
(1926) 05 MAD CK 0014
In the Madras High Court

Paramaswami Ayyangar and Another

APPELLANT

Vs

Pichammal

RESPONDENT

Date of Decision : 06-05-1926

Acts Referred:

Probate and Administration Act, 1881 — Section 86

Citation : 97 Ind. Cas. 836

Hon'ble Judges : Waller, J;Devadoss, J

Bench : Division Bench

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 the 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 C.P.C. Reliance is placed upon the well-known case in *Rangoon Botatoung Co. Ltd. v. Collector of Rangoon* 16 Ind. Cas. 188 : 40 C. 21 : 19 C.W.N. 961 : 12 M.L.T. 195 : (1912) M.W.N. 781 : 16 Cri.L.J. 245 : 1912 23 M.L.J. 276 : 14 Bom. L.R. 833 : 10 A.L.J. 271 : 5 Bur. L.T. 205 : 6 L.B.R. 150 : 39 I.A. 197 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". 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 C.P.C. does not apply. The case in *The Rangoon Botatoung Company, Limited Vs. The Collector*, has been explained by their Lordships of the Privy Council in *T.B. Ramchandra Rao Vs. A.N.S. Ramchandra Rao*, . Lord Buckmaster in delivering the judgment of their Lordships observed at page 329 Page of 45 M.--[Ed.]:

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 upto 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.

2. In *T.B. Ramchandra Rao Vs. A.N.S. Ramchandra Rao*, 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 the 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 *rets judicata* in a subsequent suit, where the same title is in question. In *Secretary of State for India v. Chelikani Rama Rao* 35 Ind. Cas. 902 : 39 M. 617 : 31 M.L.J. 324 : 20 C.W.N. 1311 : (1916) 2 M.W.N. 224 : 14 A.L.J. 1114 : 20 M.L.T. 435 : 4 L.W. 486 : 18 Bom. L.R 1007 : 25 C.L.J. 69 : 43 I.A 192, the objection that no appeal lay to the Privy Council in a case under the Forest Act was raised. Reliance was placed upon *The Rangoon Botatoung Company, Limited Vs. The Collector*, in support of the contention. The Privy Council overruled the objection on the ground that there was no civil right in dispute in *The Rangoon Botatoung Company, Limited Vs. The Collector*, 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". 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.

3. The order passed by this Court is a decree in a contested civil matter and under cl. 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 C.P.C. an appeal to the Privy Council against an order or decree of the High Court is provided if it fulfills certain conditions. Sections 109 and 110 of the C.P.C. 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 110, 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 as *Po Kin v. Ma Sein Tin* 51 Ind. Cas. 596 : 10 L.B.R. 22 : 12 Bur. L.T. 87. There the learned Judges following *The Rangoon Botatoung Company, Limited Vs. The Collector*, 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 the objection is a novel one, it is one which, though not taken in other cases, he is entitled to take here.

4. 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 100 and 110 are satisfied. This point was specifically raised and decided in *Chatrapat Duggar v. Kharaj Singh* 19 Ind. Cas. 435 : 40 C. 685 : 17 C.W.N. 752 : 17 C.R.I.L.J. 547. 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.

5. 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.

6. On the merits, we hold the case satisfies the provisions of Sections 109 and 110. 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.