

**(1928) 10 MAD CK 0027**  
**In the Madras High Court**

Tinnevelly Mills Co. Ltd.

APPELLANT

Vs

T.A.K. Mohideen Pichai Taraganar and Others

RESPONDENT

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**Date of Decision :** 04-10-1928

**Acts Referred:**

**Citation :** AIR 1929 Mad 209 : 117 Ind. Cas. 712

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**Judgement**

1. These are applications for the review of the judgment in T.A.K. Mohideen Pichai Taraganar Vs. Tinnevelly Mills Co. Ltd. and Others, delivered by Srinivasa Ayyangar and Ananthakrishna Ayyar. JJ., who have since ceased to be Judges of this High Court. The Tinnevelly Mills Co. Ltd. (hereinafter referred to as the company) which was respondent in the second appeals is petitioner and the ground on which review is applied for is that the decision of both the learned Judges is vitiated by an error of law apparent on the face of the record, i.e., in the judgments themselves within the meaning of Order 47, Rule 1, Civil P.C.

2. In Chhajju Ram v. Neki AIR 1922 P.C. 112, their Lordships of the Privy Council have held that

Rule 1, Order 47 must be read as in itself definitive of the limits within which a review of a decree or order is permitted and that a Court hearing an application for the review of a decree has no jurisdiction to order review merely because it is of opinion that a different conclusion of law should have been arrived at.

3. The application for review can be entertained only on the ground of "an error of law apparent on the face of the record." As to the meaning of that expression, we were referred by the learned Counsel for the company to the decision of their Lordships of the Privy Council in Champey Bhara & Co. v. Jeevraj Balloo Spinning and Weaving Co. Ltd. AIR 1923 P.C. 66, in which a similar question was raised with reference to an award sought to be set aside under Clause 14 (c), Schedule 2, Civil P.C., the terms of which are:

where an objection to the legality of the award is apparent upon the face of it.

4. Their Lordships observe that

an error in law on the face of the award means...that you can find in the award or document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to seeing first what that contention is and then going to the contract on which the parties rights depend to see if that contention is sound.

5. An award of an arbitrator cannot be questioned on the ground that it is erroneous in law; it can be questioned only if such an error is " apparent on the face of the record " as explained by their Lordships in *Champey Bhara & Co. v. Jeevraj Balloo Spinning and Weaving Co.* AIR 1923 P.C. 66. In our opinion the expressions in Rule 1, Order 47, Civil P.C., " error apparent on the face of it" must receive the same construction. We may add that in view of their Lordships' decision in *Chhajju Ram v. Neki* AIR 1922 P.C. 112., already referred to, an error of law to be apparent on the face of it must relate to some proposition of law which is well settled and beyond controversy so far as the Court which delivered the judgment is concerned, as for instance in *Murarirao v. Balwant Dikshit* AIR 1921 Mad. 98, and on which the (judgment rests and not merely to a question of law which is debatable and may be shown to be erroneous.

6. It is contended on behalf of the petitioner that the basis of the judgment of the learned Judges is a legal proposition which on the face of it is erroneous and that therefore we ought to entertain the review petition.

7. The respondent's learned Counsel on the other hand contends that assuming there was an error of law in the decision of the case, the error is not one apparent on the face of the record within the meaning of that expression as stated in the first portion of the passage from their Lordships' judgment quoted above, but it is only an error of the kind referred to by their Lordships in the latter part of the above passage, which is no ground for granting a review.

8. The question we have to determine is whether the petitioner has made out that the judgment sought to be reviewed rests on any proposition of law which is erroneous on the face of it, or whether if there is any error of law it only relates to the contentions put forward by the respective parties as to interpretation of certain rules of the company on which the decision of the case depended. It is only if the former contention is made out that we have jurisdiction to entertain this application. We cannot entertain it merely on the ground that in our opinion the learned Judges appear to have misconstrued the said rules in consequence of which their judgments are erroneous.

9. The material facts of the case out of which the questions argued before us arise are as follows: One Nallasivan Pillai was the registered holder of three shares in the company. He died in 1919 leaving three sons surviving him. Three of Nallasivan's creditors sued his sons after his death for recovery of the amount due to them from Nallasivan Pillai and obtained a decree in their favour in O.S.

No. 391 of 1919 in the District Munsif's Court of Ambasamudram. In execution of that decree, the three shares of Nallasivan Pillai in the company were attached and sold. They were purchased by one Taraganar who subsequently sold one of the shares to Sivagnanam Pillai. Both Taraganar and Sivagnanam called upon the company to register in their respective names the shares and share to which they had thus become entitled and to pay them the dividends which had accrued on the said shares. The company replied that owing to the claims put forward by Nallasivan Pillai's sons to the said shares and the action they threatened to take against the company if it recognized the claims of Taraganar and Sivagnanam it could not comply with their demand: see Ex T-(1)]. Thereupon the present suits were instituted, one by Taraganar and the other by Sivagnanam Pillai against the company and the sons of Nallasivan Pillai praying for a decree directing the company to register the three shares in the names of the plaintiffs and to pay over to them the dividends which had accrued on the said shares. The company resisted the claim on the ground that as the plaintiffs have not complied with the requirements in the articles of association of the company relating to the transfer of registry of the shares, the suits should be dismissed.

10. The other defendants, viz., the sons of Nallasivan Pillai contended that the decree against them in the said O.S. No. 319 of 1919 was obtained fraudulently and that it was not binding on them and that the purchase of the shares by Taraganar in the sale held in execution of that decree conveyed no valid title to him. The pleas of Nallasivan Pillai's sons were overruled; but both the lower Courts upheld the defence of the company that the plaintiffs were not entitled to registry of the shares in their names or to the payment of dividends which had accrued thereon as they had not complied with the rules laid down in the articles of association of the company. The suits were on that ground dismissed by the District Munsif. His decrees were affirmed on appeal by the District Judge of Tinnevely. Against the decrees of the appellate Court, the plaintiff preferred the second appeals which were heard and disposed of by Srinivasa Aiyangar and Ananthakrishna Ayyar, JJ. Both the learned Judges after an elaborate discussion of the points urged before them as to the construction and effect of the rules of the company which were relied on, on both sides, came to the conclusion that the plaintiffs had made out a valid title to the three shares of Nallasivan Pillai and that the company was bound to comply with their demands for the shares in their names. In that view the decrees of the lower Courts were set aside and the company was directed to register the shares in the names of the respective plaintiffs and to pay them also the dividends which had accrued on the said shares.

11. The applications before us are for the review of the said decrees. The ground on which the applications are pressed before us is, that both the learned Judges have misconstrued the regulations of the company relating to the transfer and registry of shares. The company's learned Counsel contends that when a registered shareholder of the company dies, the transfer of registry of his shares is governed by Rule 28 which says that the company can recognize only his

executor or administrator as the person entitled to his shares. It cannot recognize any other claim or title which may be put forward to such shares. As neither of the plaintiffs claimed as executor or administrator of Nallasivan Pillai's estate or under a title derived by transfer from Nallasivan Pillai's executor or administrator, their title as purchasers of the shares in Court auction held in execution of a decree against the sons of Nallasivan Pillai does not entitle them to obtain registry of the shares in their names. It is argued that while the learned Judges accept the company's contention that if Nallasivan Pillai's sons "(defendants 2 to 4 in the suit) had themselves applied for the registry of the shares in their names, the company was not in virtue of Rule 28 bound to recognize their title unless they produce letters of administration to his estate (Nallasivan Pillai having died intestate), they have nevertheless held that the plaintiffs who claimed title to the said shares under a purchase in Court auction in execution of a decree obtained against Nallasivan Pillai's sons stood in a different position and that Rule 28 did not apply to them.

12. It is argued that the plaintiffs under the purchase of the shares in Court auction became entitled only to the right, title and interest of the judgment-debtors, viz., Nallasivan Pillai's sons and if the latter could not get a transfer of the registry of the shares in their names with-out producing letters of administration,, it would be obviously inconsistent with that view to hold that a person who derives title from them stands in a better position and that in his case the condition as to the production of letters of administration is not operative. It is contended that the learned Judges erred in holding that the claim of the purchaser in Court auction of the shares of a deceased member of the company for the transfer of the registry in his name is on, a title which falls under the category of

title acquired in any other way than by-transfer

which is referred to in Rule 29 and that in taking such a view the learned Judges have overlooked that the first link in the title of the purchaser is the right of the sons of Nallasivan Pillai who became entitled to the shares on the death of their father. It is also pointed out that in the view of the learned Judges the position might have been different if the transfer of the shares had been made by the sons themselves but that an involuntary transfer of the shares stood in a different position. It may be conceded that these contentions are not without considerable force.

13. The learned Counsel for the respondent on the other hand contends that it is not in consequence of the death of Nallasivan Pillai that plaintiffs have become entitled to the shares. He died indebted to his creditors (plaintiffs in O.S. 319 of 1919 on the file of the District Munsif's Court, Ambasamudram) who sued his legal representatives to enforce their claims against him and obtained decree in their favour and it was as part of Nallasivan's estate that the shares were sold for the discharge of the debts due by him and purchased by Taraganar and that the title thus acquired falls under Rule 29 as one acquired "in any other way than by

transfer."

14. It is further contended that when the plaintiff applied for the registry of the shares in their names the only objection put forward by the company was that the said shares were claimed by Nallasivan Pillai's sons and that unless those claims are withdrawn the company cannot recognize the plaintiffs' title : see Ex. T (1). That objection whatever force it may have had when it was made cannot be put forward now as the plaintiffs have established their title to the shares as against Nallasivan's sons who are also parties to this suit. It is also pointed out that the plaintiff cannot comply with Rule 28 because there is no executor in this case, the deceased having died intestate, and the plaintiffs as purchasers of the shares are not entitled; to apply for letters of administration to Nallasivan's estate and that a dismissal of their claim under these circumstances would result in obvious injustice to the plaintiffs.

15. In support of the respective contentions urged before us, we are referred to the rules of the company and to the relevant portions of the judgments sought to be reviewed. We observe that the contentions raised before us were also raised before the learned Judges and considered at great length by them. The material rules which bear on the question are Rules 28 and 29 and arguments have been addressed on both sides as to the true construction of those rules. All that we need observe is that the question as to the right interpretation of these rules is by no means free from doubt or difficulty. One thing, however, is clear. Apart from the noncompliance with Rule 28 assuming the same to be applicable to the case, the plaintiffs' title to the shares has been clearly made out. On the death of Nallasivan Pillai his sons became entitled to the shares and their rights have indubitably passed to the purchasers of the shares. The company has also been directed to register the shares in the names of the plaintiffs and that decree is binding on Nallasivan's sons who are also parties to the suits. Under these circumstances there is hardly any warrant for the contention put forward on behalf of the company that if in obedience to the decrees of this Court it registers the shares in the names of the plaintiffs and also pays to them the dividends which have accrued thereon, it runs the risk of being hereafter sued by any person who obtains letters of administration to Nallasivan Pillai's estate and being held liable to him in respect of the shares in virtue of Rule 28 as such a claimant will not be bound by the decrees in these second appeals. So far as the present case is concerned, this apprehension seems to be altogether groundless. Further in cases like the present where there is no, executor or administrator for the estate of the deceased person, a suit to enforce a claim against his estate is rightly instituted against the persons on whom his estate has devolved by law; and any decree obtained against them in such a suit, must be held binding on whomsoever may thereafter become-entitled to represent his estate.

16. As regards the alleged error of law which relates to the construction of Rules 28 and 29 of the articles of association of the company, it is in substance an error, if error it be, as to the construction of certain terms which are to be

regarded as among the terms of a contract between the company and its shareholders. As already observed, the rules in question are not so clearly worded that only one construction is possible, viz., contended for on behalf of the company. Even though we may be deposed, that the company's contention is entitled to greater weight, it will amount to this, that the learned Judges have not correctly construed the said rules and that it is an error of law in their judgments. But such an error is not by itself a ground for granting a review. See *Chajju Ram v. Neki*. The basis of the judgments sought to be reviewed is not a proposition of law which is obviously erroneous as explained in the first of the two alternatives stated by their Lordships in *Champey Bhara and Co. v. Jeevraj Balloo Spining and Weaving Co.* On the other hand, it clearly falls within the latter alternative. To see if the company's contention is sound we have to consider what the terms of the contract were between the shareholders and the company as laid down in the rules of the company and then see what their right under those rules is. An error of law which has to be deduced from such an investigation and on a point which is open to doubt is not error of law apparent on the face of the record within the meaning of Rule 1, 0.47. No ground has therefore been made out for entertaining these review petitions and they are accordingly dismissed with costs of respondent 1 Rs. 30 in each.