. The argument, therefore, that there has been an adjudication upon the rights of the parties and that adjudication is final can only apply to that portion of the order which accepts the finding of fact by the lower appellate Court.

3. The real question, therefore, is, whether an appeal lies against an order calling for a finding from the lower appellate Court on an issue framed by the learned Judge. What is strongly pressed upon our attention is that by calling for a finding the learned Judge has decided that the plaintiff should be allowed to set up a case not set up in the plaint. The question whether that is a new case or a case which arises on the pleadings is not material to consider. When a Court frames an issue which it thinks necessary for the proper disposal of the suit and calls for a finding from the lower Court can it be said to adjudicate upon any right or title of the parties? I think an order calling for a finding on an issue new or old, whether raised in the pleadings or not is not a judgment for no right or title can be said to be adjudicated upon by the mere framing of an issue and by directing that issue to be tried.

4. The question what is and what is not a judgment has been the subject of numerous decisions of this as well as of other High Courts. It is impossible to reconcile all the cases on the point and I do not propose to undertake the almost impossible task of giving an exhaustive definition of the word ''judgment.'' Any definition of mine would only add to the difficulties already existing in applying the case-law to the question under consideration. The question of what is and what is not a judgment has been exhaustively considered in the Full Bench case in Tuljaram Row v. Alagappa Chettiar [1910] 35 Mad. 1. In that case the learned Chief Justice says:

The test seems to me to be not what is the form of 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.

5. In that case the question was whether an appeal lay against an order refusing to frame additional issues at the request of a party. The principle of that decision is applicable to the present case. If there is no appeal against an order refusing

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to frame additional issues on an application by a party can it be said that an appeal lies where on the application of a party an order is made allowing additional issues to be framed? In this case the learned Judge thought that for a satisfactory disposal of the case he should call upon the lower appellate Court to submit a finding on an issue framed by him. There is no doubt a difference between a trial Court framing additional issues and an appellate Court framing issue in respect of a case not set up in the plaint. If the order calling for a finding is not a proper order that would be a ground of appeal against the judgment that may be passed after the finding is received. The bare direction or order for the trial of an issue framed by the Court is not a judgment within the meaning of Clause 15 of the Letters Patent.

6. In a recent case reported in The Official Assignee of Madras v. Ramalingappa A. I. R. 1926 Mad. 554 the learned Chief Justice expressed his approval of the observation of Sir Arnold White, C. J., in Tuljaram Row v. Alagappa Chettiar [1910] 35 Mad. 1 quoted above and applied it to a case in which it was contended that an appeal lay against an order transposing certain defendants as plaintiffs by the judge sitting on the Original Side. The Chief Justice and Ramesam, J., held that no appeal lay against such an order.

7. The case in Kanayalal Bhoya v. Paramsukdoss A. 1923 Mad. 44 is strongly relied upon as supporting the appellant''s contention. In that case Phillips, J., sitting on the Original Side, decided certain issues in a case and adjourned the case for the trial of other issues. An appeal was preferred against the decision on the issues disposed of and it was held by Sir Walter Schwabe, C. J., and Coutts-Trotter, J., that an appeal lay against the judgment of Phillips, J., on the issue disposed of by him. This case does not apply to the present case for the appeal is not against that portion of the order of Madhavan Nair, J., in which he tacitly concurs with the finding of the lower Courts on the question of title to the plaint lane. If this case were held to govern the present case I should with great respect dissent from it. Can it be said that whenever a Judge sitting on the Original Side decides an issue in a suit the decision of that issue could be appealed against? In a case by a reversioner for possession two preliminary issues may be raised: (1) whether the plaintiff is the reversioner; and (2) whether the suit is barred by limitation? There may be other questions such as estoppel, res judicata, etc., but supposing the Judge decides that the plaintiff is not a reversioner and does not dismiss the suit could it be said that a Letters Patent Appeal is competent against the decision on that point, and if his decision is reversed in appeal, and after remand, if the Judge decides the question of limitation would an appeal lie against that decision as well? Is an appeal competent against the decision of any one of the issues? It is unnecessary to discuss this case further as I hold that it has no application to the present case.

8. In Sujjada Shah Mahamad Usuf v. Peerjada Khaja Syed Shaw Hobit [1919] M. W. N. 662 there was a remand and it was held that after remand the question decided before remand could not be reopened. This case is relied upon by Mr.

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Venkatarama Aiyar for the position that once a point is decided that point cannot be reopened by the Court and the decision of Madhavan Nair, J., as regards his allowing a new case by the plaintiff cannot be reconsidered after the finding of the lower appellate Court is received. But the answer to that is that the learned Judge has not decided anything definitely. His calling for a finding on a point raised by him cannot be said to finally dispose of any question between the parties. This case therefore has no application to the present.

9. In Sonachallam Pillai v. Kumaravelu Chettiar A. 1924 Mad. 597 it was held that an order of a single Judge of the High Court refusing to stay the execution of a decree of a mofussil Court pending an appeal therefrom to the High Court is a ''judgment'' within the meaning of Clause 15 of the Letters Patent and an appeal therefrom is maintainable. In that case Krishnan, J., and Waller, J., followed Tuljaram Row v. Alagappa Chettiar [1910] 35 Mad. 1 The observation of Bittleston, J., in De Souza v. Coles 3 M. H. C. R. 384 which Waller, J., was inclined to adopt, was not approved by Arnold White, C. J. in Tuljaram Row v. Alagappa Chettiar [1910] 35 Mad. 1 The decision in Krishna Reddy v. Thanikachala Mudali A. I. R. 1924 Mad. 90 is on a different point and does not touch the present question.

10. Subba Lakshmamma v. Venkatarayadu [1909] 32 Mad. 318 does not apply to the present case as the point therein was whether the order of remand which was not appealed against could be questioned in second appeal. The legality of the order of Madhavan Nair, J., could be questioned only in Letters Patent appeal against his judgment in the case. The order appealed against, I have no hesitation to hold, is not a judgment within the meaning of Clause 15 of the Letters Patent and therefore this appeal is incompetent. It is unnecessary in this view to consider the appeal on its merits. In the result, the Letters Patent appeal fails and is dismissed with costs.

Sundaram Chetty, J.

11. I had the advantage of perusing the judgment of my learned brother, in which the question has been exhaustively dealt with. The question is not free from difficulty, in view of the various interpretations of the word ''judgment'' in Clause 15 of the Letters Patent, made in numerous decisions, not always easy to reconcile, while the Act itself has not defined it. In the present case, the direction given by the learned Judge, in the order appealed against which amounts to allowing the plaintiff to set up a case of acquisition of a right of easement u/s 15 of the Indian Easements Act, over the lane, whereas the basis of the claim set up in the plaint is his joint ownership of the lane along with the defendants, is the gravamen of the attack in this Letters Patent appeal. It is contended by Mr. Venkatarama Aiyar on behalf of the appellant, that this is in effect, a decision by the learned Judge that the plaintiff is entitled to fall back on a right of easement by prescription and get relief in this suit on that footing. He argues that inasmuch as this point cannot be reconsidered by the Judge deciding the second appeal, at the subsequent hearing after the submission of the finding, called for

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on the newly framed issue, he must be deemed to have finally decided that the plaintiff is entitled to make out a right of easement by prescription in this very suit, and therefore it would be a judgment to that extent, within the purview of Clause 15 of the Letters Patent. By this decision, it is urged that the plaintiff is enabled to adduce evidence on a claim, which is not only not specifically set up in the plaint, but is even inconsistent with the joint proprietary title alleged therein as the basis of the claim, and this appeal has been preferred against the same, even before evidence is recorded on this issue for the submission of a finding, which would all become unnecessary in case this appeal is allowed.

12. It has to be seen, whether the decision of a cardinal point in a suit, by reason of its being final so far as the Court which gave it is concerned, would be an interlocutory judgment, and as such, would come under the word ''judgment'' in Clause 15 of the Letters Patent, as contended by the learned vakil for the appellant. I was inclined to hold that there is force in this contention, but on a careful perusal of the judgment in the Full Bench case, Tuljaram Row v. Alagappa Chettiar [1910] 35 Mad. 1 where the meaning of the word ''judgment'' in Clause 15 of the Letters Patent has been discussed at great length, it seems to me, that the test for seeing whether a decision or adjudication in a suit or proceeding is a judgment, is to see whether its effect is to put an end to the suit or proceeding so far as the Court before which it is pending is concerned, or at least whether the non-compliance with that decision or adjudication would have the effect of putting an end to the suit or proceeding. It is obvious, that if this test should be applied, the order of the learned Judge, calling for a finding on a new issue framed by him, would not be a judgment.

13. The argument pressed by Mr. Venkatarama Aiyar runs counter to the view, expressed by the Full Bench of this Court, and, if it is accepted, the test is not necessarily what is laid down by the Full Bench, but the decision of any vital point, in a suit or proceeding, would be a judgment under Clause 15 of the Letters Patent, merely because it is final or unalterable by the Court which gave it, though the suit or proceeding is not put an end to as a result of it. But this contention has not the support of the views propounded in the several decisions referred to in the judgment of my learned brother except the one reported in Kanayalal Bhoya v. Paramsukdoss A. I. R. 1923 Mad. 44 The preponderance of authority is against the contention put forward on the appellant''s side.

14. I therefore agree with the opinion of my learned brother and would dismiss this appeal with costs holding it to be incompetent.

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