

(1926) 05 MAD CK 0004
In the Madras High Court

Paramaswami Aiyangar and Another	APPELLANT
Vs	
Pichammal alias Sriranga Nachiyar now named Alamelu Nachiyar	RESPONDENT

Date of Decision : 06-05-1926

Acts Referred:

Probate and Administration Act, 1881 — Section 86

Citation : AIR 1926 Mad 986 : (1926) ILR (Mad) 954 : (1926) 51 MLJ 299

Judgement

1. This is an application for the grant of leave to appeal to His Majesty in Council against the decree of the High Court in C.M.A. Nos. 437 of

1923 and 15 of 1924. A preliminary objection is taken by Mr. Patanjali Sastri for the respondent that no appeal lies to the Privy Council against

the decree of the High Court in testamentary matters and it is incompetent for the High Court to grant leave to appeal to His Majesty in Council.

The argument of Mr. Patanjali Sastri is that under the Probate and Administration Act, Section 86, only one appeal is provided from an order of

District Judge or District Delegate to the High Court and no further appeal is allowed by the Act, and that an appeal being a creature of statute

there is no statute granting the right of appeal to the Privy Council in testamentary matters. Section 86 no doubt provides for an appeal to the High

Court against an order made by a District Judge or a District Delegate. The question is, is the decree of the High Court in a testamentary matter

appealable to His Majesty in Council, if the case is one which, if it were an ordinary civil case would be appealable u/s 109 of the Code of Civil

Procedure. Reliance is placed upon the well-known case in Rangoon, Botatoung Co., Ltd. v. The Collector of Rangoon ILR (1898)C 21 for the

contention that no appeal lies to the Privy Council. In that case it was held that

no appeal lay to the Privy Council in land acquisition cases. Their

Lordships observed:

A special and limited appeal is given by the Land Acquisition Act from the award of "the Court" to the High Court. No further right of appeal is

given. Nor can any such right be implied.

2. In that case the award was considered to be an award by an arbitrator and the Land Acquisition Act having provided for only one appeal it was

held that no second appeal lay to the Privy Council. Their Lordships treated the decision of the Court on reference by the Collector to be an

award by arbitrators. The question is whether to a civil case wherein the rights of parties are determined, the CPC does not apply. The case in

Botatoung Co., Ltd. v. The Collector of Rangoon ILR (1912) C 21 has been explained by their Lordships of the Privy Council in Ramachandra

Rao v. Ramachandra Rao ILR (1922) M 320 . Lord Buckmaster in delivering the judgment of their Lordships observed at page 329:

The argument which succeeded in that case emphasizes the distinction between an award and a decree, and the judgment mentions this in terms by

stating that the appellants, although admitted to the High Court, could not have the right to carry an award made under an arbitration as to the

value of land taken for public purposes up to this Board as if it were a decree of the High Court made in the course of its original jurisdiction....

When once the award as to the amount has become final, all questions as to fixing of compensation are then at an end; the duty of the Collector in

case of dispute as to the relative rights of the persons together entitled to the money is to place the money under the control of the Court, and the

parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be.

3. In Ramachandra Rao v. Ramachandra Rao ILR (1922) M 320 it was held that a decision with regard to title in arbitration proceedings was res

judicata between the parties in subsequent proceedings. The explanation is this, so long as the amount of compensation is in question no right or

title of the parties is involved; but where the amount awarded as compensation is paid into Court, and two or more persons claim the right to

receive the money, there is a civil contest as to the right to the money between the persons before the Court, and any determination by the Court

as to the rights of the parties is a determination in a civil case, and the ordinary incidents applicable to a decree in a civil suit concerning property

apply to such decision and therefore in land acquisition proceedings, if two persons contest the right to the amount deposited in Court, their title to

such money is determined by the Court and that decision is a decision on the merits of the contest as to the title, and such a decision operates as

res judicata in a subsequent suit, where the same title is in question. In Secretary of State for India v. Chellikani Rama Rao I L R (1916) M 617 :

31 M L J 324 (P C) the objection that no appeal lay to the Privy Council in a case under the Forest Act was raised. Reliance was placed upon

Botatoung Co., Ltd. v. The Collector of Rangoon ILR (1912) C 21 : 23 M L J 276 (P C), in support of the contention. The Privy Council

overruled the objection on the ground that there was no civil right in dispute in Botatoung Co., Ltd. v. The Collector of Rangoon ILR (1912) C 21

. Lord Shaw in delivering the judgment of the Privy Council observed:

The proceedings were, however, from beginning to end ostensibly and actually arbitration proceedings. In view of the nature of the question to be

tried, and the provisions of the particular statute, it was held that there was no right "to carry an award made in an arbitration as to the value of

land" further than to the Courts specifically set up by the statute for the determination of that value.

4. With reference to the case before them they observed:

The "merits of the present dispute are essentially different in character. The claim was the assertion of a legal right to possession of and property in

land; and if the ordinary Courts of the country are seized of a dispute of that character it would require, in the opinion of the Board, a specific

limitation to exclude the ordinary incidents of litigation.

5. The order passed by this Court is a decree in a contested civil matter and under Clause 39 of the Letters Patent an appeal lies to the Privy

Council from any judgment, decree or order of the High Court made on appeal. Clause 44 empowers the Indian Legislature to alter or modify the

Letters Patent. By the CPC an appeal to the Privy Council against an order or decree of the High Court is provided if it fulfils certain conditions.

Sections 109 and no of the CPC lay down in what cases an appeal shall lie to the Privy Council. If a decree or a final order of the High Court

satisfies the provisions of Sections 109 and no, it is difficult to see how an appeal is not competent to His Majesty in Council. The only authority in

point is a decision of the Lower Burma Chief Court reported in *Po Kin v. Ma Sein Tin* (1919) 51 I C 596. There, the learned Judges following

Botatoung Co., Ltd. v. The Collector of Rangoon ILR (1912) C 21 23 M L J 276 (P C), held that no appeal lay against an order made under the

Probate and Administration Act. Such an objection does not seem to have been taken in any other case, though in several cases against orders

under the Probate and Administration Act appeals were presented to the Privy Council. It is urged by Mr. Patanjali Sastri that, though this

objection is a novel one, yet it is one which, though not: taken in other cases, he is entitled to take here.

6. If the contention of the respondent is to prevail, no appeal to the Privy Council could lie against the orders of the High Court in insolvency

matters or orders under the Guardians and Wards Act. In the Provincial Insolvency Act an appeal is provided to the High Court but not an appeal

to the Privy Council. It cannot be said that no appeal lies to His Majesty in Council against the order of the High Court made in insolvency

proceedings provided Sections 109 and no are satisfied. This point was specifically raised and decided in *Chatrapat Singh Dugar v. Kharag Singh*

Lachmiram I L R (1913) C 685. In that case Jenkins, C.J. observed:

It is urged that Sections 46 and 47 of that Act (meaning the Provincial Insolvency Act), if anything, negative this right of appeal. But I do not so

read the Insolvency Act. In my opinion, by that Act there was no intention to interfere with any right of appeal to the Privy Council that might

otherwise exist, and this is a case which comes clearly within the provisions of the Letters Patent and of Section 109 of the Code. The only

question is whether this is a case which can properly be certified to be a fit one for appeal to His Majesty in Council.

7. Section 47 of the Guardians and Wards Act provides for an appeal to the High Court from an order made by the District Court. The provisions

as to appeal in the Guardians and Wards Act are similar to the provisions in the Probate and Administration Act. In a well-known case an appeal

was preferred with success against the order of the Madras High Court under the Guardians and Wards Act. We have therefore no hesitation in

holding that the objection of the respondent: as to the competency of an appeal to the Privy Council is wholly untenable.

8. On the merits, we hold the case satisfies the provisions of Sections 109 and No. We therefore certify that this is a fit case for appeal to His

Majesty in Council u/s 109 (a), and we grant the leave prayed for.