

Sattemma Vs. Vishnu Murthy

Sattemma Vs. Vishnu Murthy

SooperKanoon Citation : sooperkanoon.com/426338

Court : Andhra Pradesh

Decided On : Aug-05-1963

Reported in : AIR1964AP162

Judge : P. Chandra Reddy, C.J., ;Gopalakrishnan Nair and ;Narasimham, JJ.

Acts : Code of Civil Procedure (CPC) - Order 43, Rule 1 - Order 47, Rule 7

Appeal No. : S.R. No. 24466 of 1963

Appellant : Sattemma

Respondent : Vishnu Murthy

Advocate for Pet/Ap. : C.P. Sarathy and ;C. Jashree Sarathy, Adv.

Judgement :

Chandra Reddy, C.J.

1. The question to be answered by the Full Bench relates to the maintainability of an appeal, under Clause 15 of the Letters Patent, against an order of a single Judge of this Court refusing to review an order passed by him earlier dismissing the petition for leave to prefer an appeal in forma pauperis.

2. This reference has been necessitated by the judgment of the Madras High Court in Chinnadorai v. Doraisundaram : AIR1954 Mad642 which, in its turn, followed the principle enunciated by Muttuswami Ayyar and Parker JJ. in Achaya

v. Ratnavel, 1LR 9 Mad 253.

3. The point to be considered by us is whether the rule stated in : AIR1954 Mad642 represents the correct law. The principle enunciated in that ruling is that no appeal lies against an order of a single Judge dismissing a petition for review having regard to the provisions of Order 47, Rule 7 C. P. C. and that this provision of law prevails over Clause 15 of the Letters Patent. Undeniably, Order 47, Rule 7 C. P. C. postulates that an order rejecting an application for review is not appealable. So, if Order 47, Rule 7 C. P. C. controls Clause 15 of the Letters Patent, an appeal does not lie notwithstanding that the decision complained against is a 'judgment' within the scope and ambit of Clause 15. What calls for decision is whether Clause 15 of the Letters Patent is subservient to Order 47, Rule 7 C. P. C.

4. Clause 15 of the Letters Patent reads as follows:

'Appeal from Courts of original jurisdiction to the High Courts 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 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 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.'

5. We are clear in our minds that Order 47, Rule 7 C. P. C. does not override Clause 15 of the Letters Patent; on the other hand Clause 15 prevails over Order 47, Rule 7 C. P. C.

6. This opinion of ours gains support from the pronouncement of the Privy Council in *Hurrish Chunder v. Kali Sundari*, 10 Ind App 4 (PC). In discussing the question whether an appeal was competent against the judgment of a single Judge, their Lordships of the Judicial Committee observed:

'It only remains to observe that their Lordships do not think that Section 588 of Act X of 1877, which has the effect of restricting certain appeals, applies in such a case as this, where the appeal is from one of the Judges of the Court to the full Court.'

Section 588 of Act X of 1877 is the ancestor of the present Order 43, Rule 1 C. P. C. It is true that their Lordships did not specifically refer to Clause 15 of the Letters Patent. But, it is plain from the observations that the 'Judgment' falling within the purview of that clause is excepted from the scope of Section 588 of Act X of 1877, which means that Section 588 does not interfere with the rights conferred by Clause 15 of the Letters Patent. It may, therefore, be postulated that Clause 15 of the Letters Patent is not controlled by the provisions of the Civil Procedure Code.

7. In the same mould is cast *Chapman v. Moidin Kutti*, ILR 22 Mad 68 (FB), decided by a Full Bench of the Madras High Court. The Full Bench referred to the dictum of the Privy Council in 10 Ind App 4 (PC) and said that the observations were not mere obiter dicta. It may be noticed that the argument which was advanced in that case before the Full Bench and which was negatived was based off the doctrine of ILR 9 Mad 253. Therefore, the rejection of that argument is tantamount to the overruling of ILR 9 Mad 253.

8. In *Union of India v. Mohindra Supply Co.*, : [1962]3SCR497 the Supreme Court had occasion to consider the question whether Section 39(1) of the Indian

Arbitration Act, which provides only for one appeal, prevails over Clause 10 of the Letters Patent of the Punjab High Court, which corresponds to Clause 15 of the Letters Patent of the High Courts of Madras, Bombay, and Calcutta, or, whether the provisions of the relevant clause of the Letters Patent override Section 39(1) of the Indian Arbitration Act and the opinion expressed by their Lordships was that Clause 10 took precedence over Section 39. It is in discussing this problem that their Lordships referred to ILR 9 Mad 253 and observed that 10 Ind App 4(PC) expressed a view different from that taken in ILR 9 Mad 253, They then referred to ILR 22 Mad 68 (FB), along with others as taking the correct view and observed that the right to appeal against the judgments which did not amount to decrees under the Letters Patent was, therefore, not affected by Section 104(1) C. P. C. It follows that the right derived from Clause 15 of the Letters Patent is not affected either by Order 47, Rule 7 C. P. C. or by Order 43, Rule 1 C. P. C. or any other provision of the Civil Procedure Code which restricts the right of appeal.

9. This takes us to the controversy whether a decision refusing to review an order is a 'judgment within the terms of Clause 15 of the Letters Patent. In our opinion it constitutes a 'judgment' within the meaning of Clause 15 of the Letters Patent. There is support for this opinion of ours in State of Uttar Pradesh of Vijay Anand, : [1962]45ITR414(SC) . It cannot be overlooked that the refusal to review the order in the present case results in the dismissal of the appeal on account of the inability of the appellant to pay the court-fee. Thus, it puts an end to the appeal in this Court.

10. The question is accordingly answered in the affirmative.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com