

In Re: Gazula Anandappa

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Court : Chennai

Decided On : Apr-25-1945

Reported in : AIR1945Mad423; (1945)2MLJ131

Appellant : In Re: Gazula Anandappa

Judgement :

ORDER

Alfred Henry Lionel Leach, C.J.

1. The application before the Court is for an order directing an appeal which lies to the District Court of Anantapur to be received by this Court and transmitted to the District Court on its reopening after the summer vacation, the object being to obtain an interim order from this Court. The application is in accordance with a practice which existed in this Court from the year 1933 until last year. The practice was based on an unreported judgment of Ramesam, J. (C.M. Ps. Nos. 2774 and 2840 of 1933). In an order dated the 9th June, 1944, also unreported (C.M.P. No. 2513 of 1944) Byers, J., disagreed with the judgment of Ramesam, J., and held that an appeal which lay to a Court subordinate to this Court could not be received by this Court on the ground that the proper Court was closed for the vacation. The present application has been placed before this Bench in order that the conflict may be decided.

2. Section 13 of the Madars Civil Courts Act, 1873, states that regular or special appeals shall, when such appeals are allowed by law, lie from the decrees and

orders of a District Court to the High Court and that appeals from the decrees and orders of Subordinate Judges and District Munsiffs shall, when they are allowed by law, lie to the District Court, except when the amount or value of the subject-matter of the suit exceeds rupees five thousand, in which case the appeal shall lie to the High Court, provided that whenever a Subordinate Judge's Court is established in a District at a place remote from the station of the District Court, the High Court may, with the previous sanction of the Provincial Government, direct that appeals from the decrees or orders of the District Munsiffs within the local limits of the jurisdiction of the Subordinate Judge be preferred in the Court of the latter.

3. Clause 16 of the Letters Patent says:

And we do further ordain that the said High Court of Judicature at Madras shall be a Court of Appeal from the Civil Courts of the Presidency of Madras and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

In holding that this Court has jurisdiction to receive an appeal which should be filed in a Court subordinate to it when that Court is closed for the vacation, Ramesam, J., read the first part of Clause 16 as being divorced entirely from its second part. Byers, J., considered that this was wrong and that the governing words of the clause are the words 'in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations, now in force.' We consider that the opinion of Byers, J., is to be preferred. In fact We regard Ramesam J.'s construction as doing grave violence to the wording of the clause.

4. The Madras Civil Courts Act in effect prohibits an appeal of the nature of the one now sought to be filed in this Court from being filed here. It expressly provides that it shall be filed in the District Court. The appellate Court having jurisdiction in this matter is the District Court of Anantapur and the appeal is in fact headed 'In the Court of the District Judge, Anantapur.' The petitioner wants this Court to accept it and pass an interim order as he cannot get an interim order from the District Judge on account of the District Court being closed.

5. Clause 16 of the Letters Patent does not override the provisions of the Madras Civil Courts Act. The opening words of the clause 'And we do further ordain that the said High Court of Judicature at Madras shall be a Court of Appeal from the Civil Courts of the Presidency of Madras and from all other Courts subject to its superintendence ' are merely declaratory and do not govern the actual appellate jurisdiction of the Court. In deciding what appeals this Court can receive and decide it must have regard to the 'laws and regulations ' in force, which in this case means the Madras Civil Courts Act. The course which Ramesam, J., decided on has the merit of convenience, but it is not in accordance with law and therefore his judgment cannot be followed.

6. The facts of the present case certainly indicate the necessity for an amendment of the Madras Civil Courts Act giving the High Court power to receive appeals when a District Court or Subordinate Court, as the case may be, is closed for the vacation.

7. The High Court is never completely closed as Courts subordinate to it are. There is always one, and in the long vacation of the High Court, two judges who are available to deal with urgent matters. The course suggested by Ramesam, J., could be legalised by a simple amendment of Section 13 of the Madras Civil Courts Act and such an amendment should obviously be made without delay.

8. In the present case the petitioner wishes to appeal against an order passed by the District Munsiff of Gooty on the 14th April, 1945, refusing to allow an application under Section 55(4) of the Code of Civil Procedure. On the 12th April, 1945, the District Munsiff ordered the petitioner to be arrested in execution of a money decree. He was arrested two days later and then applied for his release on the ground that he intended to apply to be declared an insolvent. The District Munsiff dismissed the application as he did not consider it to be bona fide. The result is that the petitioner is now in a civil jail and he is unable to file an appeal against the order of the District Munsiff until the District Court of Anantapur re-opens on the 15th June, 1945. Other cases of an equally urgent nature are bound to arise. We cannot emphasise too strongly the urgency there is for a suitable statutory provision being made to meet cases like the present.

9. As the Court is powerless to act in the present case the application must be dismissed.

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