

(1925) 11 MAD CK 0035
In the Madras High Court

Parvathi Ammal

APPELLANT

Vs

K.G. Venketeswara Aiyar and Others

RESPONDENT

Date of Decision : 12-11-1925

Acts Referred:

Citation : AIR 1926 Mad 656 : 94 Ind. Cas. 45

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

Bench : Full Bench

Judgement

Waller, J.—This is an appeal against an order of Krishnan, J., rejecting an application for leave to file a memorandum of objections in forma

pauperis. It is argued that no appeal lies against such an order. There are no doubt, some decisions to that effect e. g., Appasami Pillai v.

Somasundara Mudaliar [1908] 26 Mad. 437 and Banno Bibi v. Mehdi Husain [1889] 11 All. 375. But the former has since been expressly

dissented from in Tuljaram Row v. Alagappa Chettiar [1911] 35 Mad. 1 and the latter proceeded on a ratio decidendi which is no longer

maintainable. The pronouncement of Sir John Edge in AIR 1925 155 (Privy Council) is also relied on, Speaking for myself, I should welcome any

clear cut definition which would render unnecessary the discussion which is at present, almost inevitable whether a particular order does or does

not pass the test laid down in Tuljaram Row v. Alagappa Chettiar [1911] 35 Mad. 1, That test is never particularly easy of application and would

be extremely difficult to apply in a case like this. I, however, see no reason to consider the very large question raised, by that pronouncement.

2. Assuming that there is a right of appeal against an order like this, I think that we should not interfere. The question is one of the exercise of

discretion. That is, of course, not the test of non-appealability, but,

When the determination complained of is merely the result of the exercise of discretion on the part of the Judge in a matter, which was a proper

subject for the exercise of that discretion the appellate Court would rightly decline to interfere : De Souza v. Coles 3 M.H.C. 384.

3. Here the Judge had discretion to admit the application but he thought fit not to exercise it in the appellant's favour. I think that we should decline

to interfere with this order. The appeal is dismissed without costs. One month for paying the necessary fees.

Devadoss, J.

4. I agree.