

(1926) 02 MAD CK 0016
In the Madras High Court

Srilasri Vythilinga Desika Pandarasannadhi	APPELLANT
Vs	
Arumuga Thambiran and Another	RESPONDENT

Date of Decision : 03-02-1926

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109

Citation : AIR 1926 Mad 748 : 94 Ind. Cas. 966 : (1926) 23 LW 695 : (1926) 50 MLJ 552

Judgement

1. In this case the Subordinate Judge held that the suit abated on the ground of the death of the defendant, the suit being one for the removal of the defendant from his alleged trusteeship and for framing a scheme for the suit mutt. In appeal here it was held that so far as the removal of the alleged trustee was concerned the suit must abate on the death of that trustee, but in so far as the suit was for the framing of a scheme the suit did not abate and could be continued against the succeeding trustee. An application has now been made for leave to appeal to His Majesty in Council against the order of this Court and the question with which we are now concerned is whether this is a final order within the meaning of Section 109. The petitioner relies upon two cases, Meghraj v. Bidyabati Koer (1914) 21 C L J 279 and Lachmi Narain Marwari v. Balmakund Marwan (1921) 6 Pat L J 116. The first of these two cases is distinguished from the prior case reported in Krishnachandra Ghosh v. Maharajah Ram Narain Sing Bahadur (1913) 18 C L J 124 on the ground that in the latter case the decree of the Court did not finally terminate the trial between the parties but left it open to the plaintiff to enforce his rights, if any, in a fresh suit. This remark would apply equally well to the facts of the present case and therefore even if the decision in Meghraj v. Bidyabati Koer (1914) 21 C L J 279 is

correct in law, it is not applicable to the case before us. The case reported in *Lachmi Narain Marwari v. Balmakund Marwari* (1921) 6 Pat L J 116 differentiates the Privy Council decision in *Radha Kishan v. The Collector of Jaunpur* 11 M L J 65 (PC), not so much on what is actually decided in the latter, but on an inference drawn from the Privy Council judgment as to what would have been the decision if the facts had been different. It must, however, be observed that both the cases relied on by the appellant appear to be opposed to the decision of the Privy Council the latest of which is *Ramchand Manjimal v. Goverdhandas Vishandas Ratanchand* 39 M L J 27 (PC)." There it was held that an order is only final if it finally disposes of the rights of the parties. These decisions have been discussed and followed by the High Court of Allahabad and Lahore *Muntaz-ud-daula Mukarram Alt Khan of Pahasn v. James R.R. Skinner* ILR (1924) All 335 and *Sultan Singh v. Murli Dhar* (1934) ILR 5 Lah 329 (FB). In the present case there has been no adjudication as to the rights of the parties. So far as the petitioner is concerned there has been no trial and no adjudication. The question as between him and the plainriffs is as to whether a scheme should or should not be framed and on that point there has been no adjudication at all and consequently the order of remand cannot be deemed to be a final order. The contention urged before us is that under the decree of the Subordinate Judge the petitioner obtained some sort of right i.e., that that particular suit should not proceed, and that that right has been taken away by the order of this Court. This is true but the right has not been taken away finally; it has been merely suspended pending further proceedings, and consequently the order taking it away temporarily cannot be said to dispose finally of that right, there being no final order by this Court. The leave to appeal must therefore be refused on the ground that the order of this Court is not a final order with in the meaning of Section 109, Civil Procedure Code.

2. It is further contended that special leave should be given as it is a fit case for appeal but we must refuse the application. If the allegations in the plaint are correct it is certainly desirable that the matter should be enquired into and that a scheme should be framed; consequently there does not appear to be good reason for the grant of special leave. The petition is dismissed

with costs.