

(1963) 11 MAD CK 0086

In the Madras High Court

Case No : S.C. Petn No. 101 of 1963 in O.S.A. No. 42 of 1960

R. Balasubramanian

APPELLANT

Vs

N. Krishnammal and Others

RESPONDENT

Date of Decision : 08-11-1963

Acts Referred:

Constitution of India, 1950 — Article 133
Original Side Rules — Order 13

Citation : AIR 1964 Mad 423 : (1964) ILR (Mad) 904 : (1964) 77 LW 82

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Venkataraman, J

Bench : Division Bench

Advocate : K. Rajah Aiyar, for L.V. Krishnaswami Iyer, for the Appellant; P.K. Janakiraman, S. Padmanabhan, P.S. Ramaswami Iyengar and C.P. Rajagopala Aiyangar, for the Respondent

Judgement

S. Ramachandra Iyer, C.J.—This is an application for grant of leave to appeal under Article 133 of the Constitution. The judgment of this Court is not one of affirmance of that given by the learned Judge sitting on the Original Side of this Court. It is admitted that the subject-matter in controversy satisfies the requirement of Article 133(1)(a) and (b). But the point taken before us against the grant of leave is that as the jurisdiction of this Court to pronounce upon the construction of the settlement deed was more or less in the nature of an advisory one, our judgment could not be regarded as a judgment or final order within the terms of Article 133. No authority is however shown in support of the contention. Under Order XIII of the Original Side Rules it will be open to any person claiming to be interested either as a devisee, legatee, heir or legal representative, or a cestuique trustee under the trusts of any deed or instrument, to apply to the Court for determination without an administration of the estate or trust of any question affecting the rights and interests of the person claiming, and, or, any question arising in the administration of the estate or trust etc.

2. In the instant case the petitioner applied under that provision for the

construction of a deed of trust executed on 30-9-1920 by one Palaniyandi Pillai. Ganapatia Pillai, J., determined the question in favour of the petitioner. That view has not been accepted by us. There can be little doubt that this adjudication is final so far as this Court is concerned and will be binding on the parties. Nothing is left outstanding for determination on the originating summons. We are therefore of opinion that our judgment will be one coming within Article 133 of the Constitution,

3. We find that in the case reported in *Lal Behary Dhur and, Another Vs. Administrator-General and Others*, there was an appeal against the judgment in an originating summons taken out for the construction of a document and the same has been reported in AIR 1936 318 (Privy Council) . Although we do not have any indication as to the precise nature of the order by which leave was granted in this case, we can take it as an instance where leave had been granted on the footing that a judgment on an originating summons would be a final judgment. The very terms of Order XIII of the Original Side rules provide that in the cases specified therein, of which the present is one, the procedure to be followed is that of a suit and that on a judgment being delivered, a decree follows. Further it is on the footing that it is a judgment, that an appeal has been entertained in this Court itself under Clause 15 of the Letters Patent.

4. Learned counsel for the petitioner has referred to certain passages in Seton on Judgment Vol. I, Chapter 1. We think that it is unnecessary to consider whether the practice of the English Court can properly be applied to the construction of the provision we have now to consider. As indicated earlier, we are of opinion that the present case will satisfy the requirements of Article 133, being a judgment. A certificate under Article 133(a) and (b) will therefore issue.