

(1904) 07 MAD CK 0005
In the Madras High Court

Mahadeva Row Subban Rao Mohite

APPELLANT

Vs

Sethuram Sahib and Others

RESPONDENT

Date of Decision : 18-07-1904

Acts Referred:

Citation : (1904) 14 MLJ 471

Hon'ble Judges : Charles Arnole White, C.J;Subrahmanya Aiyer, J;Davies, J

Bench : Full Bench

Judgement

Charles Arnole White, C.J.—This is a petition against an order of the Subordinate Judge dismissing an application for a temporary injunction

made by the plaintiff in a suit for the recovery of property, Immovable and moveable, including valuable jewels. In the Court below the

Subordinate Judge granted an interim injunction and directed notice to issue to the defendants. After hearing the defendants he dismissed the

application, but made an order purporting to continue the interim injunction pending the appeal to this Court. The plaintiff has appealed against the

order of the Sub-ordinate Judge dismissing the application for a temporary injunction and his appeal has been admitted and notice of his

application for an interim injunction pending the hearing of the appeal has been directed to issue to the defendants. The question which has been

raised is, has this Court jurisdiction pending the return of the notice to make an interim order. It seems to me that it has. It is quite clear that it was

competent for the Subordinate Judge to make the order which he in fact made, viz., an interim order pending the return of the notice to the

defendants. This power is expressly recognised by Section 494 of the Civil Procedure Code. It is also quite clear that an appeal lies from an order

refusing to grant a temporary injunction after notice. See Section 588 (24). No appeal lies from an order refusing to grant a temporary injunction

before notice (see *Lins v. Lins* I.L.R., 12 Mad. 186). But the case before us is not an appeal from an order refusing to grant an interim injunction

before notice. As a matter of fact the Subordinate Judge made an order granting an interim injunction before notice, but an appeal against an order

refusing to grant a temporary injunction after notice, in which case a right of appeal is given in, express terms by Section 588(24). It has been

argued that inasmuch as this is not an appeal against a decree, but an appeal against an order, this Court has no jurisdiction to make the interim

order asked for pending the return of the notice. It seems to me that the fact of this not being an appeal against a decree does: not prevent this

Court having jurisdiction in the matter. Section 590, Civil Procedure Code, provides that the procedure prescribed in Chapter XLI shall, so far as

may be, apply to appeals from orders and Section 582, which occurs in Chapter XLI, gives to the Appellate Court the same powers as are

conferred on Courts of original jurisdiction. No doubt Section 590 speaks of the procedure prescribed in Chapter XLI, whilst Section 587, with

reference to second appeals enacts that the provisions contained in Chapter XLI shall apply to second appeals. But it appears to me that it would

be anomalous to hold that this Court in a second appeal against a decree possesses powers which it does not possess in an appeal from an original

order and the want of uniformity in the language of the two Sections seems to me to be no good reason for so holding. Section 647 which occurs

in the chapter relating to miscellaneous proceedings, provides that the procedure therein prescribed should be followed in all proceedings in any

Court of Civil jurisdiction other than suits and appeals and this section has been construed as enabling the Appellate Court in an appeal from an

order to exercise powers which are something more than "procedure" in the limited sense. It has been held by the Privy Council that by virtue of

the enactment corresponding to Section 647 of the present Code a District Court possesses the power of review, see *Reasut Hossein v. Hadjee*

Abdoollah I.L.R., 2 C. 131. Again a reference to Section 19, Clause 3 of the Succession Certificate Act, shows that in that enactment the Legisla-

ture proceeded on the assumption that Section 647 where the word "procedure" occurs confers the power to grant a review. In England an

application for an interim injunction, even when the action itself was for an injunction has been held to come within the words "" practice and

procedure "" in Section 1(4) of the Judicature Act, 1894, *Mcharg v. Universal Stock Exchange* (1895) 2 Q.B. 81.

2. I should be loath to hold that this Court as an appellate tribu-nal does not possess jurisdiction to make an order which admit-tedly the lower

Court had jurisdiction to make. In my opinion there is no provision of the CPC or reported case which constrains me so to hold. As at present

advised I should be inclined to hold that the power to make the order asked for exists apart from any express provision of the Code as part of the

inher-ent jurisdiction of the appellate tribunal incidental to the exercise of the appellate jurisdiction, but as, in my opinion, the jurisdiction is given by

the Code itself this question need not be considered. I think we have jurisdiction to make the order asked for, if in the exercise of our discretion we

should think fit to do so.

3. On the facts I am of opinion that this is not a case in which the jurisdiction should be exercised. No order for an interim injunction will be made.

Subrahmanya Aiyer, J.

4. I agree.

Davies, J.

5. I agree to the order which the learned Chief Justice has made, wot only on the merits but because 1 think we have no jurisdiction to pass any

other. I do not think the term "" procedure"" as used in Section 590, Civil Procedure Code, was intended to cover all the provisions of Chapter XLI,

which deals with appeals from decrees and it seems to me that Section 582 in that chapter conferring on appellate Courts under that chapter the

same powers as Courts of original jurisdiction is pre-eminently not a point of "" procedure"" as the term is used in Section 590. When as in second

appeals the Legislature intended that Chapter XLI should be applied bodily the words used are the ""provisions" contained in Chapter XL (vide

Section 587) which are quite unambiguous and the same language might have been employed again in the closely succeeding Section 590, if as in

second appeals Chapter XLI was intended to be applied bodily instead" of the words "" the prescribed Chapter XLI shall, as far as may be,

apply"".