

(1955) 03 AP CK 0025

In the Andhra Pradesh High Court

Case No : S.C.C. M.P. No's. 1176 and 1177 of 1955

Vallury Mangaraju

APPELLANT

Vs

Vallury Varahamma

RESPONDENT

Date of Decision : 24-03-1955

Acts Referred:

Arbitration Act, 1940 — Section 19, 34
Constitution of India, 1950 — Article 13, 133, 133(1)

Citation : AIR 1956 AP 47

Hon'ble Judges : Subba Rao, C.J; Krishna Rao, J

Bench : Division Bench

Advocate : M. Seshachari for C. Narasimhachary, for the Appellant; N. Bapiraju, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao , C.J.—These are applications under Art. 133 of the Constitution of India for leave to prefer appeals to the Supreme Court of India against an Order of this Court.

2. The respondent was married to late Valluri Subba Rao in or about the year 1930. The applicant was the second wife of the said Subba Rao. After the death of Subba Rao, the respondent filed O. S. No. 78 of 1949 on the file of the Subordinate Judge's Court, Rajamundry, for partition and for recovery of possession of a half share in the plaint schedule properties. The 1st defendant contended that the plaintiff was deprived of her rights to inherit her husband's properties by reason of her unchastity and that late Subba Rao had executed a Will dated 19-5-1948 bequeathing the entire properties to the applicant and others.

3. The learned Subordinate Judge, on a consideration of the evidence, held that the applicant failed to make out that the will was executed by Subba Rao in a sound disposing state of mind and decreed the suit as prayed for. In decreeing the suit, provision was made for the maintenance of Subba Rao's daughters and

for the marriage expenses of those daughters.

The applicant preferred an appeal against the decree to the High Court and it is numbered as A. S. No. 434 of 1954. Pending the suit, a Receiver was appointed who collected a large amount, discharged debts, paid half the amount due to the 1st defendant to her and deposited a lakh of rupees in Court out of which admittedly about Rs. 90,000/- represent the profits due to the plaintiff's share. Pending the appeal, she filed two applications one for directions for continuing the Receiver and the other for stay of further proceedings pending the appeal.

The applications came before Bhimasankaram J., who by order dated 17-2-1955 directed Rs. 60,000/- to be kept in Court and the balance to be paid over to the plaintiff. The learned Judge also directed the Receiver appointed by the first Court to continue for the purpose of collecting the outstandings and directed him to hand over to the plaintiff her share of the property in his possession on her furnishing security for a sum of Rs. 13,000/-. The first defendant preferred two appeals against the said order and we have dismissed them.

4. From the aforesaid facts, it is manifest that the Order of Bhimasankaram J., which was confirmed by us did not purport to decide the rights of the parties finally. It was only an interlocutory order made pending an appeal imposing some conditions on the plaintiff from drawing out the amounts to which she was entitled under the decree obtained by her. The question is whether this appeal lies under Art. 133 of the Constitution of India to the Supreme Court against such an interlocutory order.

5. Article 133 reads:

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies:

a. that the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by Law; or

b. that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

c. that the case is a fit one for appeal to the Supreme Court and where the judgment, decree or final order appealed from affirms the decision of the Court immediately below in any case other than a case referred to in sub-cl. (c) if the High Court further certifies that the appeal involves some substantial question of law.

6. The Learned Counsel for the applicant contends that his client is entitled to have leave if the order made by us is a "Judgment within the meaning of Art. 133(1), if the said Judgment directly or indirectly involve." some claim or

question respecting property of the value of Rs 20,000/-. He says further that cl. (c) has no application as a single Judge of the High Court is not a "Court immediately below" a Division Bench of the same Court and, therefore, the additional condition that when the judgment affirms the decision of the Court below, the appeal should involve some substantial question of law, need not be complied with.

7. It is not necessary in this case to express our view on the question whether the judgment of a single Judge of a High Court is that of a Court immediately below a Division Bench of the same Court, for we are satisfied that the order complained of is neither a judgment, decree or final order within "the meaning of Art. 133(1) of the Constitution.

8. The Learned Counsel for the applicant contends that the word "Judgment" in Art. 133(1) has a more comprehensive connotation than the words ""decrees or final order", but takes within its range not only final orders but also interlocutory orders.

He seeks to derive support for this argument from the history of Art. 133(1) by pointing out that the word "Judgment" was not present in Ss. 109 and 110, Civil P. C. 1903. but was only introduced in those sections by the Adaptation of Laws Order, 1950. But in our view it would be futile to trace the history of the words in Art. 133(1) as the controversy was closed by the authoritative decisions of the Privy Council and of the Federal Court.

9. The leading decision on this question is, that of the Judicial Committee in - "Firm Ramachand Manjimal v. Firm Goverdhandas Vishandas Ratnachand", AIR 1920 PC 86 (A). There, in a suit for damages for alleged breach of contract, the defendant applied under S. 19, Arbitration Act, for stay of proceedings with a view to the issues being referred to Arbitration under that section.

The trial Judge granted stay but on appeal the Court of the Judicial Commissioner of Sind reversed that order and refused to stay the proceedings. The question was whether that order was a final order within the meaning of S. 1C9, C. P. C. Viscount Cave held that the said order refusing stay was not a final order. At page 87, his Lordship observed:

The effect of those and other judgments is that an order is final if it finally disposes of the rights of the parties. The orders now under appeal do not finally dispose of those rights, but leave them to be determined by the Courts in the ordinary way.

In - AIR 1933 58 (Privy Council) the Judicial Committee again reiterated the same view by holding that an order of remand was not a final order. Sir George Lowndes laid down the following test:

The finality must be a 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 under S. 109(a).

The Federal Court in - -Mohammad Amin Bros. Ltd. v. Dominion of India", AIR 1950 SC 77 (C) accepted and followed the definition of "a final order" as laid down by the Judicial Committee, There an order of a single Judge of the High Court directing the compulsory winding up of a company was set aside by a Division Bench of the same Court and the case was sent back to the trial Court to be heard at a future date in accordance with the directions contained in the judgment.

In holding that the said order was not a final order, but only an interlocutory order, Mukherjee J., after noticing the previous case law on the subject pointed out that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties. That decision is also important for another reason for that is the first case where the Federal Court considered the meaning of the word "Judgment" as distinguished from "final order".

Under S. 205(1), Government of India Act, the appellate jurisdiction of the Federal Court can be invoked only in respect of a judgment, decree or final order passed by a High Court. When it was contended that though the order in question was not a final Order, it was a judgment within the meaning of that section his Lordship in rejecting that contention made the following observations at page 79:

In English Courts, the word "judgment" is used in the same sense as a decree in the Civil Procedure Code, and it means the declaration or final determination of the rights of the parties in the matter brought before the Court..... According to the definition given in the Civil Procedure Code, Judgment Is the statement of reasons given by a Judge on which a decree or order is based.

If the order which is made in this case is an interlocutory order, the judgment, must necessarily be held to be an interlocutory judgment and the allocation of the words "Judgment, decree or final order" in S. 206(1), Government of India Act, makes it clear that no appeal is provided for against an interlocutory judgment or order.

10. These observations apply "mutatis mutandis" to the construction of similar words in Art. 133(1) of the Constitution of India. We are bound by that Judgment.

11. The Patna High Court in - "Gaya Electric Supply Co. Ltd. v. State of Bihar", AIR 1951 Pat 619 (D) ruled that an order of the High Court staying a suit under S. 34. Arbitration Act, 1940, is not a "final order" within the meaning of Art. 133(1) of the Constitution. Applying the test laid down in the decisions of the English Courts and in those of the federal Court and Supreme Court of India, the learned Chief Justice held that the effect of the order under appeal was not finally to dispose of the rights of the parties, even though it decided a cardinal point in the case and that the suit was still alive, because the order did not terminate the suit, and therefore it was not an order within the meaning of the said Article.

12. The Madras High Court in - Mulugu Raghavacharyulu Vs. Mulugu Sri Venkata Ramanuja Charyulu and Others, applied the same test to an order of the High Court deciding some issues and remanding other issues. The learned Judges, Rajamannar Chief Justice and Venkatarama Ayyar J., held that the said order was interlocutory in character. At page 408 Venkatarama Ayyar J., who, delivered the Judgment on behalf of the Bench, observed:

It is, therefore, well settled that an order can be held to be a final order only if it finally disposes of the rights of the parties in the suit or proceeding.

When it was contended that though an order of remand was not a final Order, it was a judgment within the meaning of Art. 133(1) of the Constitution of India, the learned Judges repelled that contention at pp. 408 & 409 with the observation that "the word 'judgment' in Art. 133 is used in the sense of decree or order and not in the sense in which it is used in the Civil procedure Code. From the aforesaid discussion of the case law on the subject it is clear an appeal lies to the Supreme Court under Art. 133 if the order complained of finally disposes of the rights of the parties".

To put it differently, it should not be an interlocutory Order, but a final order deciding the rights of the parties. The word "Judgment" in the Article in the context means a final judgment in the sense that it finally decides the rights of the parties. Can it be said in the present case that the order made by us satisfied the aforesaid tests?

It was an interim order made pending an appeal. It did not purport to decide the rights of the parties. Indeed it imposed temporary restriction of the rights declared by the learned Subordinate Judge in favour of the applicant. The order in our view is obviously interlocutory in nature, for it does not purport to decide finally the rights of the parties. We cannot, therefore, hold that the order is a "judgment, decree or final order" within the meaning of Art. 133(1) of the Constitution of India.

13. The applications fail and are dismissed with costs.