

(1928) 12 MAD CK 0032
In the Madras High Court

K. Shanmugasundara Mudaliar and Others	APPELLANT
Vs	
S. Ratnavelu Mudaliar and Others	RESPONDENT

Date of Decision : 11-12-1928

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110

Citation : AIR 1929 Mad 429 : 121 Ind. Cas. 16

Hon'ble Judges : William Watkins Phillips, J;Odgers, J

Bench : Division Bench

Judgement

Phillips, J.—The petitioners brought a suit against the respondents asking for an account in respect of their trusteeship of the plaint temple. Although they asked for a general account in the plaint, eight specific charges of malversation were alleged and these charges formed the subject-matter of the trial in the first Court. Without taking a general account, the Subordinate Judge examined the evidence relating to the eight charges and held that two charges were proved and that the other six failed. The judgment is not altogether satisfactory for it is quite possible that, if a general account had been taken some sums of money might have been found to be due to the respondents which could have been set off against the two claims allowed. The respondents filed an appeal in respect of these two claims and the appeal was allowed in this Court. The petitioners filed a memorandum of cross-objections relating to the other six items and that was dismissed in toto. The ground for dismissing the claim of the petitioners in toto both in appeal and in the memorandum of objections was that the petitioners had no right to claim a general account as accounts had already been furnished and the petitioners themselves had suppressed the accounts and thereby prevented any further account being taken. The petitioners now wish to appeal to the Privy Council in respect of the whole of the subject-matter of the original suit.

2. It is contended for the respondents that the decree of this Court which was drawn up in respect bcth of the appeal and of the memorandum of objections is in effect an affirming decree and that no substantial question of law arises. So

far as the appeal is concerned, the decree of this Court can in no circumstances be deemed to be an affirming decree for it disallowed a sum of Rs. 7,000 which had been allowed by the trial Judge. The contention for the respondents is that the appeal and the memorandum of objections must be treated as separate appeals, and that so far as the decree in respect of the memorandum of objections is concerned no appeal would lie to the Privy Council as the judgment of the lower Court was affirmed and that, so far as the decree in the appeal itself is concerned, the value of the subject matter is less than Rs. 10,000 and, therefore, no appeal would lie. The petitioners contend that the memorandum of objections must be deemed to be so intimately connected with the appeal itself as to constitute one appeal and that, therefore, the total value of the subject-matter is over Rs. 10,000 and the decree of this Court is a reversing decree. I am not prepared to hold that in all cases the memorandum of objections must be deemed to be dependent upon the appeal itself. The alteration in law effected by Order XLI, Rule 22 (4) clearly indicates that the memorandum of objections may in certain cases be treated as a separate cross-appeal, The decision in *A.L.A. Alagappa Chettiar Vs. Chockalingam Chetty and Others*, does not affect the point for that only dealt with the question of limitation. The further decision in *S.T.M.R. Murugappa Chettiar and Another Vs. Ponnuswami Pillai*, which purported to follow *Alagappa Chettiar v. Chockalingam Chetty* 48 Ind. Cas. 203 : ct, it seems to me difficult to hold that the abatement of an appeal on the death of the appellant and its subsequent dismissal does not amount to a dismissal for default of prosecution within the meaning of Rule 22, Clause (4). What has to be considered in a question of this sort is whether the appeal and the memorandum of objections must be treated as forming two independent proceedings relating to distinct sets of facts, and it is now contended for the respondents that each of the eight charges of malversation formed a separate subject-matter and that inasmuch as this Court affirmed the decrees of the lower Court in respect of six charges, it must be deemed to be an affirming decree and that, therefore, in respect of these six charges, no appeal would lie to the Privy Council. It is, however, difficult to say that all these eight charges are separate and distinct subject matters, for they were all based on the alleged breach Of trust by the respondents and in fact the six charges were dismissed by the trial Court not on the ground taken by this Court, namely that the petitioners had no right to demand an account but on the merits of the evidence which was held not to prove the charges. In these circumstances, the case in *Ramanathan Cheiti v. Subramanian Chetti* 97 Ind. Cas. 592 : 51 M.L.J 295 : 24 L.W. 455 : AIR 1926 Mad. 1024; (1927) M.W N. 65 decided by this Bench can be distinguished, far there the memorandum of cross-objections related to a matter entirely distinct from the subject matter of the appeal, nor do I think that the cases in *Raja Sree Nath Roy Bahadur v. Secretary of State for India* 8 C.W.N. 291 and *Narendra Lal Das Chaudhury Vs. Gopendra Lal Das Chaudhury and Others*, apply. It is unnecessary to refer to the other cases cited for, the question that has to be decided is, whether the decree of this Court in the appeal and memorandum of objections really consists of two separate decrees in respect of separate subject-

matters or whether it is really one decree dealing with one subject-matter only. In the former case, it may well be that in respect either of the appeal or of the memorandum of objections, no appeal would lie to the Privy Council, whereas in the latter case, if the subject-matter of the suit in the first Court and the value of the appeal to the Privy Council is over Rs. 10,000 an appeal would lie to the Privy Council. Here, so far as the value of the subject-matter of the suit and the appeal is concerned, the provisions of s.110, Civil Procedure Code, are complied with and it is not possible to split the decree into two parts and hold that one part is an affirming decree and that the other part is a reversing decree, and that because the latter is below Rs. 10,000 in value, no appeal would lie. In these circumstances I would hold that the petitioners have a right to appeal.

3. It is perhaps unfortunate that in this particular case this litigation which is undoubtedly prejudicial to the interests of the suit temple should have been instigated by a factious feeling prevailing between two parties. This, however, cannot affect the right of appeal of the parties. The petitioners have been prejudiced by the judgment of this Court and, therefore, they must be allowed to appeal to the Privy Council.

4. I certify that the provisions of Sections 109 and 110 of the CPC have been complied with in this case and grant leave to the petitioners to appeal.

5. Odgers, J.--This is an application for leave to appeal to the Privy Council from a judgment of Phillips, J, and myself. The suit was brought by certain persons interested in the temple of Sri Karuneeswara-swami, Saidapet, against the defendants for a general account of their management of the shrine and for a decree that defendants Nos. 1 to 4 be directed to pay Rs. 14, 458 or such other sum as may be found due on such account being taken. The learned Judge decided the case on the eight points of particulars of claim lodged with the plaint and decided as to points A and B that the 1st defendant was liable to account but that as to the other items he was not liable. It was held by us that the 1st defendant could not be held liable to a general account and accordingly he was not even liable on the two items found by the Subordinate Judge. Now the first question is, is this a decree of affirmance? The Subordinate Judge, as stated did not find on the broad question of liability to general account at all which was the main ground for our decision here.

6. As regards the particulars there is no doubt that it was not a decree of affirmance and I think, therefore, that it cannot be said that our decree was in affirmance of the decree of the lower Court.

7. Then the question is whether the appeal is worth Rs. 10,000. The total amount claimed is about Rs. 14,500. I think there is no doubt that this is the amount in question on appeal to the Privy Council. The question is complicated by a memorandum of objections in which the respondents took objection to the finding of the Subordinate Judge with regard to the six other particulars of claim.

8. It is contended that all the eight items of particulars are independent and that,

therefore, the value of the subject-matter must be under Rs. 10,000. I do not think that these items can be considered as being separate. They are really particulars of the claim for a general account, i.e., they are incidents of the alleged misuse of trust moneys, so that they really all depend on a finding as to whether the 1st defendant was liable to a general account or not I, therefore, agree with my learned brother that they are not independent items.

9. The question is further as to whether the Court's order below as to the six items can be separated from the appeal as to the two allowed by the Subordinate Judge. Of course, if the memorandum of objections relates to an entirely different matter as in *M.L.M. Ramanathan Chetti Vs. V.K.N.S.P. Subramanian Chetti and Others*, , it may be that the memorandum of objections must be considered as a separate cross appeal quite distinct from the main appeal. In any case, the petitioner is to have the benefit of any doubt that may arise, *Vikrama Deo Garu v. Maharaja of Jaipur* 31 Ind. Cas. 272 : (1916) 1 M.W.N. 122 : 18 M.L.T. 387., though there is no doubt that, if an appeal is dismissed as being out of time, the memorandum of objections cannot be heard as it is dependent to that extent on the appeal. *A.L.A. Alagappa Chettiar Vs. Chockalingam Chetty and Others*, . But as I;have held that all these items are not independent items but really hang together and are collectively dependent on and form particulars of the claim for a general account, I think this objection must be overruled. I, therefore, agree that this is a fit case for appeal to the Privy Oouncil and that the certificate may issue.