
(1954) 09 MAD CK 0018

In the Madras High Court

Case No : Letters Patent Appeal No. 58 of 1954

Srinivasa Reddiar and Others

APPELLANT

Vs

P. Krishnaswami Reddiar and Others

RESPONDENT

Date of Decision : 10-09-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1898 (CrPC) — Section 435, 439
Government of India Act, 1915 — Section 107
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 — Section 87

Citation : AIR 1955 Mad 72 : (1955) CriLJ 323 : (1955) ILR (Mad) 990 : (1955) 68 LW 82 : (1956) 1 MLJ 68

Hon'ble Judges : Rajamannar, C.J.; Rajagopala Aiyangar, J

Bench : Division Bench

Advocate : K.V. Venkatasubramania Aiyar, for P.S. Kaliasam and A. Palaniswami, R. Santanam, for the Appellant; R. Rangachari, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This is an appeal under Clause 15, Letters Patent filed against the judgment of Somasundaran J. in Criminal R. C. No.

636 of 1953. The said case was filed under Ss. 435 and 439, Criminal P. C. against the order of the Sub-Divisional Magistrate of Musiri in M. C.

No. 18 of 1953 on his file, which was an application by the trustees of a temple u/s 87, Madras Hindu Religious and Charitable Endowments Act,

1951, for delivery of certain properties alleged to belong to the temple. The Magistrate dismissed the application. Somasundaram J. set aside this

order of the Magistrate and directed the trustees to be put in possession of the properties. This appeal is against that order;

2. On a preliminary objection taken to the maintainability of the appeal, we heard arguments only on that question. After listening at length to Mr.

K.V. Venkatasubramania Iyer, learned counsel for the appellants, we have come to the conclusion that the preliminary objection is well founded

and that the appeal is not competent.

3. Clause 15, Letters Patent on which the appellants found their right to appeal runs thus:

15. "Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction": And we do further ordain that an appeal shall lie

to the said High Court of Judicature at Madras from the judgment (not being a Judgment passed in the exercise of appellate jurisdiction in respect

of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being

an order made in the exercise, of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of

superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of Criminal Jurisdiction) of one Judge of

the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding

anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court, or one Judge of any

Division Court pursuant to Section 108 of the Government of India Act made (on or after the 1st day of February 1929) in the exercise of

appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the

said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other

judgments of the Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as

hereinafter provided.

Undoubtedly, the order of the learned Judge, which is the subject matter of the appeal is a "Judgment" within the meaning of the clause. An appeal

would, therefore, lie from it, unless it is a judgment which falls within one or other of the categories of judgments which are expressly excepted in

the clause. The following are such categories: (1) a Judgment passed in the

exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate Jurisdiction by a lower Court; (2) an order made in the exercise of revisional Jurisdiction; (3) a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107, Government of India Act (the provision in the Constitution corresponding to which is Article 227) and (4) a sentence or order passed or made in the exercise of criminal jurisdiction. The order of Somasundaram J. certainly does not fall within the first category. The question is whether it falls within any one or more of the other categories.

4. Mr. Venkatasubramania Aiyar contended that though the order was passed in a criminal revision case filed under two sections of the Criminal

Procedure Code the order was not passed in the exercise of criminal jurisdiction. He first relied on a decision of this Court in -- "Chakrapani

Aiyangar v. King Emperor", 12 Mad LJ 408 (A), in which it was held by a Full Bench that an order passed u/s 195, Criminal P. C. was

appealable under Clause 15, Letters Patent. But it must not be overlooked that the language of that clause at the time of that decision was different

and the decision depended on the language of the material part of the clause which is not to be found in the Letters Patent as it stands today,

namely, "'not being a sentence or order passed in a criminal trial " As an order passed u/s 196, Criminal P. C. only contemplated a subsequent

prosecution and trial for an offence, it was held that it was not a sentence or order "passed in a criminal trial".

Considering the same language in Clause 15, Letters Patent, it was held in -- "Subbayya v. Ramayya", AIR 1916 Mad 970 (B), that no appeal lay

under that clause against an order of a single Judge of the High Court in a criminal revision petition preferred against an order of a Magistrate acting

u/s 133, Criminal P. C., as such an order could be said to be passed in a criminal trial. Likewise, in -- "Desikachari v. Emperor", AIR 1915 Mad

831 (C), it was held that no appeal lay from the judgment of a single Judge disposing of a revision petition filed against an order of a Magistrate u/s

118, Criminal P. C., because proceedings taken under Chapter VIII, Criminal P. C. must be deemed to be criminal trials within the meaning of

Clause 15, letters Patent. These cases cannot obviously help the appellants in

view of the change in the language.

5. Learned counsel for the appellants next cited to us the case of -- Gundu Venkatalingam Vs. Gundu Mrutyanjayadu, . It was held therein that an

order passed by a single Judge of the High Court committing a person to prison for contempt of Court on the ground that he broke an undertaking

given to the Court that he would not alienate any of his properties pending an appeal is a ""judgment"" within the meaning Clause 15, Letters Patent

and was not an order in a criminal proceeding within the meaning of that clause and therefore an appeal lay. It was contended that proceedings in

contempt were-quasi-criminal in their nature and therefore leave-to appeal should not be granted; but the objection was overruled on the authority

of the ruling of the Privy Council in -- AIR 1938 295 (Privy Council) .

In the other case of -- K.S. Doraiswami Nadar Vs. Sivanupandia Nadar, , an order of a learned Judge of this Court passed u/s 476, Criminal P.

C. directing that a complaint be file against a party charging him with an offence under the Penal Code was held to be appealable under Clause 15,

Letters Patent, as it was not an order passed in the exercise of revisional or criminal jurisdiction. The learned Judges relied upon the decision of the

Full Bench in -- E.P. Kumaravel Nadar Vs. T.P. Shanmuga Nadar and Others, , for the position that a civil court does not cease to be a civil

Court when it is considering an -application made to it u/s 476, Criminal P. C., in proceedings which took place before it. Neither of these two

decisions is directly in point. In both the cases, the order passed by the-learned Judge of this court was in the nature off an original order and not

an order on an application made to him seeking interference with the order of a subordinate court or tribunal.

Following the principle of these decisions, it maybe argued with considerable force that the nature of the proceedings u/s 87 are not in the nature of

criminal proceedings. But what must not be overlooked is that the petition to revise the order of the Magistrate was filed u/s 435, Criminal P. C.,

treating the order as an order passed by a criminal namely the Sub Divisional Magistrate. It may be that the provision invoked did not properly

apply, but it can well be assumed that Somasundaram J. purported to pass the order sought to be appealed against in exercise of the powers of

revision which this court undoubtedly has in respect of orders of subordinate

Courts like the Sub Divisional Magistrate concerned in this case. We are, therefore, of opinion that the order should be deemed to be an order passed in the exercise of criminal jurisdiction.

6. Even assuming that the order does not fall within that category, it is difficult to resist the conclusion that it was passed in the exercise of revisional jurisdiction. We do not think there is any justification for confining the words "revisional jurisdiction" to jurisdiction u/s 115, Civil P. C. The order in question was undoubtedly not made in the exercise of original jurisdiction or appellate jurisdiction.

7. In our opinion, the order of Somasundaram J., would in any event fall within the category of orders passed in the exercise of the power of

superintendence under Article 227 of the Constitution which corresponds to Section 107, Government of India Act, mentioned in Clause 15,

Letters Patent. Learned counsel for the appellants protested that Somasundaram J., did not purport to exercise this power. If the learned Judge

had the power, we do not think it is very material that the power was exercised on a petition filed under a wrong provision of law. If, for instance,

a revision petition is filed u/s 115, Civil P. C. this court would not be incompetent to interfere on good grounds under Article 227 of the

Constitution. If the decisive factor is the provision of law under which the learned Judge purported to act, then the appellants have no case because

the order was passed on an application made u/s 435, Criminal P. C. But if such factor is the actual existence of the power of interference, then we

can fall back upon the power of superintendence under Article 227 of the Constitution.

It was further contended by learned counsel for the appellants that the Magistrate acting u/s 87, Madras Hindu Religious and Charitable

Endowments Act cannot be considered to be a tribunal within the meaning of Article 227. We have no hesitation in overruling this contention.

Applying any of the well established tests it must be held that the Magistrate acting under that section is a tribunal, a judicial tribunal. There is a

dispute as to possession between the trustees on the one hand and the persons in possession on the other hand, and the Magistrate has to decide

on the rights of the trustees to immediate possession. The Magistrate has to decide Judicially whether the requirements of Section 87 have been

complied with. It is sufficient to refer to the decisions in -- Prattipati Dandaiah and Another Vs. Nori Venkatrama Dikshitulu, Managing Trustee of

Sri Brahmeswaraswami Temple at Vathcharukur and Others, ; -- The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and

The Bharat Bank Employees' Union, Delhi, and -- Waryam Singh and Another Vs. Amarnath and Another, .

8. There remains only one argument of Mr. Venkatasubramania Aiyar which might be briefly noticed. His contention was that any judgment passed

by a Judge of the High Court without jurisdiction was appealable ;under Clause 15, Letters Patent without, any exception, and it is not necessary

to examine whether such a judgment might or might not fall within one of the exceptions mentioned in Clause 15. In support of this contention,

which certainly appeals to be very extreme, learned counsel relied upon the ruling of the Privy Council in -- "Hurrish Chunder v. Kalisundari Debi",

9 Cal 482 (K). The facts in that case material for the purpose of this appeal are: A decree was obtained by certain defendants in the High Court,

was appealed to the Privy Council by one only of the plaintiffs, and the decision of the High Court was reversed. The plaintiff who had appealed

assigned her share in the decree of the Privy Council to one of the defendants. The plaintiff who had not appealed to the Privy Council applied to

the High Court for leave to transmit the order to the court of first instance for execution of the share decreed to him.

The Judge presiding over the Privy Council department in the High Court refused the application on the ground that the decree of the court of first

instance which was affirmed by the Privy Council could only be executed as a whole and not partly by one of the plaintiffs. Against the said order

of the learned Judge refusing the application, an appeal was filed under Clause 15, Letters Patent. An objection was raised that the appeal was not

maintainable, as the order of the learned Judge was not a judgment within the meaning of Clause 15. It was held by White and Mitter JJ. (Garth C.

J. dissenting) that the order was a Judgment within the meaning of Clause 15 of the Charter and therefore appealable. The majority view was

upheld by their Lordships of the Privy Council. The view taken by Garth C J., who dissented was that the duties of a Judge in dealing with

transmission of Privy Council decrees were purely ministerial and an order made in such ministerial capacity could not be considered a judgment.

Mr. Venkatasubramania Aiyar relied strongly on the following observations in the judgment of the Privy Council:

The Chief Justice was of the opinion that it was not a judgment and he seems to have based his opinion in a great measure upon the ground that, in

his view. Mr. Justice Pontifex had no jurisdiction to inquire at all whether or not Kalisundari had a right to execution; that his function was merely

ministerial; that all he could do, or ought to have done, was to transmit the decree of Her Majesty in Council to the lower court for execution; that

he usurped a jurisdiction which did not belong to him; and that under those circumstances no appeal would lie. Their Lordships do not think that

Mr. Justice Pontifex can be properly treated as having usurped jurisdiction; but. if he had, this would have been a valid ground of appeal, and they

are unable to agree with the Chief Justice, that if a Judge of the High Court makes an order under a misapprehension of the extent of his

Jurisdiction, the High Court have no power by appeal, or otherwise, in setting right such a miscarriage of justice (page 493-4).

9. We do not agree that these observations warrant the conclusion that whenever a single Judge of the High Court passes an order without

jurisdiction, then an appeal lies under Clause 15, Letters Patent against that order. The above observations must be understood in their proper

context. The only point in controversy was whether the order in question was a ""Judgment"" within the meaning of Clause 15. The decision of the

Privy Council is an authority only on that point, a point which does not arise in the present case at all, because it is common ground that the order

of Somasundaram J., was a judgment.

10. In our opinion the order of Somasundaram J., does fall within one, if not more than one, of the categories excepted from the general right of

appeal conferred by Clause 15, Letters Patent and therefore this appeal is not maintainable. The appeal is dismissed with costs.