

Samidorai thennavarayar Vs. Vaithilinga thennavarayar and ors.

Samidorai thennavarayar Vs. Vaithilinga thennavarayar and ors.

SooperKanoon Citation : sooperkanoon.com/808641

Court : Chennai

Decided On : Apr-25-1963

Reported in : (1964)1MLJ7

Appellant : Samidorai thennavarayar

Respondent : Vaithilinga thennavarayar and ors.

Judgement :

G.R. Jagadisan, J.

1. The question raised is of some importance, as it relates to the right of appeal to the Supreme Court under Article 133(1)(a) of the Constitution read along with section no, Civil Procedure Code. I agree with the judgment of my learned brother ; but I, however, wish to add a few words, having regard to the fact that no direct decision on the precise point now in issue had been brought to our notice. The facts of the case giving rise to this petition have been fully set out by Kailasam, J., and they need not be repeated.

2.A right of appeal is a substantive right, though it stems from a statute or the Constitution, and is not inherent in every defeated suitor. The Constitutional provisions dealing with the right of appeal to the Supreme Court have to be read with due regard to the qualifications, limitations and restrictions contained therein; but with a liberality which would favour an appeal being preferred rather than with the stringency that would defeat it. If the words are sufficiently clear, either, for or

against an appeal, there can be no issue regarding the right. If, however the words are ambiguous and are capable of being construed as sustaining a right of appeal, or as conferring such a right, it would be proper and legitimate for the Court to uphold the right. This, in my opinion, is a sound canon of construction of statutes. Broadly stated, the ambiguity resulting from the language of an enactment is resolved by adopting that meaning which accord with justice and good sense (*Countess of Rothes v. Kirkcaldy Waterworks Commissioners* L.R. (1882) 7 A.C. 694. As between two constructions which are open, both being equally plausible, the Court may lean in favour of the more reasonable of the two (*R. v. Halliday* L.R. 1917 A.C. 260).

3. Now we have to construe the words in Article 133 of the Constitution in conjunction with section no, Civil Procedure Code. The latter provision does not call for any interpretation ; the test of pecuniary valuation is that the amount or value of the subject-matter of the suit in the Court of first instance must be Rs. 20,000 or upwards and the value of the subject-matter in dispute on appeal to the Supreme Court must be the same sum or upwards. The language of Article 133 is not identical with that is Section 110, Civil Procedure Code. The words in Article 133(1)(a) are ' 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....'. Instead of the words' the subject-matter of the suit ' occurring in section no, Civil Procedure Code, the words ' the subject-matter of the dispute ' are found in Article 133. The words ' still in dispute ' in Article 133 are not to be found in Section 110, Civil Procedure Code. But for these two features, the phraseology, both in the Constitution and in the Civil Procedure Code, is almost identical. Does the differences pointed out connote different meanings and thereby bring about a repugnancy between the two, is the vital point to be decided. It is quite obvious that, in case where there is any conflict between Article 133 of the Constitution and section no, Civil Procedure Code, the Constitution should prevail. It seems to me that the ' the subject-matter of the suit ', and the words ' the subject-matter of the dispute' in the Court of first instance connote the same meaning, that is, the amount or value of the subject-matter of the context between the parties in the Court of first instance. The language of the Constitution is perhaps a little more clear than that employed in the Civil Procedure Gode in

regard to the matter. The words ' still in dispute on appeal' have caused me some difficulty in interpreting the Constitutional provision. It is possible to construe Article 133(1)(a) as meaning that the dispute between the parties which survives for being agitated before the Supreme Court should alone be valued, and that the amount or value of the dispute should be not less than Rs. 20,000 both at the time when the suit was instituted and at the time when the appellate judgment was passed. It is now well settled law that the point of time with reference to which the value of the subject matter of the dispute in the Court of first instance is to be determined, is the commencement of the suit *Rajendra v. Reshbehari* (1931) 35 C.W.N. 669 (P.C.) and the point of time for determination of the value of the subject-matter in dispute on appeal is the date of the decree or order from which the appeal is made *Brijji v. Bhuneswar* : AIR1941 Pat255 and *Ram Kumar v. Md. Takub* I.L.R. (1920) All. 445. Article 133(1)(a) is, however, not quite clear so as to indicate that what, was taken into account is the subject-matter of the dispute on appeal even for the purpose of valuation in the Court of first instance. It would not be strained interpretation to hold that the meaning of Article 133 is just what is meant and laid down under Section 110, Civil Procedure Code.

4. The Constitution should not be read as departing from the established law, if the words therein do not lead to that conclusion. In choosing one of two meanings where the words are equally susceptible of both the meanings, the Constitution should be read as far as possible in harmony with the existing provisions of law. This has been pointed out by the Supreme Court in *State of Punjab v. Ajaib Singh* : 1953 CriLJ180 in the following words:

If two constructions are possible, then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory.

Adopting this test, with respect, it seems to me that the framers of the Constitution did not intend to prescribe a different pecuniary test from what has been provided for in the Civil Procedure Code and adopted in practice for over a long range of years.

5. I concur with my learned brother that the petitioner is entitled to leave to appeal to the Supreme Court under Article 133(1)(a) of the Constitution.

P.S. Kailasam, J.

6. This is a petition under Sections 109 and no, Civil Procedure Code and Article 133(1)(a) to (c) of the Constitution of India for grant of a certificate under Article 133(1)(a) to (c) of the Constitution of India and for grant of leave to appeal to the Supreme Court of India against the decree and judgment of this Court in A.S. No. 285 of 1957.

7. The suit out of which this petition arises was filed by the plaintiff-respondent herein for a declaration that he is the legitimate son of one Rangaswami Thennavarayar, or in the alternative for a declaration that he is the illegitimate son of Rangaswami Thennavarayar. He also claimed that he is entitled to a share in the plaint B and C Schedule properties.

8. The trial Court dismissed the suit holding that he had not established that he was either the legitimate son or the illegitimate son of Rangaswami Thennavarayar. The plaintiff preferred an appeal to this Court and in the appeal the claim of the plaintiff that he is the legitimate son of Rangaswami Thennavarayar was negated, but a declaration was granted that he is the illegitimate son of Rangaswami Thennavarayar, and therefore was entitled to a 1/4th share in the plaint B and C Schedule properties.

9. The defendant, who is the legitimate son of Rangaswami Thennavarayar, aggrieved at the decision of this Court has filed this petition for grant of a certificate and for leave to file an appeal to the Supreme Court. As the judgment on appeal is not one of affirmance, the petitioner is entitled for leave to appeal if he satisfies the conditions laid down in Article 133(1)(a) to (c) of the Constitution of India. When the matter came up before us on an earlier occasion, there was a dispute amongst the parties regarding the valuation of the subject-matter of the dispute. A finding was called for from the Subordinate Judge of Cuddalore regarding the valuation of the properties. The Subordinate Judge has found that the total value of B and C Schedule properties in 1954, the date of suit, would be

Rs; 64,260, and the present value would be Rs. 1,00,155. The petitioner and the respondent have filed memorandum of objections to the finding of the Subordinate Judge as to the value of the suit properties. The petitioner 1st defendant submitted that the price of the cashew-nut tope fixed by the lower Court is low. He submitted that in any event the lower Court was in error in arriving at the value of the lands by taking 15 years' income. He further submitted that the learned Subordinate Judge was in error in taking the lowest rate Rs. 50 that he ought to have taken the average at Rs. 60 and that when capitalising the value he ought to have taken the 20 years' income instead of 15 years income. On the other hand the learned Counsel for the plaintiff-1st respondent submitted that the learned Subordinate Judge ought to have found that the valuation given by the petitioner's witness was highly exaggerated and that the learned Subordinate Judge ought to have taken into account the value given in Exhibit A-1 which dealt with a genuine sale and fixed the rate at Rs. 170 per acre. He also commented that, as the petitioner failed to discharge the burden of proving that the real value was higher than that given in the plaint, the lower Court was in error in fixing a higher value than that given in the plaint. We are unable to accept either the contention of the petitioner or that of the respondent. We do not see any error in the Subordinate Judge taking the income at Rs. 50 per acre or arriving at the value of the lands by capitalising 15 years income. We are also unable to accept the contention of the learned Counsel for the respondent that the burden of proving that the value of the properties was higher than the value given in the plaint is on the petitioner, and that he failed to discharge it. The learned Subordinate Judge has given sufficient reasons for not accepting the value given in Exhibits A-1 and A-2, the two documents relied on by the respondent. In the circumstances we accept the finding of the learned Subordinate Judge regarding the value of lands.

10. The learned Counsel for the respondent submitted that even so the conditions required under Article 133(1)(a) are not satisfied. The subject-matter of the dispute in the appeal to the Supreme Court is that of plaint B and C Schedule properties. The value of B and C Schedules is determined at Rs. 1,00,155. Therefore, the requirement that the value of the properties in dispute on appeal should be over Rs. 20,000 is satisfied. The value of the properties on the date of suit is found to be Rs. 64,260. The suit was filed by the plaintiff for a declaration that he was

entitled to one-half of the plaint B and C Schedule properties and the matter in dispute in the Court of first instance was of the value of Rs. 32,130. According to the learned Counsel for the respondent, in order to satisfy the conditions under Article 133(1)(a) of the Constitution not only should the value of the matter in dispute on appeal should be over Rs. 20,000 but the value of the matter in dispute on appeal when in the Court of first instance should also have been over Rs. 20,000. In other words, according to him, the th share of the suit property to which the appeal to the Supreme is confined, should on the date of the suit have been of the value of over Rs. 20,000. On the other hand the learned Counsel for the petitioner submitted that in the Court of first instance the plaintiff claimed half a share in the suit properties and that the value of the subject-matter of the dispute in the Court of first instance is the value of the half share. According to him, Article 133(1)(a) does not require that the-subject-matter in dispute on appeal, that is th share, should be of the value of Rs. 20,000 as on the date of the suit. The answer to these contentions depends upon the construction put on Article 133(1)(a) of the Constitution of India. Article 133(1)(a) is as follows:

133(1)(a). 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 that the amount or value of the subject-matter of the dispute in the Court of the 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.

Sub-clause (1)(a) requires, (1) that the value of the subject-matter of the dispute in the Court of first instance should be over Rs. 20,000 and (2) that the value of the subject-matter in dispute on appeal should be over Rs. 20,000. It is contended on behalf of the respondent that the words 'subject-matter of the dispute in the Court of first instance and still in dispute on appeal was and is ' require that the value of the subject-matter of the dispute on appeal, should have been more than Rs. 20,000 on the date of the suit in the Court of first instance. Particular emphasis is laid on the words ' still in dispute.' We are unable to construe the clause in the manner in which the learned Counsel would want us to do. The requirement under the section is that the value of the subject-matter of the dispute in the Court of first

instance was and the value of the subject-matter of the dispute on appeal is over Rs. 20,000. The presence of the word ' still ' would require that the value of the subject-matter of dispute in the Court of first instance should have been more than Rs. 20,000 and the value of the dispute on appeal should still be not less than Rs. 20,000. The word ' still' cannot be construed to require that the value o.f subject-matter of dispute on appeal should have been more than Rs. 20,000 on the date of suit in the Court of first instance. The learned Counsel for the respondent drew our attention to the relevant part of section no of the Civil Procedure Code, which is as follows:. the amount or value of the subject-matter of the suit in the Court of first instance must be twenty thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to the Supreme Court must be the same sum or upwards.

Section 110 requires that the value of the subject-matter of the suit in the Court of first instance must be Rs. 20,000 or upwards, and the value of the subject-matter in dispute on appeal must be the same sum or upwards; No doubt the wording in section no, Civil Procedure Code is different from that of Article 133(1)(a). Merely because Article 133(1)(a) is differently worded we are unable to conclude that the framers of the Constitution intended it to be different from section No. We are of opinion that different words were used in Article 133(1)'(ffl) of the Constitution to convey the same meaning as in section no, Civil Procedure Code.

11. It was admitted by the counsel appearing for both parties that this question is not. covered by any authority but a few decisions were brought to our notice to assist us in arriving at a conclusion. In Venkataswami v. Manikyam : AIR1951 Mad723 a Bench of this Court had to determine the value of the subject-matter in dispute in mortgage suit. The suit was filed on title for possession of item (1) in the plaint schedule. It was observed that the subject-matter of the appeal was confined only to the mortgage interest by the 5th defendant and therefore the value of the subject-matter of the dispute in appeal would only be the mortgage amount which was admittedly below Rs. 10,000 The Court held that the value of the subject-matter of the dispute in appeal could not therefore be held to be more than Rs. 10,000. From the above observations the learned Counsel for the petitioner submitted that the learned Judges held that the value of the subject-

matter in appeal could only be construed as the value of the mortgage right, and that if they understood Article 133(1)(a) of the Constitution to require that the value of the subject-matter of the dispute on appeal to the Supreme Court should have been more than Rs. 20,000 on the date of the suit, they would have made observations to that effect. The question did not arise before the Court in the manner in which it has arisen now, and from the observations made it cannot be held that the decision expressed any view on the point in dispute.

12. We were next referred to the decision of a Bench of the Calcutta High Court in *Prabirendra Mohan v. Berhampore Bank, Ltd.* : AIR1954 Cal289 . The above decision is not helpful in deciding the point at issue in this petition, for it dealt with the difference between the expression 'value of the subject-matter of the suit' in section no, Civil Procedure Code and the expression ' the value of the subject-matter of the dispute in the Court of first instance.'

13. In *Mugneeram Bangur and Co. v. Kalikas* (1955) 59 Cal. W.N. 681 the expression ' subject-matter of the dispute in the Court of first instance and still in dispute on appeal ' in Article 133(1)(a) was referred. After explaining the expression ' subject-matter of the dispute ' in Article 133(1)(a) Chakravartti, C.J., observed that the true meaning of the expression ' subject-matter of the dispute ' was made clearer by the other phrase, 'subject-matter...still in dispute on appeal.' Reference to the expression ' subject-matter of the dispute in the Court of first instance and still in dispute ' does not throw any light on the present controversy.

14. Reliance was next placed on the observations made in a decision of the Full Bench of the Andhra Pradesh High Court in *Smt. Kishore Devigaru v. B.G. Chorani* : AIR 1960 AP286 . Dealing with the expression ' subject-matter of the dispute in the Court of first instance ' in Article 133(1)(a) of the Constitution the Full Bench approved the observations in *Ratnaswami Aiyar v. Vythinatha Aiyar* : (1903)13MLJ448 which are as follows:

In our opinion the expression the ' subjects in dispute ' signifies the jural relation between the parties to the suit for the determination of which the suit is brought.

It is clear that the expression ' subjects in dispute' means the cause of action or the subject matter of litigation, that is, the right which one party claims as against the other and demands the judgment of the Court upon.

It was held that the subject-matter of the dispute in the Court of first instance has to be determined by looking at the substance of the averments in the plaint and the nature of the suit. The Full Bench did not deal with the question which has now arisen for consideration and therefore the observations are not very helpful.

15. As pointed out at the outset the decisions cited above are not helpful in coming to a conclusion on the question raised. On a construction of the words in Article 133(1)(a) of the Constitution we held that the Sub-clause does not require that the value of the subject-matter of the dispute on appeal should have been more than Rs. 20,000 on the date of the suit in the Court of first instance. The requirements of the Sub-clause will be satisfied if the value of the subject-matter of the dispute in the Court of first instance was over Rs. 20,000 and the value of the subject-matter of the dispute on appeal is more than Rs. 20,000. In view of our decision the petitioner will be entitled to appeal to the Supreme Court, and the leave asked for will therefore be granted.