
(1995) 03 MAD CK 0032

In the Madras High Court

Case No : L.P.A. No. 101 of 1995 and CMP. No's. 5154 to 5156 of 1995

Sarasammal

APPELLANT

Vs

Murugasamy and Others

RESPONDENT

Date of Decision : 30-03-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100A, 104

Citation : (1995) 1 CTC 450 : (1995) 2 MLJ 319

Hon'ble Judges : K.A. Swami, C.J.;Raju, J

Bench : Division Bench

Advocate : K. Sampath for C.R. Prasanan, Hema Sampath and Indumathi Ravi, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Swami, C.J.—This LPA. is preferred against the order dated 2.3.1995 passed by the learned single Judge in CMA.No. 229 of 1995.

Learned single Judge has dismissed the CMA.

2. The question that arises for consideration is as to this maintainability. The CMA itself was preferred against the order dated 9.12.1994 passed

by the Sub Judge, Tiruppur, on an application, I.A.No. 1124 of 1993 filed in A.S. No. 49 of 1993 for an order of temporary injunction. As

against the decree passed in A.S. No. 49 of 1993, second appeal lies to this court, which has to be heard and decided by a single Judge.

3. Section 100-A of the CPC Specifically provides that notwithstanding anything contained in any letters Patent for any High Court or in any other

law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court, no

further appeal shall lie from the Judgment, decision or order of such single Judge

in such appeal or from any decree passed in such appeal. Thus, it is clear that in a case where an appeal lies from the appellate decree or order to the High Court, and such appeal is decided by a single Judge of this Court, no further appeal will lie to a Division Bench, irrespective of the provisions for appeal contained in the Letters Patent. Section 104 of the CPC Provides as to the orders from which appeals can be preferred. Clause (i) of Sub section (1) of Section 104 provides that an appeal shall lie from ""any order made under rules from an appeal is expressly allowed by Rules"". No doubt Order XL III , Rule 1(r) provides for an appeal against an order passed under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of order XXXIX . But, the provisions contained in order XLIII are controlled by the provisions contained in Section 104 of the Code of Civil Procedure, Sub section (2) of Section 104 specifically provides that no appeal shall lie from any order passed in appeal under that Section. The order in question is passed in the appeal, as pointed out earlier. Therefore, the appeal in question, having regard to the provisions contained in Sections 100-A and Section 104(2) of the Code of Civil Procedure, is not maintainable.

4. Accordingly, the LPA is rejected as not maintainable. The CMPs. are also rejected.