

(1933) 04 MAD CK 0027
In the Madras High Court

N.K.R.M. Rajagopala Chettiar

APPELLANT

Vs

The Hindu Religious Endowments Board and Others

RESPONDENT

Date of Decision : 11-04-1933

Acts Referred:

Madras Hindu Religious Endowments Act, 1923 — Section 84(1), 84(2)

Citation : (1934) ILR (Mad) 271 : 147 Ind. Cas. 614 : (1934) 39 LW 94 : (1934) 66 MLJ 43

Hon'ble Judges : Madhavan Nair, J;Lakshmana Rao, J;Jackson, J

Bench : Full Bench

Judgement

Madhavan Nair, J.—This case relates to the Sri Rajagopaswami Temple at Ammayappan in the East Tanjore District. The appellant

contends that the temple is an excepted temple. u/s 84(1) of the Madras Hindu Religious Endowments Act, ""If any dispute arises as to whether a

math or temple is one to which this Act applies or as to whether a temple is an excepted temple, such dispute shall be decided by the Board"".

2. The Hindu Religious Endowments Board by its order, dated 31st January, 1931, decided that the temple is not an excepted temple. u/s 84(2)

a trustee affected by a decision under Sub-section (1) may, within one year, apply to Court to modify or set aside such decision but, subject to the

the result of such application, the order of the Board shall be final"".

3. The appellant applied to the District Court to set aside the decision of the Board, but the District Judge confirmed its order. The appellant has

now appealed to the High Court against the decision of the District Court. It is contended by the 1st respondent (The Hindu Religious

Endowments Board) that u/s 84(2) no appeal lies to the High Court against the decision of the District Judge. This contention is supported by a

decision of a Bench of this Court in Appeal No. 44 of 1931 which held that there is no right of appeal to the High Court against an order by the

District Court u/s 84(2) of the Act. It is argued by Mr. Srinivasa Aiyangar for the appellant that this decision requires re-consideration and that an

appeal lies to the High Court against such an order. The question we have to decide in this Full Bench is whether "" the order passed by the District

Judge u/s 84(2) of the Hindu Religious Endowments Act on an application made to the District Court to set aside the decision of the Hindu

Religious Endowments Board u/s 84(1) of the Act is appealable to the High Court"".

4. The law is well settled that it cannot be assumed that there is a right of appeal in every matter which comes under the consideration of a Judge.

Such right may be given by statute or some authority equivalent to a statute: (1887) L.R. 14 I.A. 160 (Privy Council) . Unless it is so given a right

of appeal does not exist. Mr. Srinivasa Aiyangar does not contend that the Act expressly gives the appellant a right of appeal to the High Court

against orders passed u/s 84(2), but what he first contends is that there is nothing in the Act to signify that there is no right of appeal to the High

Court. On this point Mr. Venkataramana Rao contends that the Act clearly forbids an appeal to the High Court. As the appellant's right of appeal

is statedly based by his learned Counsel not on the provisions of the Act but on the general law as embodied in the Civil Procedure Code, it is

really not necessary to discuss this contention; but as the point has been argued I shall deal with it very briefly. In this connection our attention has

been invited to the language used in the Act in describing the finality of the orders of the District Court in Sections 53(4) and 76(3) on one side,

and Sections 77(2) and 84(2) on the other. Section 53 deals with the removal and dismissal of trustees by the Committee. Clause 4 of that section

states:

The order of the Committee under this section shall, when no appeal is preferred or application made under Sub-section (3), be final; and when

such appeal is preferred or application is made the order of the Board or the Court, as the case may be, shall be final.

5. The application mentioned here is the application to the District Court. Section 76 deals with the alienation of Immovable trust property

belonging to any mutt or temple. Clause 3 of the section states that the order of the Board or Committee under Sub-section (1) when no application is made under Sub-section (2) and the order of the Court when such application is made shall be final.

6. These two sections state clearly that the orders passed by the District Judge on applications made to the District Court under these sections are final and therefore not appealable. Now observe the language of Sections 77(2) and 84(2). Section 77(2) states:

Any party affected by an order under Sub-section (1) may within such time as may be prescribed apply to the Court to modify or set aside such order but, subject to the result of such application, the order of the Board shall be final.

8. Section 84(2), already quoted, states that

a trustee affected by a decision under Sub-section (1) may, within one year, apply to the Court to modify or set aside such decision but, subject to the result of such application, the order of the Board shall be final.

9. Now it cannot be disputed that there is a difference in the language of the two sets of sections referring to the finality of the orders of the District Court. Mr. Srinivasa Aiyangar argues that whereas in Sections 53(4) and 76(3) it is clearly stated that the order of the Court shall be final, it is not

so stated in Sections 77(2) and 84(2) and that the contrast in the language shows that an appeal to the High Court against the decision of the

District Court u/s 84(2) is not forbidden by the Act, for, if it was so forbidden the legislature would have said, as it has said in the other two

sections, that the order of the Court shall be final. This argument is not without force; but it becomes more forcible when we remember that Section

77 which uses in Clause (2) the language "" subject to the result of such application (to the Court), the order of the Board shall be final"" comes

immediately after Section 76(3) which uses the language ""the order of the Court when such application is made shall be final"". It is argued by the

appellant that no reason can be assigned for the difference in the language used unless it be that the legislature did not desire to forbid appeals

against the orders passed by the District Court under Sections 77(2) and 84(2). The difficulty in construing these provisions in the Act has been

commented upon by this Court in Sri Ishwarananda Bharathi Swami Vs. The

Board of Commissioners for Hindu Religious Endowments, , where

after remarking with reference to those sections that "" it is rather curious that the legislature has chosen to use two different expressions in

connection with an aggrieved person's remedy to the District Court,"" Anantakrishna Aiyar, J. says:

The question suggests itself whether there is any, and, if so, what difference between saying that "the order of the Court when such application is

made shall be final" and saying "subject to the result of such application to the Court, the order (of the Board) shall be final".

10. But the line of discussion suggested by this question was not pursued as it was not necessary for the disposal of the case before the Court; nor

is it necessary to pursue the discussion any further in this case also, as the appellant, as already stated, does not purport to base his right of appeal

on the provisions of the Act, his contention being only that the Act does not forbid an appeal to the High Court. However it may be stated that

though it is difficult to account satisfactorily for the difference in the language used in the two sets of sections, it is not clear despite the close

proximity of the two sections 76 and 77 that the legislature by using a different language really intended to produce a different effect. The

expression "" subject to the result of such application to the Court, the order of the Board shall be final"" may, I think, without doing any violence to

the language, be interpreted to mean that the finality of the order of the Board is only subject to the result of an application to the Court and to

nothing further. If this view is correct then the orders of the District Court in Sections 77(2) and 84(2) become as final as the orders of the Court in

Sections 53(4) and 76(3). Whatever difficulties there may be in reconciling the language used in the two sets of sections 53(4), 76(3) and 77(2),

84(2), one thing is clear beyond doubt, viz., that the effect of the language in Section 84(2) is not to give a right of appeal to the appellant as such a

right must be given expressly by a statute or by an equivalent authority.

11. I will now deal with the main argument of Mr. Srinivasa Aiyangar which is that the appellant is entitled to prefer the appeal under the general

law, that is, under the provisions of the Civil Procedure Code. Section 2(2), Civil Procedure Code, defines a decree 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.

(The italics are mine.)

12. Section 96 of the Code says:

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.

13. It is contended that the order made by the District Court on an application u/s 84(2) of the Hindu Religious Endowments Act is a "" decree

within the meaning of the Civil Procedure Code, and that u/s 96, Civil Procedure Code, such an order is appealable to the High Court as appeals

against such orders are not otherwise provided for. This contention can be accepted if it can be shown that the order passed by the District Court

u/s 84(2) is a ""decree"" as defined by Section 2(2), Civil Procedure Code. It cannot be disputed that the decision of the District Court in the case

before us fulfils all the requirements of a decree except that the decision has not been given in a suit but has been given on an application made to

the Court. Since the decision was not given in a suit it is argued by Mr. Venkataramana Rao that it amounts only to an order and as it does not fall

within the list of appealable orders it cannot be appealed against to the High Court either as a decree or an order; on the other hand, it is

contended by the appellant that the term ""suit"" used in the definition of the decree would include a proceeding based on an application as well, and

that the decision on an application conclusively determining the rights of the parties as in the present case will fall within the definition of a decree.

The word ""suit"" is not defined in the Code. Undoubtedly it is a term of wide significance; the only indication of what is meant by the term in the

CPC is what we get from Section 26 of the Code which says that every suit shall be instituted by the presentation of a ""plaint"" or in such other

manner as may be prescribed. (See also Order 4, Rule 1.) It has been held that a proceeding that does not commence with a plaint is not a suit

(Venkata Chandrappa Nayanivaru v. Venkatrama Reddi ILR (1898) Mad. 256) and when there is no suit there can be no decree ((1887) L.R.

14 I.A. 160 (Privy Council)). It must therefore follow that an order passed by the District Judge on an application, even if that order complies with

all the other requirements of the definition of a decree, cannot be a "" decree "" under the Code inasmuch as an application cannot be the

commencement of a suit and without a suit there cannot be a decree. This reasoning is met with a twofold reply. In the first place it is argued that

so long as the application by which the District Court is moved contains all the particulars which a plaint should contain under Order 7, Rule 1,

Civil Procedure Code- and it is not denied that the application in the present case contains all such necessary particulars-there can be no difference

between a plaint and an application; and that a proceeding commenced by an application may well, for all substantial purposes, be termed a suit.

This argument is sought to be supported also by a reference to Order 4, Rule 1(2) which says that every plaint shall comply with the rules

contained in Orders 6 and 7 so far as they are applicable. Emphasising the words "" so far as they are applicable"" it is suggested that the term

plaint"" would include within its connotation an application also which cannot strictly be called a plaint. Secondly, it is argued having regard to

certain decisions-which will be noticed later-that a proceeding in which rights of parties are determined may be deemed a ""suit"" and that an order in

such a proceeding even though it is commenced only by an application should ""be treated as a decree within the meaning of Section 2(2), Civil

Procedure Code. It appears to me that neither of these arguments can be accepted. It is clear that in defining ""decree"" the CPC has recognised a

distinction between a proceeding commenced by an application and one commenced by a plaint. By way of illustration reference may be made to

Order 33, which relates to suits by paupers. This Order, instead of helping the appellant, I think, helps the respondent. Though such suits are

initiated by applications for permission to sue as paupers, the proceedings do not become suits instituted in the ordinary manner till the applications

are granted. Rule 8 of the Order makes this clear. It says that

where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all

other respects as a suit instituted in the ordinary manner...

14. This rule distinctly shows that the Code recognises a distinction between a

proceeding commenced by an application and a proceeding commenced by a plaint. After the applications have become plaints the proceedings become ""suits"" and the adjudications thereon then become decrees within the meaning of Section 2(2). It may be observed that an order rejecting an application for leave to sue in forma pauperis is only an order and not a decree, for no suit has till then been filed. (See The Secretary of State for India in Council v. Jillore ILR (1898) All. 133 (F.B.)) The term "" suit "" in the CPC can mean only a proceeding instituted by the presentation of a plaint. Of course, a proceeding commenced by an application would also fall within the term ""suit"" if such a proceeding has been specially declared to be a ""suit"" under the Code by the specific provisions of any special enactment, for instance, a contentious probate proceeding. A decision given in such a proceeding would be a decree. Under the Hindu Religious Endowments Act ""applications"" and "" suits "" are treated as distinct remedies for aggrieved persons. Remedy by suit is provided in Sections 55(4), 57(3), 57(4), 63(4), 65, 67(5) and 73 and remedy by application is provided for in Sections 44, 62, 70(2), 76(2), 77(2), 78 and 84(2). It is true that the Court-fee payable on an application u/s 84(2) is what is payable on a plaint (see Sch. II to the Religious Endowments Act) and that such an application has been described as analogous to a regular suit (see Bamodaram v. Hindu Religious Endowments Board, Madras ILR (1929) Mad. 266 : (1929) 58 M.L.J. 494 (F.B.)) but however much it may approximate to a suit it cannot be said for the reasons given above that under the CPC a proceeding commenced on such an application will fall within the meaning of the term ""suit""; if so, an order on an application made to the District Court u/s 84(2) of the Hindu Religious Endowments Act cannot be called a decree and is not therefore appealable to the High Court.

15. The above conclusion is not in any way affected by the decisions relied on by the appellant's learned Counsel to show that a proceeding in which the rights of parties are determined may be termed a suit and that an order in such a proceeding even though it is commenced only by an application should be treated as a decree within the meaning of Section 2(2), Civil Procedure Code. This is the second of the appellant's contentions already referred to. The decisions chiefly relied on are the Privy

Council decisions in (1916) L.R. 43 I.A. 192 (Privy Council) , 26

CWN 713 (Privy Council) and the decisions of our Court in Mahalinga Kudumban v. Theetharappa Mudaliar (1928) 56 M.L.J. 387 and

Secretary of State for India in Council v. Narayanaswami Chettiar ILR (1931) Mad. 391 : (1931) 63 M.L.J. 962 . On examination it will be found

that none of these decisions supports the contention of the appellant. To appreciate the true significance of the reference to a ""decree"" in their

Lordships' judgment in (1916) L.R. 43 I.A. 192 (Privy Council) and 26 CWN 713 (Privy Council) it is necessary to state that those observations

refer to ""decree"" as defined in the CPC of 1882 (Act XIV of 1882). Under that Code ""decree"" meant ""the formal expression of an adjudication

upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or

appeal"".

16. An adjudication which decides an appeal would also fall within the meaning of the term ""decree"" under that Code, whereas this part of the

definition is omitted from the present Code which confines the term ""decree"" to adjudications on matters of controversy in the suit alone. The

decision in (1916) L.R. 43 I.A. 192 (Privy Council) arose under the Madras Forest Act (Act V of 1882). In that case a consolidated appeal was

filed in the Privy Council against two decrees (30th September, 1909) of the High Court of Madras which reversed and varied respectively two

decrees (27th July, 1904) of the District Judge of Godavari by which two orders (19th October, 1903) made by the Forest Settlement Officer of

Godavari were upheld. The question for determination was whether the Secretary of State for India in Council was entitled to incorporate the land

in dispute into a reserve forest under the Madras Forest Act. Section 10 of the Forest Act enacted that the Forest Settlement Officer ""shall pass an

order specifying the particulars of such claim (claims made against land taken up for reservation) and admitting or rejecting the same wholly or in

part."" u/s 10(11) of the Act, ""if such claim be rejected wholly or in part, the claimant may within thirty days of the date of the order prefer an

appeal to the District Court in respect of such rejection only"". In that case the claim was rejected by the Forest Settlement Officer and an appeal

by the respondents was made to the District Court which pronounced a decision.

Against the District Judge's decision appeals were preferred to the High Court. It was argued before their Lordships that the appeals to the High Court were incompetent. In repelling that contention their

Lordships observed as follows:

In their Lordships' opinion this objection is not well founded. Their view is that when proceedings of this character reach the District Court, that

Court is appealed to as one of the ordinary Courts of the country, with regard to whose procedure, orders and decrees the ordinary rules of the

CPC apply. This is in full accord with the decision of the Full Bench in *Kamaraju v. The Secretary of State for India* ILR (1888) Mad. 309 (F.B.),

a decision, which was given in 1888 and has been acted on in Madras ever since.

17. On the basis of these observations it is argued that in the present case also the order of the District Court should be treated as a decree and

that an appeal would lie to the High Court from such an order, notwithstanding the fact that the decision of the District Court was made only on an

application and not in a suit. This argument loses sight of the true basis of their Lordships' decision. What their Lordships decided was only this,

that the decision of the District Court passed in appeal (under the Madras Forest Act) is a decree under the CPC to which the ordinary rules of the

CPC will apply and that therefore an appeal would lie against such an order to the High Court. This, if I may say so very respectfully, is quite in

accordance with the definition of "decree" under the Code of 1882 according to which an adjudication passed in an appeal would be a decree. As

already stated, this part of the definition of the term "decree" is omitted in the present Code. Their Lordships' observations do not lend any support

to the suggestion that the decision passed by a District Judge on an application should be treated as a decree. That question did not arise before

their Lordships; what they decided was only this, that an adjudication of rights in appeal was a "decree" and that being so, an appeal would lie

against it to the High Court. That this is the true significance of their Lordships' observations becomes clear beyond doubt when we refer to

Kamaraju v. The Secretary of State for India ILR (1888) Mad. 309, which their Lordships say is in full accord with their views. It decided that an

appeal lies to the High Court from a decision of the District Court passed u/s 10 of the Madras Forest Act, 1882, on appeal from the decision of a

Forest Settlement Officer. This was all that their Lordships decided in (1916) L.R. 43 I.A. 192 (Privy Council) . For these reasons I do not think

the decision in (1916) L.R. 43 I.A. 192 (Privy Council) supports the appellant. The same may be said about the decision in 26 CWN 713 (Privy

Council) also. In that case a reference relating to a dispute as to the title to receive compensation was made to the District Court and the decision

of the District judge was appealed against to the High Court. As the printed papers (in Appeal No. 74 of 1896 on the file of the High Court) will

show the reference was made u/s 18 of the Land Acquisition Act, and the appeal to the High Court was preferred u/s 54 of the Act. The decision

of the High Court, dated the 13th July, 1897 (in Appeal No. 74 of 1896) became final as no appeal was filed against it. It was held by the Judicial

Committee that this decision would be res judicata in subsequent proceedings. In the course of their judgment their Lordships stated thus:

How the proceedings were commenced is a matter that is not material provided that they were instituted in the manner that gave the Court

jurisdiction, for they ended in a decree made by the High Court and appealable to this Board.

18. This would show that adjudication by the High Court was dealt with as a decree which it was under the Code of 1882 as being a decision in

appeal and this decree not being appealed against became final for the purposes of res judicata. Their Lordships were dealing with the finality of

the High Court's decree for the purposes of res judicata and were not directly concerned about the appealability of the order passed by the

District Court. The objection that the previous decision not being one in a former suit could not be res judicata was thus met by their Lordships:

It has been suggested that the decision was not in a former suit, but whether this were so or not makes no difference, for it has been recently

pointed out by this Board in (1921) ILR 48 499 (Privy Council) that the principle which prevents the same case being twice litigated is of general

application, and is not limited by the specific words of the Code in this respect.

19. I do not think it will be an unfair inference from this passage that their Lordships recognised the distinction between decision on application and

decision in a suit, but for the purposes of res judicata they thought that the distinction did not matter as Section 11 of the Code is not exhaustive of

the circumstances in which an issue is *res judicata*. In my opinion the decision in 26 CWN 713 (Privy Council) does not support the argument that

an adjudication on an application stands on the same footing as an adjudication in a suit for the purposes of the definition of a decree under the

Code. These decisions do not say anything more than this, viz., that when a proceeding comes before the District Court it will be subject to the

rules of the CPC and the decision passed on it will be appealable, if it is a decree within the meaning of the Code. The decision in *National*

Telephone Co., Ltd. v. Postmaster-General (1913) A.C. 546 does not lay down any different principle. In *Mahalinga Kudumban v. Theetharappa*

Mudaliar (1928) 56 M.L.J. 387, which was also a case under the Land Acquisition Act, Mr. Justice Deva-doss in upholding the contention that

the word "suit" in the definition of the "decree" may be applied to any contentious proceeding in a Civil Court in which rights of parties are in

question and in which the Court is asked to determine them, even though the proceeding was not commenced by a plaint, relied on the following

observations of Sir Barnes Peacock in *Hurro Chunder Roy Chowdhry v. Sooradhonee Debia* (1868) Beng. L.R. Sup. Vol. 985 (990):

The word "suit" does not necessarily mean an action, nor do the words "cause of action" and "defendant" necessarily mean cause upon which an

action has been brought, or a person against whom an action has been brought, in the ordinary restricted sense of the words. Any proceeding in a

Court of justice to enforce a demand is a suit; the person who applies to the Court is a suitor for relief; the person who defends himself against the

enforcement of the relief sought is a defendant; and the claim, if recoverable, is a cause of action.

20. These observations cover a very wide ground but it may be noted that the case was decided under the CPC of 1859 in which a provision

corresponding to Section 26 of the present Code does not find a place. It may also be mentioned that the decision in *Hurro Chunder Roy*

Chowdhry v. Sooradhonee Debia (1868) Beng. L.R. Sup. 985 may be rested on a narrower ground. The question for decision in that case was

whether the prosecution of the claim for mesne profits in the miscellaneous proceedings before the Principal Sudder Ameen was the prosecution

of a suit" within the meaning of Section 14 of the Limitation Act. The Full Bench answered the question in the affirmative. After making the

observations above quoted, Peacock, C. J. indicates the narrower grounds on which the judgment may be based in the following remarks:

The legislature has clearly shown what it understood by the word "suit" for the Act which provides a period of limitation in the case of proceedings

by process of execution to enforce judgments and decrees, as well as periods for the limitation of actions or suits in the ordinary acceptance of the

words, is described merely as "an Act to provide for the limitation of suits" and it recites that it is expedient to amend the law relating to the

limitation of suits. We ought not, in my opinion, to fritter away the law by construing words according to a mere technical sense, instead of giving

them a broad meaning, so as to embrace all cases intended by the legislature to be provided for.

21. This would show that the decision was based on considerations specially applicable to the Limitation Act. It would therefore not be proper to

apply this decision while considering the question whether the term "" suit "" appearing in another enactment would include within its meaning an

application "". The next case relied on by the appellant is *Secretary of State for India v. Narayanaswami Chettiar* ILR (1931) Mad. 391 : (1931)

63 M.L.J. 962. In that case also reference is made to the decision in 26 CWN 713 (Privy Council) , which I have already discussed. If the

decisions in *Mahalinga Kudumban v. Theetharappa Mudaliar* (1928) 56 M.L.J. 387 and *Secretary of State for India v. Narayanaswami Chettiar*

ILR (1931) Mad. 391 : (1931) 63 M.L.J. 962 mean that a decision though not given in a suit will be a decree under the Civil Procedure Code,

then I would respectfully differ from that view. I would therefore hold that the decision of the District Court u/s 84(2) of the Hindu Religious

Endowments Act does not fall within the meaning of the term "" decree "" as defined in Section 2(2) of the Civil Procedure Code.

22. It follows from the above considerations that the order passed by the District Judge u/s 84(2) of the Hindu Religious Endowments Act on an

application made to the District Court to set aside the decision of the Hindu Religious Endowments Board u/s 84(1) of the Act is not appealable to

the High Court either under the Hindu Religious Endowments Act or under the Civil Procedure Code. In expressing this opinion I am perfectly

alive to the force of the criticism that it is desirable that no decision of a Court regarding the rights of parties or their title to properties should be

allowed to remain without giving the aggrieved party a right of appeal against such a decision to a higher tribunal; but that is a matter for the legislature to consider and it cannot be made a ground for giving the aggrieved party a right of appeal when such a right is not given expressly under the statute.

Jackson, J.

23. The point for determination is whether in Section 84(2), Madras Act II of 1927, the words "subject to the result of such application" mean subject to the order of that Court to which the application is made or mean subject to the order of the final appellate authority to which that Court is subject.

24. Then if the latter interpretation is accepted, a further question arises whether in the circumstances of such application, there is any further appellate authority, a question which turns on the point whether the Court to which application is made passes a decree.

25. I think there can be no doubt that the words "subject to the result" mean subject to what may result under the ordinary rules of the Civil

Procedure Code. When proceedings reach the District Court the Code applies: of (1916) L.R. 43 I.A. 192 (Privy Council) .

26. And this is made clear by comparing the formula "subject to the result" with another formula used in this Act (they will be found successively in

Sections 76 and 77) "the order of the Court when such application is made shall be final". Obviously the different wording carries a different

sense, and the difference would seem to be that in one case the order of the Court to which application is made is intended to be final, and in the

other case the ultimate result of the ordinary rules of the CPC is contemplated as finally settling the matter. But then it is argued that if the District

Court is moved by application its decision is final, and no appeal is provided by the ordinary rules of the Civil Procedure Code. This depends upon

whether the decision is a decree within the definition of Section 2(2), Civil Procedure Code; and, since it is conceded that the decision is a decree

in all respects except that it is not made "in a suit," the ultimate point for determination is whether such a proceeding is a suit.

27. Every suit shall be instituted by the presentation of a plaint: Section 26. Pleading shall mean plaint: Order 6, Rule 1. The plaint shall contain

certain particulars: Order 7. But if it does not contain all these particulars it may still be the foundation of a suit: Order 4, Rule 1(2). A plaint in

order to be accepted must be properly stamped: Order 7, Rule 11. In the present case the pleading which was carried to the District Court

contained all the particulars required by Order 7, and was stamped as a plaint (as enjoined in the second schedule of Act II of 1927). The only

reason for not calling it a plaint is that it is called a petition (O.P. No. 31 of 1931). So the question reduces itself to a very narrow compass. Can a

pleading be considered in law a plaint in spite of the fact that by the local statute it is styled an application? This may be arguable either way (for the

difficulty in defining a suit: of Venkata Chandrappa Nayanivaru v-Venkatranian Reddi ILR (1898) Mad. 256) and in these circumstances it seems

better stare decisis and to affirm the decision in Appeal No. 44 of 1931.

28. In 26 CWN 713 (Privy Council) there is a discussion of a case arising not by way of plaint but from a Collector's reference under* the Land

Acquisition Act, which seems to have been carried on appeal from the District to the High Court, and therefore presumably to have been treated

as a suit. But that presumable precedent is not binding upon this Bench; for it was never approved by the Judicial Committee. Their Lordships

observe on page 326 in 26 CWN 713 (Privy Council) , "" What the actual proceedings were that ensued between them is not plain "" and on page

331, ""It has been suggested that the decision was not in a former suit, but whether this were so or not makes no difference"".

Lakshmana Rao, J.

29. I agree that the question referred to the Full Bench should be answered in the negative and would only add a few words in view of its general

importance. It is well settled that a right of appeal from any decision of any tribunal must be given by express enactment, and the Madras Hindu

Religious Endowments Act does not expressly provide for an appeal from a decision of the District Court on an application u/s 64, Clause (2) of

the Act. It was not seriously argued that a right of appeal can legitimately be founded on the contrast between the language of Sections 77 and 84

which make the decision of the Board final subject to the result of the application to the Court to modify or set it aside, and Sections 53, Clause

(4) and 76, Clause (3) which provide that the order of the Court on applications

under those sections shall be final, and the real question for determination is whether as urged on behalf of the appellant the CPC gives him a right of appeal. The CPC is not in terms made applicable to proceedings under the Madras Hindu Religious Endowments Act and as pointed out in *Parasurama Aiyar v. Seshier* (1903) Mad. 504 and *K. Damodara Menon Vs. Patinhara Malasseeri Ikkaliamma's son Kelappa Menon and Others*, . Section 141 which provides that the procedure in regard to suits should be followed as far as it can be made applicable in all proceedings in any Court of civil jurisdiction, only extends the mode of trial and the procedure incidental thereto. It will not give a party to a proceeding not a suit, a right of appeal nor does the CPC confer a right of appeal in every matter which comes under the consideration of the District Court. To be appealable the decision must be a decree within the meaning of Section 2, Clause (2) or an order against which an appeal is provided for u/s 104 of the CPC and it cannot be contended that the decision on an application u/s 84,. Clause (2) is an order against which an appeal is specially provided. It has therefore to be considered whether the decision is a decree within the meaning of the Civil Procedure Code, and to be a decree the decision should according to Section 2, Clause (2) be expressed in the suit. Section 26 of the CPC provides that every suit should be instituted by the presentation of a plaint or in such other manner as may be prescribed and it is clear from Order 33, Rule 8, which enacts that where an application for permission to sue as a pauper is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, that the distinction between a plaint and an application is recognised even in the Civil Procedure Code. Such a provision would be unnecessary and superfluous if without it an application can be treated as or deemed a plaint and considering that according to Order 33, Rule 2 an application for permission to sue as a pauper should contain the particulars in regard to plaints in suits, it follows that independently of a statutory provision it is not permissible to treat an application as, or deem it, a plaint though it may contain the particulars required in regard to plaints in suits. That a proceeding which does not commence with a plaint is not a suit is pointed out in *Venkata Chandrappa Nayanivaru v. Venkatrama Reddi* ILR (1898) Mad. 256 and it is not as if the Legislature in this case was not aware

of the distinction between the several remedies. It was unquestionably within its competence to provide for a remedy by way of application and not suit, in spite of the importance of the matter in controversy u/s 84, Clause (2) and the Madras Hindu Religious Endowments Act specifically provides for suits, appeals and applications. It is also apparent from Sch. II, which describes the proceeding u/s 84, Clause (2) as an application and prescribes the Court-fee as that leviable on a plaint under Article 17 of the Madras Court-Fees Amendment Act of 1922, that the distinction between a plaint and an application was kept in view and it would be against sound rules of construction to treat an application u/s 84, Clause (2) as or deem it a plaint. Applications under this section are not really suits though they are analogous to them: vide *Danwdaram v. Hindu Religious Endowments Board*, Madras ILR (1929) Mad. 266 : (1929) 58 M.L.J. 494 (F.B.); and it follows that the decision on such an application is not a decree. The decisions of the Privy Council in (1916) L.R. 43 I.A. 192 (Privy Council) and 26 CWN 713 (Privy Council) do not militate against this view, as the nature of the decisions in question in those cases had to be determined with reference to the CPC of 1882, wherein a decree is defined as meaning the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court, when such adjudication so far as regards the Court expressing it, decides the suit or appeal, and what is pointed out in (1916) L.R. 43 I.A. 192 (Privy Council) is that when the proceedings reach the District Court, that Court is appealed to as one of the ordinary Courts of the country with regard to whose procedure, orders and decrees, the ordinary rules of the CPC apply. The decision of the District Court in that case was a decree within the meaning of the CPC of 1882 as it was one passed on appeal, as in *Kamaraju v. Secretary of State for India* ILR (1888) Mad. 309 (F.B.) which was approved by the Privy Council, and the observation in 26 CWN 713 (Privy Council) that the proceedings in the particular case ended in a decree made by the High Court and appealable to the Board clearly indicate that the nature of the decision was considered with reference to the CPC of 1882. The principle deducible from these cases appears to be that when any proceedings reach the District Court, the ordinary rules of CPC apply, and the appealability or otherwise of the decision in any particular case depends upon whether or not it is a decree within the meaning of the CPC or an

order against which an appeal is specially provided in the Code. The decision in *The National Telephone Co., Ltd. v. The Postmaster-General*

(1913) A.C. 546 does not enounce a different principle, as according to it also the decision would be appealable only if there is a general right of

appeal from the decisions of the particular Court to which the question is referred without more, and it follows that unless the decision on an

application u/s 84, Clause (2) is a decree within the meaning of the CPC of 1908 or an appealable order, an appeal would not lie. It is admittedly

not an order against which an appeal is specially provided and it cannot be a decree within the meaning of the CPC as it was not expressed in a

suit. The proceedings u/s 84, Clause (2) cannot be deemed to be or treated as suits and with all respect I am unable to agree with the view taken

in *Venkata Reddi v. Adhinarayana Rao* (1928) 56 M.L.J. 357 and *Mahalinga Kudumban v. Theetharappa Mudaliar* (1928) 56 M.L.J. 387 that to

be a decree within the meaning of the CPC of 1908, the decision need not be expressed in a suit. It does not necessarily follow from the decision

in 26 CWN 713 (Privy Council) nor need the previous decision be a decree within the meaning of the CPC to render the question *res judicata* in a

subsequent suit. Further it appears from the printed papers in the land acquisition proceedings in that case, that the dispute was referred to the

District Court u/s 18 of the Land Acquisition Act and the appeal was taken to the High Court u/s 54 as it then stood and was understood, with the

result that it ended in a decree made by the High Court within the meaning of the CPC of 1882: and independently of the contention advanced on

behalf of the Board on the authority of the decision of the Privy Council in (1931) L.R. 58 I.A. 259 (Privy Council) as to the effect of the language

of Section 84, Clause (2) of the Madras Hindu Religious Endowments Act, the answer to the question referred to the Full Bench should be in the

negative.