

(1952) 11 MAD CK 0031

In the Madras High Court

Case No : Letters Patent Appeal No. 134 of 1952

K. Pannalagu Ammani

APPELLANT

Vs

K.S.V. Lakshmi Ammani and Others

RESPONDENT

Date of Decision : 07-11-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 104, 144, 47, 96
Constitution of India, 1950 — Article 226
Government of India Act, 1935 — Section 107, 108, 205
Madras Court of Wards Act, 1902 — Section 15, 62

Citation : (1953) ILR (Mad) 808

Hon'ble Judges : P.V. Rajamannar, C.J.; Venkatarama Ayyar, J

Bench : Division Bench

Advocate : K.V. Venkatasubramaniam, K.S. Desikan and V.C. Sri Kumar, for the Appellant; R. Kesava Ayyangar, K.S. Ramamurthi and K. Parasaram for first Respondent and P. Satyanarayana Raju, Government Pleader, Vepa P. Sarathi and V.V. Raghavan for second and third Respondents, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Rajamannar, C.J.—This is an appeal under the Letters Patent against the judgment of Subba Rao, J., in Civil Miscellaneous Petition No. 13519 of 1950. That petition was filed in the following circumstances: Krishna Vijaya Poochayya Naicker, Zamindar of Marungapuri, an impartible estate situated in Tiruchirappalli district, died on 17th September 1926 leaving behind him three widows, Lakshmi Ammani, Ponnalagu Ammani and Muthu Alagu Ammani. As one of the incidents of impartible estates in Southern India is that the estate is descendible to a single heir the senior most of the three widows would be first entitled to succeed. The Government, on the assumption that Lakshmi Ammani was the senior most of the widows, proceeded to exercise powers conferred on them by the Madras Court of Wards Act. On 11th July 1927 the following notification was published in the Fort St. George Gazette and in the Tiruchirappalli District Gazette:

Under Section 15 of the Madras Court of Wards Act, 1902, His Excellency the

Governor-in-Council declares Lakshmi Ammani Ammal, the proprietrix of the Marungapuri Estate in the Kulittalai taluk of the Tiruchirappalli district to be incapable of managing her property and directs the Court of Wards to assume the superintendence of that property.

2. The Collector of Tiruchirappalli will discharge in respect of the property the duties imposed on a Collector by the said Act.

It is common ground that in pursuance of this notification the Court of Wards assumed the superintendence not only of the impartible estate of Marungapuri but also other partible properties left by the deceased Zamindar.

2. The late Zamindar left behind him a will, dated 30th July 1915 and a codicil, dated 10th August 1926. Ponnalagu Ammani alleged that she took the son of her daughter in adoption to her husband on 1st December 1949 under the authority given to her by her husband in the will and the codicil. She appears to have sent a petition to the Government on 6th January 1950 on behalf of the minor adopted son. Lakshmi Ammani filed another petition on 1st May 1950 evidently attacking the validity of the alleged adoption. The Government passed an order, G.O No. 2709, on 9th October 1950 dealing with both the petitions and communicated portions of their order to the two widows, respectively. The following is the portion of the order communicated to Ponnalagu Ammani:

(5) With reference to her petition, dated 6th January 1950, read above, Sr mathi Ponnalagu Ammani is informed that the Government have directed the Court of Wards to release from its superintendence the properties pertaining to Marungapuri Estate which are now under its superintendence. As however there is dispute as to title to the properties between the senior Zamindarini and the adopted boy the Government have decided to retain custody to enable either of the claimants to obtain suitable orders from the Civil Court in regard to the custody of the properties.

To Lakshmi Ammani the Government communicated paragraph 4 of their order, which runs as follows:

4. With reference to her petition, dated 1st May 1950, read above, Srimathi Lakshmi Ammani is informed that the Government have been advised that the adoption made by Srimathi Ponnalagu Ammani is valid in law and that she (Srimathi Lakshmi Ammani) has no longer any subsisting legal right or title to the impartible and partible properties of the late Zamindar which are in the custody of the Court of Wards and that it is therefore not possible to hand over possession of such properties without an order of a Civil Court. The Government have directed the Court of Wards to release the properties from its superintendence. She is informed that in case she does not obtain suitable orders from a Civil Court, within a period of three months from the date of receipt of this order regarding the custody of the properties, the Government will, on the expiry of that period, take such steps in regard to them as they may consider suitable and necessary in the light of the legal advice they have received.

On 17th October 1950 the following notification was published in the Fort St. George Gazette:

In exercise of the powers conferred by Section 15 of the Madras Court of Wards Act, 1902 (Madras Act I of 1902) and of all other powers enabling them in this behalf, His Excellency the Governor of Madras hereby rescinds Revenue Department Notification No. 210 , dated the 11th July 1927, published at page 1079 of Part I of the Fort St. George Gazette, dated the 19th July 1927, declaring Srimathi Lakshmi Ammani Ammal, then the proprietrix of the Marungapuri Estate, in the Kulittalai taluk of the Tiruchirappalli district, to be incapable of managing her property and directing the Court of Wards to assume the superintendence of that property.

3. The Government followed it up by another notification a few days later which was published in the Fort St. George Gazette, dated 21st November 1950. It was in the following terms:

2. It is hereby notified u/s 62 of the Madras Court of Wards Act I of 1902 that, under orders of Government, the Court of Wards has released from its superintendence the Marungapuri Estate in the Kulittalai taluk of the Tiruchirappalli district including the separate and partible properties left by the late Zamindar.

4. Immediately after this notification Lakshmi Ammani filed in this Court an application under Article 226 of the Constitution for the issue of a writ of mandamus or any appropriate writ or order directing the State of Madras and the Court of Wards to deliver possession of the Marungapuri Zamin Properties which were in the superintendence of the Court of Wards to her with accounts, records, documents, etc. She also prayed for an ad interim injunction restraining the Respondents from parting with the custody of the properties in favour of any person other than her pending disposal of the main application. In the affidavit filed by her karyasthar, after setting out the facts above narrated, he alleged that the Court of Wards was bound to hand over possession of all the properties including the accumulated income only to her and stated that the Court of Wards having assumed management on her behalf and in her right, it would be unjust and incompetent for them to set up the rights of anyone else in derogation of and inconsistent with her rights without surrendering and restoring possession of the properties to her.

5. The Collector of Tiruchirappalli filed a counter-affidavit on behalf of the Respondents. He stated inter alia that the Government were advised that the adoption was validly made and had the effect of divesting Lakshmi Ammani of the estate and the adopted son became entitled not only to the impartible zamindari but also to the separate and partible properties left by the late Zamindar. The attitude taken up by the Government and the Court of Wards is summed up in paragraph 5 of the counter-affidavit in which the objection was taken that the question as to who is the proprietor of the estate could not be

decided in proceedings by way of a writ and the matter could only be decided properly in a Civil Court at the instance of either of the two claimants.

6. Lakshmi Ammani's karyasthar filed a reply affidavit alleging that it was not competent to the Respondents to raise any objection to the re-delivery of the zamin to her as it was from her they took the zamindari and it was on her behalf that they had been in management of the estate. A legal plea was put forward in the following terms:

The Respondents having accepted the position of guardianship and taken the zamin in that capacity it is not competent for them to assert any hostile title or set up jus tertii until they had surrendered possession and discharged themselves from the guardianship with which the statute had clothed them.

Lakshmi Ammani's karyasthar subsequently filed a further affidavit evidently because of the notification of the Marungapuri Estate under Madras Act XXVI of 1948. He alleged that even if that Act was valid the notification under it would not vest in the Government the properties other than the zamindari like the separate properties, jewels, etc., left by the late zamindar, and these had in any event to be re-delivered to her. A schedule was attached to the affidavit setting out in detail the items of properties which would not vest in the Government under Madras Act XXVI of 1948.

7. The petition was disposed of by Subba Rao, J. He held after a consideration of the facts and the relevant provisions of the Court of Wards Act that the Court of Wards had no power to refuse to give possession to the person who was their ward and who had subsequently ceased to be such. If a third party had paramount rights it was for that party to institute a suit in a Civil Court to establish his or her rights. The learned Judge recognized the effect of Madras Act XXVI of 1948, namely, that even on his finding Lakshmi Ammani could only claim to recover possession of properties that did not vest in the Government under the provisions of that Act, He therefore directed the Respondents to hand over to her the properties belonging to Lakshmi Ammani in their possession excluding the properties that vested in the Government under Madras Act XXVI of 1948. This order was passed on 15th April 1952.

8. Neither the State of Madras nor the Court of Wards filed any appeal. But on 22nd April 1952 Ponnalagu Ammani filed an application before us asking for leave to prefer a Letters Patent Appeal against the order on the ground that neither she nor the adopted son had been impleaded in Lakshmi Ammani's petition, that she was a person whose rights were affected by the said decision and as an aggrieved person she should be granted leave to file an appeal though she was not a party to the petition. In the affidavit filed in support of the application she submitted that even if the adoption were to be disregarded she would be entitled to an equal share in the partible properties left by the late Zamindar, and if the adoption were to be upheld neither she nor Lakshmi Ammani would -be entitled to any share. We granted leave to appeal as we

thought that Ponnalagu Ammani was vitally interested in the subject-matter and felt aggrieved by the order passed by Subba Rao, J., and we admitted the Letters Patent Appeal. The order granting leave was however passed ex parte.

9. A preliminary objection was taken by Mr. Kesava Ayyangar on behalf of Lakshmi Ammani that the appeal was incompetent because Ponnalagu Ammani who was not a party to the petition disposed of by Subba Rao, J., could not file an appeal against the order in that petition and there was no provision of law under which this Court had the power or jurisdiction to grant leave to a person, not party to a proceeding, to prefer an appeal against an order in that proceeding. His contention briefly was that the right of appeal is the creation of statute and a Court could not enlarge its appellate jurisdiction by its own rules of practice. His contention was obviously based on the assumption that there was something in the Letters Patent which impliedly restricted the right of appeal against judgment or order in any proceeding to the parties to the proceeding. The material provision of the Letters Patent is Clause 15. It runs thus:

Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction: And we do further ordain that an appeal shall lie to the said High Court of Judicature at Madras from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made (on or after the 1st day of February 1929) in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided.

The argument was that the word "judgment" in this clause has the same meaning as the word "decree" in the CPC and Section 96 of the Code which provides for an appeal from

every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court

has been construed as conferring that right of appeal only on the parties to the

suit who might be aggrieved by the decree.

10. Mr. Kesava Ayyangar relied on the following observation which occurs in the opinion of Sir John Edge in *S.J. Bhogilal v. Temple Committee* (1925) 49 M.L.J. 25 (P.C.):

The term "judgment" in the Letters Patent of the High Court means in civil cases decree and not a judgment in the ordinary sense.

In the CPC we find three expressions used relating to the decisions of Courts, namely, decree, order and judgment. Decree is defined as follows:

"Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144, but shall not include (a) any adjudication from which an appeal lies as an appeal from an order, or (6) any order of dismissal for default.

"Order" means "the formal expression of any decision of a civil Court which is not a decree." "judgment" is defined as "the statement given by the Judge of the grounds of a decree or order." Their Lordships of the Judicial Committee evidently had in mind this definition of judgment when they refer to "a judgment in the ordinary sense." The scheme of appeals under the CPC is this. u/s 96:

Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

Under Section 104 an appeal lies from certain orders mentioned in that section and in Order XLIII. But no appeal ordinarily lies from any other order. In certain cases a second appeal is provided from appellate decrees (Section 100). No appeal lies against a judgment, as such, as distinct from a decree or order. Under Clause 15 of the Letters Patent, an appeal lies from "the judgment" of one Judge of the High Court. This difference in language has led to the view taken by this Court in the leading case *Tuljaram Row v. Alagappa Chettiar* I.L.R (1910) Mad. 1 (F.B.) and the subsequent decisions following it that certain decisions of a Judge on the original Side of the High Court are subject to appeal under Clause 15 of the Letters Patent though similar decisions would not be appealable under the Code of Civil Procedure. We are not now concerned with the correctness of this view. Sulaiman, J., in *Hori Ram Singh v. The Crown* [1939] F.C.R. 159, was inclined to hold that in view of the observation made by the Privy Council in *S.J. Bhogilal v. Temple Committee* (1925) 49 M.L.J. 25 (P.C.) the word "judgment" cannot now be taken in its widest possible sense so as to include every order which terminates a proceeding pending in the High Court so far as that Court is concerned. It was not disputed before us that an appeal would lie from the

judgment of a Judge of this Court disposing of an application for a writ under Article 226 of the Constitution to a Division Bench though it may not be strictly a decree within the meaning of the Code of Civil Procedure. Mr. Kesava Ayyangar's anxiety to equate judgment in Clause 15 of the Letters Patent with "decree" in the CPC was to have the benefit of rulings in which it was held that only parties to a suit could appeal against the decree in the suit. Support for this view is apparently sought from the definition of "decree" as

the formal expression of an adjudication which conclusively determines the rights of the parties to the suit.

Varadachariar, J., in *The United Provinces v. Atiq Begum* [1940] F.C.R. 110, observes at page 150:

Section 96 of the CPC does not in terms say who is entitled to prefer an appeal. But according to the Code it is the decree that has to be appealed against. The decisions have therefore laid it down as a matter of inference that a party adversely affected by the decree is the only person entitled to appeal.

Observations in decisions of the Federal Court in appeals sought to be preferred in criminal cases which were relied on by Mr. Kesava Ayyangar appear to us to be entirely irrelevant. Their Lordships in those cases were concerned with the question whether an interlocutory order made in a criminal proceeding could be carried in appeal to the Federal Court, and it was held that it could not be; see *S. Kuppuswami Rao v. The King* [1947] F.C.R. 180.

11. It is equally not necessary to deal with the rulings of English and Indian Courts to which Mr. Kesava Ayyangar referred us for the proposition that there is no inherent right of appeal and the creation of a right of appeal is an act which requires legislative authority and that neither the inferior Court nor the superior Court nor both combined can create such a right; *Attorney-General v. Sillem* (1864) 10 H.L.C. 704 : 11 E.R. 1200, *National Telephone Co. Limited v. Postmaster-General* [1913] 2 K.B. 614, 621, *Pashupati Bharti v. Secretary of State for India in Council* [1939] F.C.R. 13 and *Lakshpat Ram v. Behari Lal Misir* [1939] F.C.R. 121. In the case before us there is no controversy about the right of appeal as such. The only controversy is as to who is entitled to appeal. On that question the cases referred to above have no bearing whatever.

12. Mr. Kesava Ayyangar concedes that every party to a suit is not entitled as of right to file an appeal against the decree in the suit. The party must be aggrieved. While it has been held that a party who is not aggrieved is not entitled to appeal it has also been held that even a successful party in a suit can file an appeal against a finding of the Court on one of the issues which is adverse to him, though the final decision is in his favour; vide *Venkateswarlu v. Lingayya* I.L.R.(1924) Mad. 633 and *Harachandra Das v. Bholanath Das* I.L.R.(1935) Cal. 701. It was laid down in these cases that the test to be applied in each case is whether the finding sought to be appealed against is one to which the rule of *res judicata* may be held to be applicable so as to disentitle the aggrieved party to

agitate the question covered by the finding in any other proceeding. This rule is certainly an extension of the principle that it is only a party adversely affected by the decree that is entitled to appeal vide Varadachariar, J., at page 174 in *The United Provinces v. Atiqa Begum* [1940] F.C.R. 110. This extension is evidently based on grounds of justice. Guha, J., in *Harachandra Das v. Bholanath Das* I.L.R. (1935) Cal. 701 says:

...the Code of Civil Procedure, by the provisions relating to the right of appeal, as they now stand, does not provide for an appeal against a finding contained in a judgment; the Appellants in this Court have, therefore, no right of appeal, under the law. On grounds of justice, and recognizing that, on that ground, the implication of suitable exception or qualification may be justifiable and even necessary, we are prepared to follow the rule engrafted on the statute by a current of decisions by High Courts in this country, that an aggrieved party may have a right of appeal, and that the test to be applied in such a case is whether the finding sought to be appealed against is one to which the rule of *res judicata* may be held to be applicable, so as to disentitle the aggrieved party to agitate the question covered by the finding in any other proceeding.

13. On the immediate question, namely, whether a person who is not a party to a suit or other proceeding is under no circumstance entitled to prefer an appeal against the decision in that suit or proceeding, there is very little authority in India. In *Indian Bank Ltd. v. Seth Bansiram Jeshamal Firm* ILR 1933) Mad. 670 *Madhavan Nair and Jackson, JJ.*, held that neither under the general principles of law nor under the CPC can a person who was not a party to a suit prefer an appeal against the decree therein. In that case the Official Receiver representing the general body of creditors was a Defendant in a suit brought by two Plaintiffs to declare their title to two items of property. The suit went against the Official Receiver. But he did not file an appeal. One of the creditors thereupon filed an appeal against the decree in the suit and along with it filed an application praying that in the circumstances this Court may be pleased to permit the applicant to appeal against the decree. The learned Judges held that under the CPC no person who is not a party to the suit can prefer an appeal u/s 96 because,

the right of appeal is a special creature of statute and it can be exercised only by those in whom the power is vested expressly or implied by the statute.

14. Two decisions of the Chancery Court in England were relied on by the Appellant in which leave to a person interested in, but not a party to an action, was given to appeal from an order by which the person was aggrieved. But the learned Judges did not act on those decisions as in their opinion they related to powers of the appellate Court to grant leave to appeal and such power was rested on the practice prevailing in the English Courts. No provision of law or rule of practice, they said, had been shown to them entitling the Appellant to claim such leave. But they added that even if such permission could be asked they were not satisfied that it was a proper case in which the permission should be given. This ruling was followed by a single Judge, Abdur Rahaman, J., in *S. Kasi*

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15. Mr. Kesava Ayyangar further contended that an appellate Court cannot give leave to appeal unless under a statutory power. In support of this contention he relied on the decisions in Pashupati Bharti v. Secretary of State for India in Council [1939] F.C.R. 13, Lakshpat Ram v. Behari Lal Misir [1939] F.C.R. 121, Kishori Lal v. Governor-in-Council, Punjab (1940) 3 F.L.J. 12 and Ramanayya v. Kotayya ILR 1926) Mad. 952. These decisions are only authority for the position that when under a statute a right of appeal is conferred on an aggrieved party only with the leave of or on a certificate from the Court from which the appeal is sought to be preferred and if such leave or certificate be refused by that Court, an appellate Court will not have the power to grant the leave or certificate. In the decisions of the Federal Court their Lordships had to consider the effect of Section 205 of the Government of India Act, 1935, under which an appeal to the Federal Court was available only with a certificate from the High Court. In the earliest of these cases, their Lordships say:

In the first place though every Court of superior jurisdiction no doubt possesses inherent powers for certain purposes (of which it is unnecessary and perhaps would be unwise to attempt an exhaustive definition) we know of no authority for the proposition that a Court by the exercise of any inherent powers can extend its appellate jurisdiction or increase its revisional authority over other Courts.

In the later case in Kishori Lal v. Governor-in-Council, Punjab (1940) 3 F.L.J. 12 their Lordships point out that a certificate u/s 205 is a necessary condition precedent to all appeals to the Federal Court, and if the High Court refuses to grant a certificate it is not for them to enquire into the reasons for the refusal against which no appeal lay to that Court. We have nothing like that here. There is no provision making such a leave a condition precedent to an appeal like the one under consideration.

16. Mr. Venkatasubramanya Ayyar for the Appellant relied on the decision in The Province of Bombay Vs. Western India Automobile Association, and the English practice on which that decision is based. In the Bombay case Chagla, C.J. and Bhagwati, J. held that a person not a party to a suit may prefer an appeal if he is affected by the order of the trial Court provided he obtained leave from the Court of appeal. The learned Chief Justice observed as follows:

The CPC does not in terms lay down as to who can be a party to an appeal. But it is clear and this fact arises from the very basis of appeals, that only a party against whom a decision is given has a right to prefer an appeal. Even in England the position is the same. But it is recognized that a person who is not a party to the suit may prefer an appeal if he is affected by the order of the trial Court, provided he obtains leave from the Court of Appeal therefore whereas in the case of a party to a suit he has a right of appeal, in the case of a person not a party to the suit who is affected by the order he has no right but the Court of appeal may

in its discretion allow him to prefer an appeal.

Bhagwati, J. referred to the decision of this Court in *Indian Bank Ltd. v. Seth Bansiram Jeshamal Firm* I.L.R.(1933) Mad. 670 and accepted it as authority for the position that no person who is not a party to a suit or proceeding has a right of appeal. But if he was aggrieved by a decision of the Court the remedy open to him was to approach the appellate Court and ask for leave to appeal which the appellate Court would grant in proper cases. The learned Judge cites a passage from the decision in *In re Securities Insurance Co.* [1894] 2 Ch. D. 410 where Lindley L.J., said that the practice of the Courts of Chancery both before and after 1862 was well settled that while a person who was a party could appeal without any leave a person who without being a party was either bound by the order or was aggrieved by it or was prejudicially affected by it could not appeal without leave.

17. There is abundant authority recognizing the existence of such a practice and innumerable instances of such a practice to some of which learned Counsel referred us, namely, *In re Markham*. *Markham v. Markham* (1880) 16 Ch.D. 1, *In re Padstow Total Loss and Collision Assurance Association* (1882) 20 Ch.D. 137, 142, *Attorney-General v. Marquis of Ailesbury* (1885) 16 Q.B.D. 408, 412 and *Ferdinand, Ex. Tsar of Bulgaria*, *In re* [1921] 1 Ch. 107, 110. The position is thus stated in the *Annual Practice* for 1951 at page 1244:

Persons not parties on the record may, by leave obtained on an ex parte application to the Court of Appeal, appeal from a judgment or order affecting their interests, as under the old practice.

Halsbury's *Laws of England*, Volume XXVI, page 115, gives the same rule in a different form:

A person who is not a party and who has not been served with such notice (notice of the judgment or order) cannot appeal without leave, but a person who might properly have been a party may obtain leave to appeal.

Several instances are referred to in the footnote and the limits of the rule can be gathered from these instances. Leave will not be given where the applicant could not have been a party and application for leave must be made within the time limited for the appeal. The reason for the practice apparently is the principle that a person who could have been made a party and who might have appealed could not afterwards bring an action to declare that the judgment or order was not binding on him; vide *Hambrough's Estate* *In re. Hambrough v. Hambrough* [1909] 2 Ch. 620.

18. In more or less similar terms the rule and its limits are stated in *Seton on judgments and Orders*, Seventh Edition, Volume 1, at page 824.

Where the Appellant is not a party to the record he can only appeal by leave to be obtained on motion ex parte from the Court of Appeal.... Leave to appeal will not be given to a person not a party unless his interest is such that he might

have been made a party.

19. Mr. Kesava Ayyangar of course could not deny that such a practice was well established in England. But he contended that such a practice could not be followed by our Courts, governed, as we are, by the CPC and the Letters Patent. We do not see why. The very doctrine on which Mr. Kesava Ayyangar rests his whole case, namely, that a right of appeal is a creature of statute and an appellate Court cannot create a right of appeal is founded on English authorities like *Attorney-General v. Sillem* (1864) 10 H.L.C. 704 : 11 E.R. 1200. The provisions as regards appeal in England are not materially different from those contained in the CPC or Letters Patent. In neither of them is there any express mention of persons who could appeal. In our opinion the practice consistently followed by the English Courts is a just and equitable practice and is in no way inconsistent with the doctrine that a right of appeal can only be created by statute. With respect to the learned Judges of the Bombay High Court we agree with them that there is no reason why the practice should not be followed by Courts in India.

20. Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceedings against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceeding, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings. We can give as an instance the case where an official receiver impugns an alienation by the insolvent and sues to set it aside and fails. If he does not appeal the decision of the trial Court would be final and binding not only on him but also on all the creditors. In such a case, if the official receiver does not choose to file an appeal an aggrieved creditor should ordinarily be given leave to appeal if he shows a prima facie case against the order sought to be appealed. A more or less similar test has been applied to cases where a successful party has been allowed to file an appeal against an adverse finding; vide *Venkateswarlu v. Lingayya* I.L.R.(1924) Mad. 633 and *Harachandra Das v. Bholanath Das* I.L.R.(1935) Cal. 701.

21. Applying that test, can we say that Ponnalagu Ammani will be bound by the judgment of Subba Rao, J., in the application filed by Lakshmi Ammani to which she was not a party? We think not. The Court of Wards cannot be said to have represented her. The judgment of Subba Rao, J., was in no sense a judgment in rem. It is binding only as between Lakshmi Ammani and the Government and the Court of Wards. Mr. Venkatasubramanya Ayyar, when he says that the judgment of Subba Rao, J. affects his client adversely, means not that the decisions affect her legal rights but that the carrying of it into effect would adversely affect her, that is, if and when the Government and the Courts of Wards deliver possession of the properties to Lakshmi Ammani as directed by that judgment. But it will be

open to Ponnalagu Ammani to prevent the happening of such a thing by taking other steps. In these circumstances we do not think that this is a fit and proper case in which leave to appeal should be granted. We therefore hold that the appeal is incompetent and dismiss it.

[The portion of the judgment dealing with the connected Writ Petition No. 317 of 1952 is omitted.]