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Court : Chennai

Decided On : Sep-10-1901

Reported in : (1902)ILR25Mad555

Judge : Arnold White, C.J. and ;Bhashyam Ayyangar, JJ.

Appellant : Sabhapathi Chetti and ors.

Respondent : Narayanasami Chetti

Judgement :

1. This is an appeal against the judgment of Shephard, J., disallowing a claim preferred, under Sections 278 and 282 of the Civil Procedure Code, by the appellants as mortgagees of a certain house and ground attached in execution of the decree in Civil Suit No. 58 of 1900 on the Original Side of this Court.

2. The respondent's vakil takes a preliminary objection that no appeal lies against the order disallowing the claim, firstly, because such an order is not specified as an appealable order in any of the 29 clauses of Section 588, Civil Procedure Code, and the right of appeal, if any, under Section 15 of the Letters Patent, is taken away by the first paragraph of Section 588 and by Section 591, Civil Procedure Code; and secondly, because the said order is not a judgment within the meaning of Section 15 of the Letters Patent.

3. We are clearly of opinion that neither of these objections is well founded. As regards the first, the matter has been practically concluded by the decision of this

Court in Chappan v. Moidin Kutti I.L.R. 22 Mad. 68 which was heard by a Bench of six Judges and in which it was held by Mr. Justice Shephard, Mr. Justice Subrahmanya Ayyar and Mr. Justice Moore that Section 15 of the Letters Patent is not controlled by Sections 588 and 591 of the Civil Procedure Code. This view was dissented from only by Benson, J. A Full Bench of the Calcutta High Court in Toolsee Money Dassee v. Sudevi Dassee I.L.R. 26 Calc. 361 unanimously held that Section 15 of the Letters Patent is not restricted by Section 588 of the Civil Procedure Code and dissented from Mr. Justice Benson's opinion that Sections 588 and 591, Civil Procedure Code, do restrict the right of appeal given by Section 15 of the Letters Patent. The above decisions of this Court and of the Calcutta High Court are in conformity with the decision of the Privy Council in Hurrish Chunder Chowdhry v. Kalisunderi Debi I.L.R. 26 Calc. 361 in which it was held that Section 588 of the Code of Civil Procedure restricting appeals against orders did not apply to prevent an appeal to the High Court from the order of a single Judge of that Court, and with the canon of interpretation based on the maxim *generalia specialibus non derogant*, that a general later law does not abrogate an earlier special one by mere implication, Thorpe v. Adams L.R. 6 C.P. 125 The Queen v. Champaneys L.R. 6 C.P. 384 and Rulner v. Phillips [1891] 2 Q.B. 267 per A.L Smith, J., and that when the Legislature has already given its attention to a particular subject and provided for it, it is reasonably presumed not to intend to alter that special provision by a subsequent ' . general enactment, unless that intention is manifested in explicit language per Wood V. C, in Fitzgerald v. Champneys 2 J.&H.; 31 also Maharajah of Jeypore v. Papayamma I.L.R. 23 Mad. 329 Both Section 540 of the Code of Civil Procedure relating to appeals from original decrees and Sections 588 and 591 relating to appeals from orders provide for appeals from one Court to another of higher grade. The provision made by Section 15 of the Letters Patent for appeals from one or more Judges of the High Court, to other Judges of the same Court is entirely foreign to the provisions of the Civil Procedure Code relating to appeals from one Court So another. The matter is placed beyond all reasonable doubt, by Section 597 of the Code of Civil Procedure which occurs in the chapter relating to appeals to the King in Council. It is provided in that section, among other things, that no appeal shall lie, to His Majesty in Council, from a judgment of one Judge of a High Court or of one Judge of a

Division Court. The obvious reason for such restriction is, that the party should not be permitted to appeal directly to the King in Council, from the judgment of a single Judge of the High Court, whether passed in the exercise of ordinary original civil jurisdiction or of appellate civil jurisdiction but that he should, in the first instance, appeal, under Section 15 of the Letters Patent, to the other Judges of the High Court. The result of holding that no appeal would lie under Section 15 of the Letters Patent, from an order of a single Judge in the exercise of original civil jurisdiction when such order is not a decree or an order specified under Section 588 of the Code of Civil Procedure or from an order of a single Judge, passed in appeal, from any of the orders, specified in Section 588 of the Code of Civil Procedure would be that such orders would be final and no appeal would lie, either to other Judges of the High Court or to the King in Council, although from a final order passed by a District Judge in appeal from any of the orders mentioned in Section 588, an appeal would lie direct to the King in Council under Section 595 (a). The fact that Sections 588 and 591 of the Code of Civil Procedure are applicable to the High Court, does not affect the question now under consideration. They are applicable to the High Court, in that appeals from orders of the Subordinate Courts lie to the High Court under Section 588 of the Code of Civil Procedure and Section 591 prohibits appeal from such Courts to the High Court, except in the cases provided for by Section 588.

4. The second contention that the judgment of Shephard, J., disallowing the claim is not a judgment within the meaning of Section 15 of the Letters Patent is entirely untenable and opposed to the current of decisions as to the meaning of the word 'judgment' in the said section.

5. We are unable to concur with the learned Judge, that the appellants have no interest in the property under attachment and that the only person who can advance a claim is the executor of the person in whose favour the mortgage document, exhibit F, was executed. Exhibit F is a mortgage bond for a lakh and thirty-seven thousand rupees, borrowed in several shares from four persons or firms mentioned in paragraph 3 thereof. The respective amounts borrowed from each of these four persons, are specified in paragraph 3 and an express provision is made, that whenever any part payment is made by the mortgagors to the first

named of the four persons, viz. Bamanadan Chetti, deceased, in whose favour alone, the mortgage deed was, with the consent of all the four, executed, such amount should be distributed by him, among all the four creditors, including himself, according to their respective shares. A further provision is made in paragraph 4 that it has been agreed that the first named person alone should conduct proceedings against the mortgagors for the purpose of recovering the mortgage debts.

6. Paragraph 10 of exhibit F is the only one which relates to the house and ground, the subject matter of the attachment in respect of which the claim has been preferred; and it is therein declared by the mortgagors, that the Collector's certificate relating to the house and ground is with them and that they have not already encumbered, nor shall thereafter encumber the said certificate or the house and ground of which the certificate is the title-deed.

7. With reference to paragraph 4 of the claim petition, it is explained by the learned pleader who appeared before Shephard, J., and who now appears also in this appeal, for the claimants that the deposit of title-deeds mentioned in the said paragraph refers to the Collector's certificate, in respect of the house and ground, specified in paragraph 10 of exhibit F, and that the same was deposited by way of security, subsequent to the execution of the mortgage deed.

8. It is unnecessary to decide in this appeal, whether, so far as the appellants are concerned, the mortgage deed, exhibit , was executed in favour of the deceased Ramanadan Chetti, as their agent or as their trustee; for, in either case, the appellants are competent to prefer this claim and establish within the meaning of Section 279 of the Code of Civil Procedure, 'some interest in' the property attached. If, so far as they were concerned, the said Ramanadan Chetti acted as their agent in the mortgage transaction, they have a legal interest in the property attached and if he was a trustee they have a beneficial or equitable interest therein. And, in our opinion, a beneficial interest is as much an interest within the meaning of Section 279 of the Code of Civil Procedure as a legal interest in the property attached.

9. We are wholly unable to accede to the arguments advanced by the learned pleader for the respondent, that the appellants have only a beneficial interest in their shares of the mortgage debt,, as a mere debt or personal claim and have no beneficial interest in the house and ground in question forming the security for such debt.

10. For the above reasons, we allow this appeal, with costs, and as the learned Judge has practically disallowed the claim only on a preliminary point, we reverse the judgment appealed against and remand the claim for investigation and disposal in due course of law.

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