

(1968) 01 MAD CK 0015
In the Madras High Court

Syed Mohamed Salia Lebbai and Others	APPELLANT
Vs	
Mohamed Hanifa and Others	RESPONDENT

Date of Decision : 25-01-1968

Acts Referred:

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

Citation : (1970) ILR (Mad) 113 : (1969) 82 LW 601 : (1970) 1 MLJ 87

Hon'ble Judges : K. Veeraswami, J

Bench : Division Bench

Judgement

K. Veeraswami, J.—These are petitions for a certificate under Article 133 (1) of the Constitution. Our judgment reversed the common

judgment of the trial Court in two suits and held that the mosque and its adjuncts" together with the sites as well as the burial ground constituted a

public trust. We accepted the trial Court's finding that there had been mismanagement by the defendants. On the view, we remitted the matters to

the trial Court for settlement of a scheme of management pursuant to our directions in that Behalf.

2. The point debated before us at the Bar is whether our judgment is within the scope of ""any judgment decree or final order "" in Article 133 (1).

Both The plaintiffs and the defendants independently ask for leave to appeal to the Supreme Court by different petitions. Nevertheless, the

question has been raised. On the one hand the contention is that all the rights of the parties have been determined and that remains to be done by

the Court below is to carry out the directions of this Court to settle a scheme. The argument on the other hand is that that not test to decide

whether our judgment is one within the meaning of Article 133(1). It is said that determination of even a vital issue will not make it a judgment if it

has the effect of leaving the suit alive. The question in controversy is not a new one and has been repeatedly considered and decided in numerous

cases. In *Firm Ramanand Manjilal v. Firm Govardhandas Visahadas Ratanchand L R* (1920) 47 IndAp 124 : (1920) 39 M.L.J. 27 : ILR (1920)

Cal. 918 : AIR 1920 P.C. 86 the Privy Council with reference to similar words which occur in Sections 169 and 110, Civil Procedure Code,

adopted the principle as stated below in *Abdul Rahiman v. D.K. Cassim and Sons* ILR (1933) Rang. 58.:

The finality must be finality in relation to the suit. If, after the order, the suit is still a live suit in which the rights of the parties have still to be

determined, no appeal lies against it.... The effect of the order from which it is here sought to appeal was not to dispose finally of the rights of

parties. It is no doubt decided as important and even a vital issue in the case, but it left the suit alive and provided for its trial in the ordinary way.

3. This interpretation was applied by the Federal Court in *Mohamed Amin Brothers Ltd. v. Dominion of India* (1950) S.C.J. 139 : (1949) F.C.R.

842 : AIR 1950 F.C. 77, for determining the scope of a judgment, decree or final order in Section 205 (1) of the Government of India Act 1,935,

which corresponds to Article 133 (1) of the Constitution. The Supreme Court in *Jethanand and Sons Vs. The State of Uttar Pradesh*, , pointed out

that an order was final if it amounted to a final decision relating to the rights of the parties in dispute in the civil proceeding. If after the order civil

proceeding still remains to be tried and the rights in dispute between the parties have to be determined, the order is not a final order within the

meaning of Article 133. In a recent judgment of this Court in *L.C.T.L.P.L. Palaniappa Chettiar and Others Vs. M.R. Krishnamurthy Chetty and*

Others, this principle has been accepted which is that a judgment of final order is one which finally decided the rights of the parties without leaving

the suit in which the question arose alive or pending. The divergence of opinion, as we find from decided cases arises only in the application of this

principle to particular facts or situation.

4. The main matter in controversy between the parties in the present litigation is as to the character of the properties, whether they constituted a

public trust. It was with reference to this question the parties, were in issue as to whether the suit instituted for settlement of a scheme u/s 92, Civil-

Procedure Code, was maintainable. As far as we have been able to find, there has been no dispute between the parties that if once the character

of the properties was decided to be a public trust, even in that event no scheme could be settled. In that sense we are inclined to think that this is a

case in which the rights of the parties have been fully and finally decided by this Court and all that is left to the Court below is to carry out the

directions of this Court to settle a scheme- which is but an, ancillary to our decision. Mr. Ahmed Meeran placed strong reliance on Mohd. Ahmed

v. M.E. Mekhri AIR 1961 Mys. 104, in support of his contention that our decision still leaves the suit alive and the trial Court has yet to frame a

scheme and that from this point of view on judgment is not a final one. Shiromani Gurdwara Parbandhak Committee and Others Vs. Raja Shiv

Rattan Dev Singh and Others, , did not involve determination of the character of the ownership of the properties, but related only to the framing; of

a fresh scope of management, The High Court of Mysore on appeal rejected the; contention of the defendants and directed the trial Court to frame

a fresh scheme as prayed for by the plaintiffs. In the petition for leave to appeal that Court was of the view that. the whole question of the mode of

management had still to be worked out and that until that was done it could not be said that a rights of the parties had been finally determined. We

may observed that so far as : the matter before us is concerned, the question- did not relate to the mode of management, but the entire controversy

centred round whether the Suit properties constituted a public trust, and if they did not, whether the suit was maintainable. Reference was made by

Mr. Gopalaswami Aiyangar for one of the petitioners for leaves to Shiromani Gurdwara Parbandhak Committee and Others Vs. Raja Shiv Rattan

Dev Singh and Others, . In that case, the suit was for a declaration and injunction and the High Court having determined the right of the parties

remitted, the suit to the trial Court for granting injunction in terms of its orders. The Supreme Court held that it was a final order and leave was

rightly granted. This case again reiterates the principle that if rights of the parties have been finally determined by the decision from which leave is

sought to appeal, and all that remains to be done by the trial Court is an ancillary question, the judgment or order will be a final one. We are of the

view that in this case the remittal of the matter to the trial Court for settlement of a scheme is but a consequential matter flowing from the direction

given in our judgment.

5. On that view, leave is granted and certificates will issue under Article 133(1) (a) of the Constitution. No costs.