
(1950) 10 MAD CK 0016

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 7117 of 1950

Mangina Venkataswami and Another

APPELLANT

Vs

Nuli Manikyam and Others

RESPONDENT

Date of Decision : 10-10-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110
Constitution of India, 1950 — Article 133(1)

Citation : AIR 1951 Mad 723 : (1951) 1 MLJ 210

Hon'ble Judges : Subba Rao, J; Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : M. Seshachalapathi, for the Appellant; V. Rangachari and K. Mangachari, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appln under Article 133 of the Const Ind for leave to appeal to the S. Ct against the decree & judgment of this Ct dated 25-1-1950

in App, No. 377 of 1948.

2. The trustee of Sri Chenna Kesavaswami Temple instituted O. S. No. 73 of 1946 on the file of the Ct of the Subordinate Judge of Ellpre against

several defts for recovery of possession of certain properties & for mesne profits. The suit comprised of various items; but before the trial, the pltf

compromised with some of the defts & the suit was disposed on the merits only against defts 1 to 6 & 17 to 28. Their claim related to items 1 & 7

of the plaint schedule. The case of the pltf was that the lands in question belong to the deity & the mtges effected by the archakas were invalid &

therefore the pltf was entitled to recover possession of the same with mesne profits. Deft 5 who is the son of the mtgee under Ex. B. 1, one of the

impugned mtges" raised the plea that he acquired a right by prescription, the mtgee"s right. The Subordinate Judge decreed the suit in respect of

both the items. In appeal, this Ct confirmed the decree of the Subordinate Judge in regard to item 7 but in respect of item 1 held that deft 5

acquired a right to the mtge by prescription. In the result, we directed the lower Ct to give a decree for redemption after determining the sums due

to the mtgee under Ex. B. 1. The effect of our judgment is that the pltf obtained a decree for redemption in respect of item 1. His title to that item

was not negatived & his right to possession was conceded, & he was held entitled to recover possession after discharging the mtge. The pltf has

filed this appln for leave to appeal to the S. Ct.

3. The petnr argues that he is entitled to leave under Article 133(1) of the Const. This Article runs as follows:

1. An appeal shall lie to the S. Ct from any judgment, decree or final order in a civil proceeding of a H. Ct in the territory of India if the H. Ct

certifies

(a) that the amount or value of the subject matter of the dispute in the Ct of first instance & still in dispute on appeal was & is not less than twenty

thousand rupees or such other sum as may be specified in that behalf by parliament by law; or

(b) that the judgment, decree or final order-involves directly or indirectly some claim or question respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the S. Ct.

We have held in C. M. P. No. 6638 of 1950 that an appeal will lie to the S. Ct if the value of the subject matter of the suit & that of the appeal

was Rs. 10,000 in regard to judgments delivered, prior to the date when the Constitution came into force. The petnr therefore would be entitled to

prefer an appeal to the S. Ct under Article 133(1)(a) if the subject matter of the suit & that in dispute on appeal is not less than Rs. 10,000. From

the facts stated above, it is clear that though the suit was filed based on title for possession of item 1, in view of our judgment, the subject matter of

the appeal is confined only to the mtge interest claimed by the fifth deft. If so, the value of the subject matter of the dispute in appeal would only be

the mtge amount which is admittedly below Rs. 10,000. In a suit for redemption it is not correct to state that the property in dispute is the security

given for the loan. The subject matter is the loan for which the security was given. That the value of the subject matter of a suit is the mtge money &

not the property given as security is also supported by the judgment of the Judicial Committee in "Abdi Hussain Khan v. Ahmad Hussain", 45 MLJ

253: AIR 1923 PC 102. In that case, the suit was filed to enforce an annuity of Rs. 125 per annum. The P. C. held that Section 110, C. P. C.

1908, applies to the value of the annuity which is sought to be recovered, not to the value of the property upon which that annuity of Rs. 125 is

charged. We cannot, therefore, hold that the value of the subject matter in dispute in appeal is more than Rs. 10,000. We may also point out that

the value of the property secured is also not admitted by the resps to be the value of upwards of Rs. 10,000.

4. It is then contended that the petnr would be entitled under Article 133(1)(b) of the Constitution for leave. The learned counsel's argument is that

our judgment involved directly or indirectly some claim or question respecting property of the like amount or value. In "Subramania Iyer v.

Sellammal", 39 Mad 843: AIR 1916 Mad 985 in construing the second para of Section 110, C. P. C., which is analogous to Article 133(1)(b) of

the Constitution, the learned Judges held that the words ""involved, directly or indirectly"" contained in para 2 of Section 110, C. P. C. could not be

read as including cases which involved nothing but the actual subject matter in dispute in the appeal. It is argued on the assumption that the subject

matter of the suit & the appeal was only the amount advanced on the mtge, the decision"" of the H. C. involved a question, respecting property of a

higher value as, if the amount was not paid, the pltf would not be entitled to recover possession & also if the mtgee filed a suit & obtained a

decree, he might sell the property of a value of not less than Rs. 10,000. In support of this argument learned counsel relied, on a decision of the

Allahabad H. C. in Nadir Husain and Others Vs. Municipal Board and Another . In that case, the following are the facts material to our purpose.

A suit was filed against defts 2 to 4 for recovery of Rs. 7625 on a hypothecation bond & in case of default, the mtge property was liable to be

sold. The Subordinate Judge gave a decree against defts 2 to 4 for a sum of Rs. 915 & in default the properties were liable to be sold. The H. G.

held that the amount of Rs. 7625 was charged on the property. It is therefore clear that the value of the subject matter so far as defts 2 to 4 were

concerned, was less than Rs. 10,000. But the learned Judges gave leave under para 2 to Section 110, C. P. C. They" observed as follows:

But it cannot be disputed that property worth more than Rs. 7625 can be put up for sale at auction in execution of the mtge decree & sold. After

the realisation of Rs. 7625 the balance will have to be paid to the defts. It is also clear that at auction the mtged property may not fetch its full value

& therefore property worth more than Rs. 10,000 may be sold at auction for realisation of Rs. 7625 only.

On the aforesaid reasoning, they held that the appeal involved directly or indirectly a claim in respect of property of the value of more than Rs.

10,000. The same view is expressed by the Patna H. C. in Ishwari Prasad Singh and Others Vs. Sir Kameshwar Singh Bahadur and Others,

There the pltf brought a suit for a declaration that a certain property could not be attached & sold in execution of the certificate in certificate case

No. 1099 of 1934-35. The suit was valued at Rs. 7699 odd because that was the amount for which the certificate was issued, it was conceded

that the value of the property which was liable to be sold was Rs. 52,000 odd. On those facts, the learned Judges held that para 2 of Section 110,

C. P. C., applied & gave leave to appeal to the P. C. The reason for their decision is found in the following passage:

It is plain that if the pltf's do not succeed in this litigation the property which they have purchased in execution of their mtge decree will be liable to

be sold, & that property is worth much more than Rs. 10,000. That being so, it is difficult to hold that the decree which is sought to be appealed

from does not involve Indirectly a question respecting property more than Rs. 10,000.

5. We are unable to accept the above interpretation put upon Section 110(b), C. P. C. The paras in Section 110, C. P. C. must be read together

so as to reconcile the various provisions. If the provisions of para 2 are interpreted in the aforesaid manner, the provisions of para 1 would become

nugatory. If the view adumbrated above is logically extended, it will have to be held that even in money decrees the Judgment & decree of the

appellate Ct involved, directly or indirectly, a question respecting property of a value not less than Rs. 10,000 as, in execution of that money

decree, properties of that value may be sold. u/s 110, para 2, the decree or final order must involve, directly or indirectly, some claim or question

to or respecting property of like amount or value. Can it be said that the appellate decree involved a claim or question in respect of the property

given as security. These words were construed in Appala Raja and Others Vs. Rangappa Naicker and Others, . The learned Judges say at p. 14:

But in construing the word "property" in para 2, we cannot lose sight of para 1 of Section 110 to which the second is an alternative. I think

"property" in para 2 of Section 110 means rights in property inferior to full ownership where such inferior rights alone are the subject matter in

dispute. Hence para 2 means that suit must, to satisfy its conditions, involve rights & claims to property which rights & claims are worth Rs.

10,000 & upwards.

In this case the claim is either the right to redeem the mtge or the claim to recover the amount. That claim is not either directly or indirectly, of the

value of more than Rs. 10,000. In Sati Bala Dasi Vs. Chota Nagpur Banking Association Ltd. and Another, when a similar contention was raised,

it was negated with the following observation:

In a mtge suit the property which is given as security for the loan is not the "property" in dispute in the suit, nor is a decision that the mtgee is

entitled to recover the money which he advanced one involving either a claim to or question respecting the security. The only property in dispute in

a mtge suit is the loan advanced to the mtgor by the mtgee. The mere fact that, if this loan is not repaid in the time fixed by the decree, the mtged

property will be sold does not, in my opinion, raise any question affecting the security.

We respectfully agree with those observations. The claim in this appeal does not raise any question either directly or indirectly, affecting the

security. The only question is whether the pltf is bound to redeem the mtge by paying the amount ascertained by the ct below. We therefore hold

that the pltf cannot take advantage of Article 133(1)(b) either.

6. It is then contended that we should give a certificate under Clause (c) of Article 133(1) on the ground that the appeal involved a question of

public importance viz., whether an idol is a "person" & therefore eligible to come within the definition of an "'agriculturist'" within the meaning of

Section 3 of Madras Act IV (4) of 1938. But we have abstained from deciding that point as the suit was brought only on behalf of the temple, a

religious institution, which is excluded from the definition of a "person" in Section 3 of Madras Act IV (4) of 1938. It therefore follows that no

question of public importance arises in this case. In the view we are taking it is unnecessary to call for a report on the question of the valuation of

item 1 of the plaint schedule property.

7. In the result, the petn is dismissed with costs.