
(1948) 09 MAD CK 0003

In the Madras High Court

Case No : Civil Revision Petition No. 260 of 1947

Katikara Simhagiri Dora alias Latchanna Dora and Others

APPELLANT

Vs

Sri Vyricherla Chandramani Pattamahadevi Zemindarini of
Chemudu

RESPONDENT

Date of Decision : 13-09-1948

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1950 Mad 15

Hon'ble Judges : Horwill, J

Bench : Single Bench

Advocate : R.V. Subramaniam, for the Appellant; K. Umamaheswaram, for the Respondent

Final Decision : Allowed

Judgement

Horwill, J.—On an application by defendant 6, the lower Court amended what is often described as the decretal part of the judgment to

bring it into conformity with the earlier parts of the judgment. He thereupon amended the decree to bring it into conformity with the amended

judgment. Against that order, this revision petition has been filed u/s 115, Civil P. C., and a preliminary point has been taken that no civil revision

petition lies.

2. One of the earliest cases in which the question whether a revision petition lay against such an amendment or an appeal was considered was

Raghunath Das v. Raj Kumar, 7 ALL. 276 : 1885 A. W. N. 256, which was followed by the same two Judges in Surta v. Ganga, 7 ALL. 411 :

1835 A. W. N. 88, Oldfield J. held that since the decree was amended, an appeal would lie against the amended decree. Mahmood J., in a long

discussion of the various aspects of the case, did not directly say that no appeal would lie against the amended decree, but discussed whether the

amending order would amount to a decree; and he held that it would not. He then went on to express his opinion that a revision petition did lie. The

matter was again considered in Letters Patent appeal by a Full Bench in Raghunath Das v. Raj Kumar, 7 ALL. 876: 1685 A. W. N. 266, in

which, in a single sentence judgment, the view of Mahmood J. was accepted. A similar question arose in Narayanasami v. Natesa, 16 Mad. 424,

where Best J. referred to the Allahabad cases and said, with regard to the objection that no revision petition lay :

. . . . it is contended that though an order passed u/s 206 (Section 152 of the present Code) is not appealable as an order u/s 588 (Section 104),

the decree, as amended, is appealable. This was the opinion of Oldfield J. in Surta v. Ganga, 7 All. 411 : 1885 A. W. N. 88; but Mahmood J. was

of different opinion in the same case and on appeal the Full Bench agreed with the latter, Surta v. Ganga, 7 All. 875 : 1885 A. W. N. 256 and this

view appears to have been adopted by this Court also. This first objection must, therefore, be disallowed.

Muttuswami Aiyar J., the other Judge in that Bench, did not discuss this question at all, and gave a reluctant assent to the order proposed by his

learned brother, Best J. It may, however, be taken, from the fact that he agreed to the order passed that he was of opinion that a revision petition

lay. Since Mahmood J. did not expressly say that an appeal against the amended decree would not lie, nor did the Full Bench, and Best J.'s

opinion was apparently not concurred in by Muttuswami Aiyar J., the argument was put forward in Visvanathan Chetti v. Ramanathan Chetty, 24

Mad. 646, that an appeal against the amended decree did lie. That view was accepted by the Bench in these words:

Mahmood J., in discussing the question in Nanda Rai v. Raghunandan Singh, 7 All. 282 : 1885 A. W. N. 41, overlooks the possibility of an

appeal against the decree as amended, and for that reason comes to the conclusion that Section 622, Civil P. C., must be applied. It must be

admitted that Mahmood J.'s view has been followed in one or two cases in this Court, but no reported case is cited in which a Bench of Judges

has held that an appeal against the amended decree will not lie.

Earlier in the judgment, the learned Judges said that a petition u/s 622 (Section 115) was not admissible. The learned Judges in *Visvanathan Chetty*

v. Ramanathan Chetty, 24 Mad. 646, did not consider that there was anything in *Narayanasami v. Natesa*, 16 Mad. 424, or in any other case that

it was necessary for them to express dissent from. *Wadsworth and Patanjali Sastri JJ.*, in *PS. AR. AR. Arunachalam Chettiar by agent, Sivaraman*

Chettiar Vs. Govindaswami Goundan, and Garimalla Sitaramamurti Vs. Thamma Lakshminarayanamurti and Others, , clearly followed

Viswanathan Chetti v. Ramanathan Chetty, 24 Mad 646. It has been argued that in *Parameshraya v. Seshagiriappa*, 22 Mad. 364, a Full Bench, in

similar circumstances, held that a revision petition would lie, or at any rate that the Court could interfere in revision. That was a case in which there

was an appeal against the amended decree; and in dismissing the appeal, the Court deleted that part of the decree which had been amended.

There is no reason, however, to think that in doing so, the Court invoked Section 115, Civil P. C., for that purpose; for in exercising their

jurisdiction in appeal, they certainly had the power to amend the decree in any way they chose.

3. The preliminary objection is upheld. It has been suggested that this civil revision petition should be converted into a regular appeal. That can

hardly be done, since the decree appealed against has not been filed.

4. Since Section 115 refers to a "case", that word may include the order to amend together with the amended decree, in which case interference in

revision would be prohibited under that section; but even if we distinguish the order to amend and the amended decree, the entertainment of a civil

revision petition would be objectionable, when an alternative remedy is available.

5. The preliminary objection being upheld, the civil revision petition is dismissed with costs.