

(1941) 03 MAD CK 0025
In the Madras High Court

In Re: Bendapudi Venkataratnam and Others

Date of Decision : 24-03-1941

Acts Referred:

Citation : AIR 1941 Mad 639 : (1941) ILR (Mad) 935 : (1941) 53 LW 637 :
(1941) 1 MLJ 721

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The question which we have to decide relates to the court fee payable on an appeal filed under Rule 9 of. the rules framed

under the Madras Agriculturists" Relief Act (IV of 1938) and issued under G.O. No. 2634. These rules provide for an application either by the

debtor or by the creditor for a declaration as to the amount of the debt due. It is expressly provided that the application shall not be maintainable

under the rules if a suit for the recovery of the debt be pending and it is also provided that every such application shall bear a court-fee stamp of

the value of twelve annas. Rule 9 states that the order of the Court declaring the amount of the debt under Rule 7 shall be "subject to appeal and

second appeal as if it were a decree in an original suit" and it was the view of the office that the effect of this provision is to make appeals preferred

against orders declaring the amount of a debt taxable as appeals from declaratory decrees under Article 17-A of the Court-Fees Act as amended

in Madras. The authority relied upon for this view is a decision of Burn, J., on the effect of a similar provision in Section 50 (2) of the Malabar

Tenancy Act which provides that appeals shall lie from orders made u/s 12 etc., as if they were decrees in suits.

2. It is evident that the orders against which appeals are filed in these cases are

very much to the same effect as decrees in declaratory suits. They finally decide as between the parties the amount due on the debt; these decisions will be binding in future litigation and they cannot of themselves be executed. There is no specific article in the Court-Fees Act laying down what shall be the court-fee payable on appeal from an order which is appealable "as if it were a decree" but questions similar to that which we have now to decide have come before the Courts on numerous occasions. Under Order 21, Rule 50 (3) of the CPC the Court is concerned with an order which shall "have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree" and it has been held that under this provision the appeal is to be stamped with an ad valorem fee as an appeal from a decree. But then it must be noticed that the words "or otherwise" show that the order which is to have the force of a decree is to be governed by the same conditions not only with reference to the procedure in appeal but also in other respects. One of such decisions is in Jugal Kishore Gulab Singh v. Dina Nath-Siri Ram I.L.R.(1934) Lah. 893. There are two cases which have been cited before us which deal with statutory provisions that an order shall be subject to appeal as if it were a decree. One is in Jamsang Devabhai v. Goyabhai Kikabai I.L.R.(1891) Bom. 408 in which it was held that though the procedure in appeal was that for an appeal from a decree, the appeal was not governed by the provisions of the Court-fees Act relating to appeals from decrees and that it must be treated as a mere application falling under Article I of Schedule II. A similar view was taken by a Full Bench of the Calcutta High Court in Upadhya Thakur v. Persidh Singh I.L.R.(1896) Cal. 723 (F.B.). Both of these cases have been quoted with approval by a Bench of this Court in J.M. Rodrigues Vs. A.M. Mathias and Another, , which, though concerned with a rather different matter, had to consider what is the proper article of the Court-Fees Act to apply. The learned Government Pleader has relied on decisions mainly relating to proceedings in execution under special statutory provisions rendering an order under the, special statute executable as a decree and these decisions have held that such a provision attracts all the procedure including the right of appeal laid down for execution petitions in the CPC and also attracts the law of limitation for the execution of decrees and orders of a Civil Court under

Article 192 of the Limitation Act. An instance of such a decision under the Co-operative Societies Act is in S.V. Subba Rao Vs. The Calicut Co-

operative Urban Bank Limited, . Sundara Aiyar v. Commissioners, Hindu Religious Endowments Board, Madras (1928) 56 M.L.J. 373 : ILR

Mad. 388 is one of a number of cases which have been quoted before us under the Madras Hindu Religious Endowments Act. It seems to us that

these decisions have no direct bearing on the point which we have to decide. Granted that when it is laid down that an order shall result in a certain

procedure the whole of that procedure will be applicable including the law of limitation and the law relating to appeals, it does not necessarily

follow that a fiscal statute such as the Court-Fees Act shall be applied as if the order under appeal were that which it is expressly not. If in fact the

declaration under Rule 7 were a decree, it would be unnecessary to enact Rule 9 which provides that it shall be appealable as if it were a decree.

The rules proceed on the basis that there is a mere application resulting in a declaratory order which is not a decree, but which for purposes of

appeal is to be treated as if it were a decree. It is contended that if this order is to be treated for purposes of appeal as if it were a decree, it must

necessarily attract the provisions of the Court-Fees Act for appeals from decrees. We are unable to accept this contention in the absence of any

specific provision in the rules attracting the provisions of the Court-Fees Act governing appeals from decrees. The Court-Fees Act being a fiscal

statute, we cannot in the presence of an ambiguity guess at the meaning of the authority which enacts the rules and draw from the presumed

intentions of that authority an inference which is adverse to the party who has to pay the tax. Article 17-A applies in terms to a plaint or

memorandum of appeal in a suit. We are not concerned with a memorandum of appeal in a suit. We are concerned with a memorandum of appeal

in an application, the , order in which is made appealable as if it were a decree. It seems to us that Article 11 of Schedule II directly covers an

appeal of this kind. Article 11 applies to a memorandum of appeal when the appeal is from an order inclusive of an order determining any question

u/s 47 or Section 144 of the Code of Civil Procedure. This Article was not applied in the two cases cited above, Jamsang Devabhai v. Goyabhai

Kikabhai I.L.R.(1891) 16 Bom. 408 and Upadhya Thakur v. Persidh Singh ILR (1896) Cal. 723 (F.B.) apparently because of the different

wording of the Article of the Indian Court-Fees Act with which the learned Judges were concerned. But there is nothing in Article 11 of Schedule

II as amended in Madras which would exclude the applicability of that Article to cases such as these. We are therefore of opinion that the proper

Article of the Court-Fees Act to apply to these cases is Article 11 of Schedule II.