

In Re: Peram Chennamma

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Court : Chennai

Decided On : Oct-08-1929

Reported in : 122Ind.Cas.337; (1930)58MLJ195

Judge : Venkatasubba Rao and ;Madhavan Nair, JJ.

Appellant : In Re: Peram Chennamma

Judgement :

1. The plaintiff applied to the High Court to be allowed to appeal in forma pauperis. The application was rejected by a Judge of this Court and the plaintiff files this Letters Patent Appeal.

2. Order XLIV, Rule 1, says that the Court shall reject the application unless, upon a perusal thereof and of the judgment, it sees reason to think that the decree is contrary to law or some usage having the force of law, or is otherwise erroneous or unjust. The learned Judge who heard the application rejected it, quoting the words of this section and merely observing that its requirement has not been fulfilled. The lower Court dismissed the plaintiff's suit holding that the claim is barred under Article 93 of the Limitation Act. The question to be decided is, what is the Article applicable to such claim, Article 93 as that Court has held or Article 144 or Article 142 as the appellant contends.?

3. The lower Court; discusses the question at great length and refers to various authorities. It says that Narayanan Chetti v. Konammai Achi 28 M. 338 supports

the plaintiffs contention but expresses the view that it must be taken to have been impliedly overruled as a result of certain later cases. The matter thus requires further investigation. In other words the appeal raises a substantial question of law and we cannot foretell what view the Bench disposing of the appeal may take after hearing arguments on both sides. To decide the point at once would be to pre-judge the appeal. It is unreasonable to hold that Order XLIV, Rule 1 compels us to adopt such a course. This is the view that has generally been taken by this Court. In L. P. A. No. 248 of 1927 Kumaraswami Sastri and Wallace, JJ., were called on to interfere with an order made by single Judge refusing leave. They reversed the order observing that the appeal raised a substantial question of law. The same question was again raised in L. P. A. No. 351 of 1926 to which one of us was a party. The Judge before whom the application was made having rejected it, a Letters Patent Appeal was filed against his order. The Bench heard the appeal reversed the order, stating that the appellant had a prima facie good case. A similar view was taken in *Meruva Parasuramadu v. Mandavilli* 87 Ind. Cas. 960 : 22 L.W. 23 : 49 M.L.J. 353 : A.I.R. 1925 Mad. 1178. It is unnecessary in our opinion that the Court should arrive at a definite and final conclusion that the decree complained against is contrary to law or is otherwise erroneous or unjust. That certainly cannot be the intention of Order XLIV, Rule 1. We, therefore, set aside the order and allow the Letters Patent Appeal.

4. We may add that in conformity with precedents, we have not directed notice to the respondents, before deciding this Letters Patent Appeal (see the two Letters Patent Appeals quoted above, Nos. 351 of 1926 and 248 of 1927).

5. The appellant was allowed to sue in forma, pauperis and no further inquiry seems necessary.

6. We understand that the application was made in time. We direct that the appeal may be admitted.

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