

(1930) 10 MAD CK 0010
In the Madras High Court

P.R.M.P.R. Perichiappa Chettiar

APPELLANT

Vs

Nachiappan

RESPONDENT

Date of Decision : 16-10-1930

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109(a), 110

Citation : AIR 1932 Mad 46 : (1932) 35 LW 206

Hon'ble Judges : Reilly, J;Anantakrishna Aiyar, J

Bench : Full Bench

Judgement

Reilly, J.—I have had the advantage of reading the judgment which my learned brother is about to deliver and with which I entirely agree.

2. Section 109(a), Civil P.C., gives a right of appeal to His Majesty in Council from any decree made on appeal by a. High Court. Section 110,

Civil P.C., qualifies that right of appeal by making two exceptions to it. First there is no appeal u/s 109(a) if the amount or value of the subject-

matter of the suit in the Court of first instance or in dispute in the proposed appeal is less than Rs. 10,000 and the decree does not involve directly

or indirectly some claim or question to or respecting property of that amount or value. Secondly there is no appeal u/s 109(a) if the decree of the

High Court affirms the decision of the Court immediately below the High Court and the proposed appeal does not involve any substantial question

of law. These two exceptions, as they partially take away the right of appeal given by Section 109(a), must; be strictly construed. In the present

case prima facie there is no difficulty in respect of the first exception, as admittedly the amount of the subject matter of the suit in the Court of first

instance and in the proposed appeal is over Rs. 10,000.

3. It is not suggested that the proposed appeal involves any substantial question of law; but the petitioner will be entitled to appeal if the decree of the High Court did not affirm the decision of the Subordinate Judge. At one time it was held by the Calcutta High Court that, even when a decree of that Court had modified a decree of the lower Court on appeal it was an affirming decree for the purpose of Section 110, Civil P.C., so far as it agreed with the decision of the lower Court, and that, if the proposed appeal to His Majesty in Council referred only to that part of the decree, some substantial question of law was necessary to give a right of appeal. That view, which it may be pointed out involved the implication of words not found in Section 110, was taken in *Rajah Sree Nath Roy Bahadur v. Secy. of State*, [1904] 8 C.W.N. 294 and AIR 1925 60 (Privy Council), but has been shown to be incorrect by the decision of the Judicial Committee in the latter case. Although that implied extension of the exceptions to Section 109(a) is no longer possible, it is urged for defendant 2 that we are still entitled to effect a different extension of the exceptions by reading the last clause of Section 110 as if it ran: provided that, so far as the decree or final order appealed from in respect of any separable part of the case affirms, etc. and that, if that part involves no substantial question of law, it should be excluded in calculating the necessary Rs. 10,000. That view appears to have been taken in *Narendra Lal Das Chaudhury Vs. Gopendra Lal Das Chaudhury and Others*, and *Kapurji Magniram v. Pannaji Debichand* AIR 1929 Bom. 359. But with great respect I am not prepared to follow these decisions. If a decree is really a composite decree or a series of decrees dealing with what should strictly be the subject of separate suits, e.g., a decree dealing with alienations in favour of different; defendants, which by long established practice we have allowed to be made the subject of one suit, then it may be proper to separate each decree of the series for the purpose of appeal to His Majesty in Council. But apart from that in my opinion we are bound by the plain language of Section 110, Civil P.C., and are not at liberty to read into it any words which are not to be found there actually or by necessary implication. A decree for the payment of a certain amount, which is the result of taking an account, is one decree, and not a series of decrees merely because it is the result of

decisions in respect of a number of items. If the High Court's decree in such a case does not entirely affirm the decision of the Court immediately

below it, then it is not an affirming decree within the meaning of Section 110, Civil P.C."

4. I agree that in this case we must certify that the amount of the subject matter of the suit in the Court of first instance and the amount of the

subject matter in dispute in the proposed appeal to His Majesty in Council are each over Rs. 10,000 and that the decree of this Court did not

affirm the decision of the Subordinate Judge.

Anantakrishna Aiyar, J.

5. The petitioner, who is the plaintiff in the original suit, being desirous of appealing to His Majesty in Council against the decision of this Court in

Appeal No. 10 of 1928 has filed the present application u/s 109, Clause (a), and Section 110, Civil P.C., for the necessary certificate.

6. He instituted the Original Suit No. 2 of 1924 in the Court of the Subordinate Judge of Sivaganga for a decree directing defendant 1, his agent, to

render accounts for the period of his agency in the plaintiff's firm at Soomangai in Burma and to hand over to the plaintiff all documents relating to

the agency and for the recovery of the amount found due on taking accounts. He valued the claim in the suit at Rs. 40,000. In pursuance of a

preliminary decree passed by the Court, accounts were taken by a commissioner and after hearing the objections filed by the parties to the

commissioner's report the trial Court, on 28th November 1927, passed a decree in favour of the plaintiff for a sum of Rs. 5,682-6-11 with interest

thereon, to be recovered from, the assets of the deceased defendant 1 (defendant 1 having died in the meantime and defendant 2 having been

brought on as the legal representative of defendant 1 as defendant 1's adopted son). Against that decree, defendant 2 preferred appeal No. 10 of

1928 to the High Court and the plaintiff preferred a memorandum of objections to the High Court claiming a decree for a further amount and

valued his memorandum of cross-appeal at Rs. 20,000.

7. When the appeal and the cross-appeal came on for hearing, the High Court allowed defendant 2's appeal in part and reduced the amount

decreed by the trial Judge by about Rs. 4,000; the cross-appeal preferred by the plaintiff was allowed to a very small extent--namely, to the extent

of about Rs. 150, and the cross-appeal in respect of about Rs. 19,850 (out of the Rs. 20,000 claimed in it) was dismissed. The result therefore is

that whereas the trial Court gave the plaintiff a decree for about Rs. 5,000 odd with interest thereon, according to the decree of the High Court--

the plaintiff gets a decree only for about Rs. 2,000 with interest thereon. The plaintiff in these circumstances has applied for leave to appeal to the

Privy Council, and the question for consideration is whether he is entitled to a certificate as a matter of right.

8. It was argued on behalf of the petitioner (the plaintiff) that the value of the subject matter of, the suit in the Court of first instance was upwards of

Rs. 10,000 (the plaint was in fact valued at Rs. 40,000) and that the amount in dispute on appeal to His Majesty in Council is also upwards of Rs.

10,000 (it is more than Rs. 20,000), and that the decree of the High Court did not affirm the decision of the trial Court. He therefore claims a

certificate as a matter of right. On behalf of defendant 2 (respondent in this petition), his learned advocate argued that the question in dispute

between the parties related really to various items in the account rendered by the agent, that the value of none of the items exceeded Rs. 10,000,

and that, as the High Court has confirmed the findings of the trial Court on all the items excepting a very few, and even the total amount involved in

the items in respect of which the High Court differed from the trial Court is very much less than Rs. 10,000 (the amount comes to only about Rs.

4,000) the present is a case of concurrent findings on questions of fact; and he urged that except with reference to about Rs. 4,000 the High Court

affirmed the decision of the trial Court in respect of all the items, and that consequently the plaintiff is not entitled to a certificate as of right. In

support of this contention, the learned advocate referred us to two decisions of this Court: one reported in Ramanathan Chetti v. Subramanian

Chetti AIR 1926 Mad. 1024 and the other an unreported one of a Bench of this Court in C.M.P. 1674 of 1928. We were also referred to a

decision of the Calcutta High Court reported in Narendra Lal Das Chaudhury Vs. Gopendra Lal Das Chaudhury and Others, and another of the

Bombay High Court reported in Kapurji v. Pannaji AIR 1929 Bom. 359.

9. On the other hand we were referred to a decision of the Privy Council reported in AIR 1925 60 (Privy Council) . The question before the Privy

Council arose in this way. The plaintiff instituted a suit in the District Court of Amraoti against the defendants for possession of half of the estate of a deceased person alleging that he had been adopted by the senior widow of the deceased and denying the alleged adoption of defendant 2, defendant 1 being the junior widow of the deceased. The trial Court held that the plaintiff's adoption was proved, that the alleged adoption of defendant 2 was not proved, but held that the plaintiff was bound to provide maintenance for defendant 1 at the rate of Rs. 800 per annum, which was to be a charge upon the estate. On appeal the decree of the trial Court was modified by increasing the maintenance from Rs. 800 to Rs. 1,200 per annum in all other respects the decree was confirmed. The defendants' application to the appellate Court for leave to appeal to the Privy Council was dismissed on the ground that the decree of the trial Court had been affirmed except in respect of a "small change" in favour of the defendants and that no question of law was involved.

10. The defendants applied to the Privy Council for special leave to appeal urging that the appellate Court was in error in having refused leave, it being urged that as the decree of the appellate Court did not affirm the decision of the trial Court the defendants were entitled as of right to leave to appeal, the value of the subject-matter of the suit exceeding Rs. 10,000 as also the value of the subject matter of the proposed appeal. It was also contended that it was not material under the circumstances whether any substantial question of law was involved in the proposed appeal or not. The appellants desired however to appeal only with regard to the amount of the maintenance which was claimed at Rs. 3,000 per annum, and they did not desire to appeal with regard to the other portions of the decree, having regard to the concurrent findings against them on the question of adoption by both Courts in India. The Privy Council held that the contention of the defendants as to the effect of Section 110 of the Code was correct, and that they had therefore a right of appeal. Special leave to appeal was granted, but was limited to the question of maintenance. Their Lordships also remarked as follows: "The petitioner's chance of success is not material to their application." "Prima facie therefore when the decree appealed from does not affirm the decision of the Court immediately below, if the

amount or value of the subject-matter of the suit in the trial Court

be Rs. 10,000 or upwards, as also the amount or value of the subject matter in dispute on appeal to His Majesty in Council, the petitioner would

be entitled as of right to leave to appeal to the Privy Council.

11. But it was argued that when there were concurrent findings of fact with reference to some of the items included in the valuation, the decree of

the appellate Court should be taken to affirm that portion of the decree of the trial Court relating to these items, and that unless a substantial

question of law be involved in the proposed appeal to the Privy Council, in so far as these items are concerned, the value of these items should not

be taken into account in considering the valuation of the subject matter of the appeal to the Privy Council, and that only the amounts involved in the

other items in respect of which the decision of the trial Court was reversed by the High Court should be taken into account in considering the limit

of Rs. 10,000 prescribed by Section 110 of the Code. In support of this contention reliance was placed on the decision reported in Ramanathan

Chetti v. Subramanian Chetti AIR 1926 Mad. 1024. That was a decision of Phillips and Odgers, JJ., and their Lordships refused leave to appeal

to the Privy Council in that case. In a later case, reported in Sundara Mudaliar v. Ratnavelu Mudaliar AIR 1929 Mad. 429 in which the same

learned Judges granted leave to appeal to the Privy Council, their decision in Ramanathan Chetti v. Subramanian Chetti AIR 1926 Mad. 1024 was

distinguished in these terms:

There the memorandum of cross-objections related to a matter entirely distinct from the subject-matter of the appeal: see page 526.

12. It would seem that in the High Court the petitioner's appeal was dismissed whereas the memorandum of objections filed by the respondents

was allowed and the lower Court's decree modified to the extent of about Rs. 300 in respect of some rent disallowed in the trial Court: see p. 296

(of 51 M. L. J.) Ramanathan Chetti's case AIR 1926 Mad. 1024. We may here observe that the question for decision in Sundara Mudaliar v.

Ratnavelu Mudaliar AIR 1929 Mad. 429 arose in a suit for a general account against a trustee, and the suit out of which the application before us

has arisen was also a suit for a general account against an agent. The only other decision of this Court to which our attention was drawn is that

passed by Ramesam, J., and Wallace, J., in C.M.P. 1674 of 1928 (unreported). It related to a suit by a reversionary heir to set aside various

alienations made by a Hindu widow and to recover possession of the items from the various alienees, the widow having died just prior to the suit.

The trial Court held against the validity of some of the alienations, but the High Court on appeal reversed the decision of the trial Court with

reference to some of the alienations while confirming it as regards others. The plaintiff applied for leave to appeal to the Privy Council and relied on

AIR 1925 60 (Privy Council) Their Lordships refused leave, and observed as follows:

The leave to appeal now applied for relates to items 5, 6, 7, 8, 9 and 10. Of these items the judgment of the High Court affirms the judgment of the

trial Court as to items 5, 6, 7, 8 and 10. As to item 9, it is a reversing judgment but taken separately its value is not above Rs. 10,000. The learned

advocate for the petitioners referred to AIR 1925 60 (Privy Council) and. Sundara Mudaliar v. Ratnavelu Mudaliar AIR 1929 Mad. 429 . But

these cases do not help him. In those cases, the subject matter of the appeal could not be split into parts, and it could not be said that it was partly

an affirming judgment and partly a reversing judgment. They were cases of modifying judgments and therefore not cases of affirming judgments.

The reasoning in Sundara Mudaliar v. Ratnavelu Mudaliar AIR 1929 Mad. 429 shows that the subject matter of the litigation can be split up into

separate parts. The principle of affirming and reversing judgments should be separately applied to each of these parts. Holding that there was no

substantial question of law, the application for leave was dismissed. A suit to set aside various alienations made by a Hindu widow should really be

taken to be a suit relating to different subject matters, the subject matter of each alienation being different though, as observed by Sir V. Bhashyam

Ayyangar in the case reported in Dampanaboyina Gangi v. Addala Ramaswami [1902] 25 Mad 736, a course of decisions in this Presidency has

held that such a suit is not open to the objection of misjoinder of parties and of causes of action when the plaintiff's ground of title to all the

properties included in the suit is the same.

13. In our view it could not be said that different items in dispute between parties in a suit by a principal against his agent for an account constitute

separate subject-matters in the sense contemplated by the learned Judges in C.M.P. 1674 of 1928. No other decision of this Court was brought

to our notice. Two decisions of the Calcutta High Court were relied on by the learned advocate for the respondent. In *Sree Nath v. Secy. of State*

[1904] 8 C.W.N. 294, a Bench of three learned Judges of the Calcutta High Court declined to grant leave to appeal to the Privy Council in a land

acquisition case where an applicant claimed Rs. 77,000 before the Collector who assessed the value of the land at Rs. 28,287. The District Judge

on a reference to him upheld the Collector's award. The applicant then appealed to the High Court valuing his appeal at Rs. 49,000 being the

difference between the Collector's award and the amount claimed. The High Court allowed the appeal in part by giving the appellant an additional

sum of about Rs. 7,000. In these circumstances the appellant applied for leave to appeal to the Privy Council. The Court held that the decree of

the High Court was properly one of affirmance of the decree of the first Court as regards the subject matter of the proposed appeal, and as there

was no substantial question of law, the application for leave to appeal to the Privy Council was refused. The learned Judges observed as follows:

The question is whether under these circumstances the decree appealed against affirms the decision of the Court below. No doubt in one sense it

may be said that this Court did not confirm the decision of the Court below, because it gave the petitioner an additional Rs. 7,000; but we must

look to the substance of the case. What is the decree from which the present applicant now desires to appeal to the Privy Council? He desires to

appeal only against the decision of this Court so far as it affirmed the decision of the Court below; nothing else. This seems to be, in substance, as

far as the subject matter of appeal goes, a decree of affirmance. If the decree of this Court had been properly drawn, it would have dismissed the

appeal except to the extent that the additional sum was given. In other words, whilst the decree of this Court modifies, in the petitioner's favour,

the original decree, as regards the subject matter of the proposed appeal to His Majesty in Council it most certainly affirmed the decree of the first

Court. No question of law is involved. The application is refused.

14. This decision was passed in 1904; and after the decision of the Privy Council given in 1924 in the case reported in AIR 1925 60 (Privy

Council) , the decision in Sree Nath v. Secy. of State [1904] 8 C.W.N. 294 could not be said to represent the law on the point correctly and must

be taken to have been overruled by the decision of the Privy Council. The decision in the other case cited for the respondent, viz., Narendra Lal

Das Chaudhury Vs. Gopendra Lal Das Chaudhury and Others, was passed in 1927. The learned Judges remarked that the Privy Council decision

in AIR 1925 60 (Privy Council) has not overruled the principle that if on an examination of the subject matter that is to be in debate before the

Privy Council it be found that on that point the two Courts have been in agreement, the decree of the appellate Court is to be treated as a decree

of affirmance within the meaning of Section 110, Civil P.C., that for leave to appeal to the Privy Council in such a matter, the applicant has to

prove a substantial question of law, and that the Privy Council has only decreed that the particular application of the doctrine in Sree Nath v. Secy.

of State [1904] 8 C.W.N. 294 was erroneous. The learned Chief Justice remarked as follows at p. 576:

I do not think that the decision shows that it is an erroneous view that we have to look to the substance and see what is the subject matter of the

appeal to His Majesty in Council. I have, I confess, some doubt as to whether in the end even that principle would be found to be in accordance

with the construction to be put upon Section 110, but this Court and other High Courts have for many years acted upon that principle.

15. Similarly in Kapurji v. Pannaji AIR 1929 Bom. 359, it was held that it was not enough to entitle the applicant to a certificate u/s 110, Civil

P.C., that the decree of the lower Court is varied by the High Court on points not covered by the appeal to the Privy Council.

16. In our present case, in respect of a portion of the subject matter of the appeal to the Privy Council the High Court substantially varied the

decree of the trial Court to the prejudice of the petitioner. Further, it is not quite correct to say with reference to the decision in AIR 1925 60

(Privy Council) that the appeal to the Privy Council was limited by the Privy Council--against the wishes of the appellants--to the question of

maintenance allowance. The appellants appealed against the whole decree; but, having regard to the concurrent findings of fact on the question of

adoption, their learned Counsel desired special leave to appeal only with reference to the question of maintenance. It would therefore appear that it

is not a case where their Lordships limited special leave to the question of maintenance only, on their own accord; they intimated that in the circumstances special leave to appeal should be granted but should be limited to the question of maintenance, evidently to give notice of that circumstance to the respondents who did not then appear before their Lordships. This would seem to follow from what their Lordships say about the construction of Section 110, Civil P.C. The argument advanced on behalf of the respondent necessitates that very many words should be implied in Section 110 to justify the interpretation of the section contended for by him. We feel that it is not open to us to do so. Section 109 gives a right of appeal to the Privy Council. Section 110 is a proviso to Section 109. It is a rule of law that a proviso should receive a strict construction. It is not open to the Court to add words to a proviso with a view to enlarge the scope of the proviso. The proviso must be restricted to the scope reasonably conveyed by the words used therein.

17. Turning to the other Courts: the decision in Babu Kamal Nath and Others Vs. Babu Bithal Das and Others, was before the decision of the Privy Council in the case reported in AIR 1925 60 (Privy Council) . The decision of the Patna High Court in the case reported in Jamuna Prasad Singh and Others Vs. Jagarnath Prasad Bhawat and Others, supports the contention of the petitioner before us. There the learned Judge observed as follows with reference to the decision reported in Narendra Lal Das Chaudhury Vs. Gopendra Lal Das Chaudhury and Others, . In Narendra Lal Das Chaudhury Vs. Gopendra Lal Das Chaudhury and Others, Sir George Rankin, C.J., says:

I have, I confess, some doubt as to whether in the end even that principle would be found to be in accordance with the construction to be put upon Section 110, but this Court and other High Courts have for many years acted upon that principle.

18. The learned Chief Justice there felt that the limitation placed upon the construction of the section is not in consonance with the language used in the statute. Bhagwan Singh Vs. The Allahabad Bank Ltd., , Bhaskaruni Venkatanarayana Vs. Bhaskaruni Lakshmibayamma, and Jamuna Prasad Singh and Others Vs. Jagarnath Prasad Bhawat and Others, were also cited on behalf of the petitioner.

19. When a petitioner is given a right of appeal to the Privy Council, and he prima facie satisfies the conditions prescribed by the section, we think it is our duty to grant him leave to appeal in such a case. As remarked by the Privy Council, " the chance of success of the appellant in the proposed appeal to the Privy Council is not material to such an application for leave. The Privy Council has repeatedly remarked in several cases that as regards the amount of maintenance to be decreed to a litigant in India, the Privy Council will not ordinarily interfere, and yet the Privy Council granted leave to appeal in the case reported in AIR 1925 60 (Privy Council) regarding the amount of maintenance. The Privy Council will not ordinarily interfere with concurrent findings of facts arrived at by Courts in India on any particular point; yet if the decree of the High Court did not affirm the decision of the trial Court, and if the value of the subject matter of the suit in the trial Court and in the appeal to the Privy Council be Rs. 10,000 or upwards, a party desirous of appealing to the Privy Council would seem to be entitled to leave to appeal from the decree of the High Court u/s 110, Civil P.C., as interpreted by the Privy "Council in the case reported in AIR 1925 60 (Privy Council) , though no substantial question of law is involved in the proposed appeal. In the present case, the decree of the High Court worked to the prejudice of the present appellant (the petitioner before us) to the extent of about Rs. 4,000, and thus the decree of the appellate Court substantially varied the decree of the trial Court to the prejudice of the petitioner (the appellant in the proposed Privy Council appeal). We are not here concerned with a case of a mere formal or immaterial alteration of the trial Court's decree by the appellate Court. Nor . are we here concerned with a case where the appellate decree modified the decree of the first Court only in respect of costs. The modification in the present case being substantial and against the appellant, we are unable to say that the decree of the High Court affirmed the decree of the trial Court. Further, in a suit for an account by the principal against his agent, it could not, in our opinion, be said that each objection raised by, the plaintiff or the defendant to the commissioner's report is a different subject matter, or that a decree passed in such a suit should be taken to be ""several decrees relating to several subject-matters, but written in one piece of paper ""as argued for the respondent.

20. The proposed appeal to the Privy Council is not only against that portion of the decree of the High Court which modified the decree of the trial

Court to the extent of about Rs. 4,000 to the prejudice of the petitioner, but is also against that portion of the decree of the High Court which

dismissed the cross appeal (memorandum of objections) filed by the petitioner to the extent of more than Rs. 19,000. The value of the subject-

matter of the appeal to the Privy Council is thus much more than ten thousand rupees and not being an affirming decision, it is not incumbent on the

petitioner to show that there is a substantial question of law involved in the proposed appeal. The section gives us no discretion in the matter in

such circumstances; though there is no substantial question of law involved in the proposed appeal to His Majesty in Council the condition relating

to valuation has been satisfied, and the decree of the High Court did not affirm the decision of the trial Court.

21. In my opinion, the appellant is entitled to leave u/s 110, Civil P.C., construed in the light of the decision of the Privy Council in the case

reported in AIR 1925 60 (Privy Council) , and we accordingly certify that the value of the subject-matter of the suit in the trial Court was more

than Rs. 10,000 and that the value of the subject-matter of the appeal to the Privy Council is also upwards of Rs. 10,000, and that the decree of

the High Court in appeal did not affirm the decision of the trial Court.

22. A certificate will be issued to the petitioner accordingly.