

(1926) 11 MAD CK 0033
In the Madras High Court

Peria Koil Kelvi Appan Govinda Ramanuja Pedda
Jeeyangarlavaru

APPELLANT

Vs

Kadambi Dharmapuri Tiruvengada Krishnamacharlu and
Others

RESPONDENT

Date of Decision : 17-11-1926

Acts Referred:

Income Tax Act, 1961 — Section 51

Citation : AIR 1927 Mad 398 : (1927) ILR (Mad) 880 : (1927) 25 LW 511 :
(1927) 52 MLJ 161

Hon'ble Judges : Wallace, J; Madhavan Nair, J

Bench : Full Bench

Judgement

Wallace, J.—This appeal is against an order of Curgenvin, J., in C.M.P. No. 3375 of 1926 in which the learned Judge directed stay of

execution of a decree by suspending the injunction which had been decreed by the Subordinate Judge of Chittoor in O.S. No. 23 of 1919.

2. The respondent took a preliminary objection that no appeal lies, and we heard a good deal of argument on the matter into which I do not

propose to go at length. It cannot be denied that the practice of this Court has been to allow a Letters Patent Appeal from an order of a single

Judge of this Court in matters of stay of execution pending the disposal of " an appeal in the Court. Mr. Venkatachariar, however, for the

respondent contended that the pronouncement of the Privy, Council in a case reported in *Sevak Jeranchod Bhogilal v. The Dakore Temple*

Committee (1925) 49 MLJ 25 (PC). implies that the practice of this Court is not justified in law. In that case the Judicial Committee remarked at

the end of their judgment, referring to the Letters Patent of the High Court of Bombay, that the term "judgment" in the Letters Patent of the High

Court means in civil cases a decree and not a judgment in the ordinary sense. The point actually before them was the meaning of the word

"judgment" in Clause 39 of the Letters Patent of Bombay. But the remark is general and is not confined to Section 39. As the language of the

Letters Patent of Bombay is the same as that in Madras, the remark would equally apply to this Court.

3. It is essential in order to understand the application and the necessity for the remark quoted above, to state the point at issue in that case. Under

a temple scheme prescribed by the Privy Council decree the temple committee was given "power to frame rules subject to the sanction of the local

District judge and subject to alterations and additions by the High Court. The District Judge sanctioned certain rules so drawn up and so-called

appeals were taken in the High Court, the appellants also applying under the rules of the scheme for modifications by the High Court. The High

Court did not entertain the latter but heard the so-called appeals and after the decision granted the appellants leave to appeal to the Privy Council.

The Privy Council held that the orders of the High Court on the appeals were not "judgments" within the meaning of Section 39 of the Letters

Patent and that the High Court had no legal authority to deal with the matter at all except in so far as it was exercising the power conferred on it by

the Privy Council decree scheme, a matter more in the nature of executive or administrative than of judicial activity. Hence, as the Privy Council

held, no appeal lay from the District Judge to the High Court and therefore no appeal lay from the High Court to the Privy Council except on the

sole ground that the judgment or decree was incompetent. Then the remark here relied upon follows.

4. I do not read the remark as meaning more than that all pronouncements in the form of judgments are not judgments within the meaning of the

Letters Patent but only such pronouncements as are of the nature of decrees. What the Privy Council intends to import by the term "Decree,"

whether, for example, it is a decree as understood under the old Equity Law as equivalent to a judgment or whether it is the CPC definition of a

decree, it does not say. There is of course no particular reason why we should interpret the Letters Patent by the Civil Procedure Code, nor to my

mind is there any particular reason why we should interpret the word "Decree" in the old equity sense. If the remark made is, as suggested by Mr.

Venkatachariar, a reference to the old distinction whereby final decisions in actions in equity cases were known as decrees while final decisions in

actions in common law cases were known as judgments, then the dictum might just as easily have been reversed and it might have run that the term

"Decree" in the Letters Patent means a judgment. That the words "judgment" and "decree" as used in the Letters Patent, whether mutually

interchangeable or not, are not confined to final decisions in an action seems clear from the wording of Clause 40 which speaks of preliminary or

interlocutory judgments, decrees, etc. Another Privy Council case has been referred to, *Tata Iron and Steel Company, Ltd. v. Chief Revenue*

Authority of Bombay ILR (1923) B 724 : 45 MLJ 295 (PC). but that does not carry us any further, as the Privy Council there held in effect that

the duties of the High Court in the matter before it were merely advisory and not judicial and therefore their pronouncement was not a judgment.

No such considerations arise in the present case. Until therefore the Privy Council has made more clear that it intended to overrule a long series of

decisions not only in this Court but in the other High Courts, I am not prepared to hold that these have been overruled. There is no hint in the Privy

Council decision that they were aware that they were overruling a long continued practice. Had they intended to do so, I think they would have

said so in explicit terms. This is the view which has been adopted by another Bench of this Court in a recent decision in *L.P.A. No. 240 of 1925*

with which I respectfully agree. The balance of authority in this Court is that a Letters Patent Appeal does lie in a case like the present, and later

decisions have usually been founded on the obiter dicta in the Full Bench case in *Tuljaram Row v. Alagappa Chettiar* 26 M L J 433 M 1 which

have been regarded as laying down correct law. See *Srinivasa Aiyangar v. Ramaswami Chettiar* ILR (1913) M 235 . *Kulasekara Naicker v.*

Jagadambal ILR (1919) M 352. *Sonachalam Pillai v. Kumaravelu Chettiar* 36 MLJ 351 (FB). *Baba Sah v. Purushothama Sah* 47 MLJ 932 .

Kannayalal Bhoya v. Balaram Paramasukdoss Krishna Reddi v. Thanikachala Mudali Savan Durga Bai Ammal v. Ramanatha Rao Savan Durga

Bai Ammal Vs. S. Ramanatha Rao alias Rama Rao and Another, . and Venkata Chinnayamma v. Subbamnta. The only cases to the contrary cited

before us are *Srimantu Raja Yarlagadda Durga Prasada Nayadu v. Sritnantu Raja Yarlagadda Mallikarjuna Prasada Nayadu and Vairavan*

Chettiar v. Ramanathan Chettiar which, without any detailed discussion of the point at issue, follows Srimantu Raja Yarlagadda Durga Prasada

Nayadu v. Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayudu. The late Chief Justice Sir Arnold White who was a party to Srimantu Raja

Yarlagadda Durga Prasada Nayudu v. Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayadu delivered the leading judgment in Tuljaram Row

v. Alagappa Chettiar and thus went back upon his views in that case. This deprives it of a considerable portion of its authority;

5. It is pointed out by Mr. Rangachariar for the appellant that in spite of these repeated rulings here and in other High Courts to the same effect no

restricted definition of the word "judgment" was introduced into Section 15 of the Letters Patent when it was amended in 1919 and, what is

perhaps more significant still, in the recent Letters Patent of the Lahore High Court the same language as in the older Letters Patents has been

adopted--see Gokal Chand v. Sawwal Das ILR (1919)IL 348. and Ruldu Singh v. Sawal Singh. I would therefore repel the technical objection

taken.

6. On the merits I think the appellant has a good case. The learned Judge has failed in my opinion to give adequate weight to the important fact that

prima facie the defendants have been in a state of disobedience to the decree since ever it was passed. I do not wish to prejudge the proceedings

which are now pending against them for contempt. But from their own affidavit paras. 8 and 11 it is clear prima facie that they have never

attempted to obey the decree and that, even when the plaintiff objected, they nevertheless went on in their course of disobedience. Now it is

obviously the duty of a party to a decree to obey the decree until he has had it stayed or set aside in proper proceedings, and I am not prepared to

encourage parties to disobey decrees by granting to a prima facie disobedient party the very relief which he has been getting illicitly by his own

disobedience. He disobeys as long as he dare and then when he finds the position getting awkward and that disobedience cannot succeed any

longer he comes up for an injunction and expects to get it because he has been so successful up to date in not obeying the decree. The Court

would be stultifying itself, if it granted relief to parties guilty of such conduct.

7. This alone seems to me sufficient ground for a refusal to uphold the decision

of the learned Judge. I would therefore reverse his decision and cancel the order passed upon the C.M.P. and grant the appellant his costs both here and " on the C.M.P.

Madhavan Nair, J.

8. This is an appeal against the order of a single Judge of this Court staying the execution of the decree in O.S. No. 23 of 1919 on the file of the

Subordinate Judge's Court at Chittoor pending the disposal of the appeal preferred against that decree.

9. A preliminary objection is taken that the order appealed against does not amount to a "judgment" within the meaning of Clause 15 of the Letters

Patent and that, therefore, an appeal does not lie. It is argued by the respondent that there is a conflict of decisions in this Court as regards what

amounts to a "judgment" under Clause 15 of the Letters Patent, that therefore the question should be referred to a Full Bench and that the

decisions of this Court will have to be reconsidered in the light of the recent pronouncement by the Privy Council in *Sevak Jeranchod Bhogilal v.*

The Dakore Temple Committee.

10. The latest reported decision of this Court bearing on this point appears in *Sonachalam Pillai v. Kumaravelu Chettiar*. In that case following the

decision in *Tuljaram Row v. Alayappa Chettiar* it was held, after an examination of the case-law on the subject, that an order of a single Judge of

the High Court refusing to stay execution of a decree of a mofussal Court pending the disposal of the appeal therefrom to the High Court is a

judgment" within the meaning of Clause 15 of the Letters Patent and that an appeal therefrom is maintainable under that clause. It is conceded that

this decision would govern the present case. But what is argued is this, namely, that *Tuljaram Row v. Alagappa Chettiar* is not a direct decision on

this point and that at the time when *Sonachalam Pillai v. Kumaravelu Chettiar* was decided there was a conflict of decisions on the question under

consideration and that, therefore, the learned Judges in *Sonachalam Pillai v. Kumaravelu Chettiar* should have referred the question to a Full

Bench; and they not having done so, we are now asked to make the reference.

11. The respondent relies upon two decisions of this Court--*Srimantu Raja Yarlagadda Durga Prasada Nayadu v. Srimantu Raja Yarlagadda*

Mallikarjuna Prasada Nayadu and Vairavan"Chettiar v. Ramanathan Chettiar in

support of his argument that an order of a single Judge of the High, Court refusing stay of execution or allowing it does not amount to a " judgment" within the meaning of Clause 15 of the Letters Patent. The decision in Vairavan Chettiar v. Ramanathan Chettiar simply follows the decision in Srimantu Raja Yarlagadda Durga Prasada Nayadu v. Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayadu and does not contain any discussion on the point at issue. The decision in Srimantu Raja Yarlagadda Durga Prasada Nayadu v. Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayadu supports the respondent as it states that an order made by a single Judge refusing stay of execution is not a "judgment" within the meaning of Clause 15 and no appeal lies therefrom. But this decision was considered by the Full Bench in Tuljaram Row v. Alagappa Chettiar 21 MLJ 1 (FB). No doubt the question referred to the Full Bench in Tuljaram Row v. Alagappa Chettiar 21 MLJ 1 (FB) was whether an order of a single Judge on the Original Side refusing to frame an issue which is asked for by one of the parties is a judgment within the meaning of Clause 15 of the Letters Patent and is appealable; but the meaning of the term "judgment" was elaborately considered in that case by the learned Chief Justice and Krishnaswami Aiyar, J. Both of them held that in the particular case before them there was no appeal. Ayling,., contended himself by saying that he agreed that the answer to the question referred should be in the negative. I do not think it is necessary for the purposes of this case to refer to the discussion of the meaning of the term "judgment" contained in that decision. I am prepared to accept the meaning put upon that term by the learned Chief Justice. In explaining its meaning the learned Chief Justice refers to various interlocutory orders which, in his opinion, would amount to judgments within the meaning of Clause 15 and one of such instances is an order refusing stay of execution. He states that he should be prepared to hold that an appeal lay from such an order. He notes that a contrary view on this question was taken in Srimantu Raja Yarlagadda Durga Prasada Nayadu v. Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayadu to which he himself was a party but he resiled from it in this decision. As the point for determination in Tuljaram Row v. Alagappa Chettiar 21 MLJ 1 (FB) was whether an appeal lies from an order of a Judge on the Original Side declining to frame

an issue which was discussed for by one of the parties to the suit, the opinion on the question whether an appeal lies from an order refusing stay of

execution is no doubt an obiter dictum; but in view of the elaborate discussion of the question, I think we should follow it.

12. It would be hardly right to confine *Tuljaram Row v. Alagappa Chettiar* ILR (1919) M 1 to the question therein decided. In fact, in this Court

the decision in *Tuljaram Row v. Alagappa Chettiar* 21 MLJ 1 (FB) has been generally considered as affording a general test as to what amounts to

a "judgment" within the meaning of Clause 15 of the Letters Patent. Applying the test contained in it, the learned Judges in *Srinivasa Aiyangar v.*

Ramaswami Chettiar held that the order of a single Judge of the High Court rejecting a petition to send for the records and to revise the judgment

of the Lower Court exercising small cause jurisdiction is a judgment within the meaning of Clause 15 of the Letters Patent and is therefore

appealable. Following the same decision it was held in *Kulasekara Naicker v. Jagadambal Ammal* that an order as to costs passed by a Judge of

the High Court in the exercise of his original jurisdiction is not the less a judgment within the meaning of Clause 15 of the Letters Patent because it

relates to costs only. Two Full Bench decisions have thus treated the decision in *Tuljaram Row v. Alagappa Chettiar* ILR (1919) M 1 : 21 MLJ 1

(FB) as binding on matters not directly dealt with by it. Various Benches of this Court have also applied the decision in *Tuljaram Row v. Alagappa*

Chettiar 21 MLJ 1 (FB) in determining the applicability of various interlocutory orders passed by single Judges of this Court. See *Kannayalal*

Bhoya v. Balaram Paramasukdoss, Krishna Reddi v. Thanikachala Mudali, Syed Yusuf Saheb v. Subhan Bibi, Venkata Chinnayamma v.

Subbamma, and Baba Sah v. Purushothama Sah. I have already referred to the decision in *Sonachalam Pillai v. Kumaravelu Chettiar* which is a

direct decision on the present question as it relates to the appealability of an order passed by a single Judge of this Court refusing stay of execution.

In view of this large volume of authority in this Court, I must hold that the decision in *Srimantu Raja Yarlagadda Durga Prasada Nayadu v.*

Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayadu is no longer good law and that the decision in *Vairavan Chettiar v. Ramanathan Chettiar*

(1923) 28 C W N 403 which simply follows it without discussing the question cannot be accepted as an authority. In this state of authorities, I do

not think there is any necessity now to refer the question before us to a Full Bench. So far as I can speak from experience, I may state that the practice in this Court ever since *Tuljaram Row v. Alagappa Chettiar* 21 MLJ 1 (FB) has always been to allow appeals against orders like the one before us. It may also be mentioned that the decision in *Tuljaram Row v. Alagappa Chettiar* ILR (1919) M 1 : 21 MLJ 1 (FB) has been followed in the Lahore High Court see *Gokal Chandel v. Sanwal Das and Ruldu Singh v. Sawal Singh* ILR (1922)L 188.

13. The next question for consideration is whether the meaning of the term "judgment" in Clause 15 of the Letters Patent as explained in *Tuljaram*

Row v. Alagappa Chettiar 21 MLJ 1 (FB) should be reconsidered in view of the pronouncement of the Privy Council in *Sevak Jeranchod Bhogilal*

v. The Dakore Temple Committee. The facts of this case are briefly these. The Privy Council sanctioned a scheme of management for a certain

temple in Ahmedabad. The scheme empowered the committee of the temple to frame rules for its management, etc., subject to the sanction of the

District Judge of Ahmedabad and it was provided that the scheme may be altered or modified by the High Court of Bombay. The temple

committee drew up certain rules which with some modifications were sanctioned by the District Judge. Appeals were preferred against the order of

the District Judge to the High Court and applications were also concurrently made to the High Court for modification of the scheme. The High

Court did not make any order on the applications but gave judgments on the appeals varying the order of the District Judge by amending the rules

in certain respects. From the judgments of the High Court an appeal was filed to the Privy Council u/s 39 of the Letters Patent of the Bombay High

Court. After pointing out that appeals to the High Court did not lie and that the High Court had original powers under Clause 20 of the scheme for

altering or modifying the rules which it did not exercise but which it might still exercise upon a proper application, their Lordships of the Privy

Council state as follows:

There was no right of appeal to His Majesty in Council from the judgments of the High Court of the 11th of April, 1919 and the 22nd September,

1919 or from any decrees which were drawn up, except on the sole ground that the Judgments or decrees were incompetent. The term

"judgment" in the Letters Patent of the High Court means in civil cases a decree and not a judgment in the ordinary sense.

14. It is this last sentence that is relied upon by Mr. Venkatachariar in support of his argument that the opinion of the High Court in *Tuljaram Row*

v. Alagappa Chettiar 21 MLJ 1 (FB) should be revised. It is contended that if the judgment of the High Court in the case before the Privy Council

interfering with the scheme does not come within the meaning of the term as used in the Letters Patent, then the order refusing stay of execution or

allowing it cannot be considered to be a judgment because that does not amount to a decree. It may be observed that though the opinion is

generally stated, the appeal in that particular case was u/s 39 of the Letters Patent and not u/s 15. Their Lordships do not explain in what sense the

term "decree" is used in that sentence. Whether the term should be given the same meaning that is given to it by the Civil Procedure Code, or

whether it is used as understood in the old Equity Law according to which, as contended for by Mr. Venkatachariar, final decisions in equity cases

were known as decrees is not at all clear. Section 40 of the Letters Patent shows that the words "judgment" and "decree" are not limited to final

decisions, because it refers to preliminary or interlocutory judgments, etc. The decisions in *Tuljaram Row v. Alagappa Chettiar* 21 MLJ 1 (FB) and

other cases were in existence when the Letters Patent was amended in 1919 and still the Legislature did not interfere with the term "judgment" by

giving it a limited definition. In the recent Letters Patent of the Lahore High Court the same language as in the older Letters Patents appears.

Another case referred to, viz., *Tata Iron and Steel Company Limited v. Chief Revenue Authority of Bombay* does not give much help in deciding

this matter. In that case it was held that the decision of the High Court upon a case stated and referred to it by the Chief Revenue authority u/s 51

of the Income Tax Act was merely advisory and not judicial. In these circumstances, it is difficult to hold that by the pronouncement referred to

their Lordships of the Privy Council have overruled the long current of authorities in this and in other Courts bearing on the question; at any rate,

until the doubt is removed by a clearer pronouncement, the contention that the decisions referred to have been overruled cannot be accepted. A

similar conclusion was reached by another Bench of this Court in L.P.A. No. 240 of 1925. For these reasons, the preliminary objection raised by

the respondent must be overruled.

15. On the merits, I agree with my learned brother that the decision of the learned Judge should be reversed with costs here and on the Civil

Miscellaneous Petition.