

(1963) 11 MAD CK 0075
In the Madras High Court

R. Balasubramanian

APPELLANT

Vs

N. Krishnammal and Others

RESPONDENT

Date of Decision : 08-11-1963

Acts Referred:

Constitution of India, 1950 — Article 133, 133(1)(a), 133(a)

Citation : (1964) 1 MLJ 271

Hon'ble Judges : S. Ramachandra Iyar, C.J

Bench : Single Bench

Judgement

S. Ramachandra Iyar, 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 satisfied 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 13 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 cestui que trust under the trust 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 persons claiming, and, or, any question arising in the administration of the estate or trust etc.

2. In the instant case the petitioner applied under the provision for the construction of deed of trust executed on 30th September, 1920, by Payaniandi 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 Ganesh Chunder Dhur v. Lal Behary Dhur 71 M.L.J. 740 : (1936) L.R. 63 IndAp 448 (P.C.). 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 has been granted on the footing that a judgment on an Originating Summons would be a final judgment. The very terms of Order 13 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, Volume 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 provisions 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.