

The Official Assignee Vs. A. Ramalingappa and anr.

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Court : Chennai

Decided On : Dec-16-1925

Reported in : AIR1926Mad554; 94Ind.Cas.456; (1926)50MLJ361

Appellant : The Official Assignee

Respondent : A. Ramalingappa and anr.

Judgement :

Murray Court Trotter, C.J.

1. The Chief Justice: The preliminary point is taken in this case that no appeal lies because the pronouncement appealed against was not a judgment but an order. The words have been the subject of great controversy in these Courts and I certainly do not propose to attempt to go through the welter of conflicting decisions, with many of which I may say I do not in the least agree. It seems to me that the matter is left in a state in which all this Court can do is to take the principle underlying the Full Bench case in Tuljaram Rao v. Alagappa Chettiar (1990) 21 MLJ 1 and apply it as best as it can to the actual matter before it. In this case the learned Judge directed that certain persons who appeared in the first instance on the record as defendants should be added as plaintiffs, the 2nd plaintiff having given up his cause of action and thereby adversely no doubt affected the position of the defendants who were transposed, because, if he obtained a decree, in the working out of that decree they might have their rights affected. However, that is a question on the merits which really does not arise. The learned Chief Justice, Sir Arnold White laid down the following test in the case cited above, Tuljaram Rao v. Alagappa Chettiar (1990) 21 MLJ 1 and, If I may respectfully say so, I think he very wisely guarded himself from setting up a too Procrustean bed in the language that he adopted in laying down the principle for Courts to work out on the facts of each case, he says: "The test seems to me to be not what is the form of the adjudication but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a judgment within the meaning of the clause. An adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not, in my opinion, a judgment within the meaning of the Letters Patent."

2. Then later on he says this and I respectfully agree with it.

I think the decision may be a judgment for the purposes of the section though it does not affect the merits of the suit or proceeding and does not determine any question of

right raised in the suit or proceeding.

3. Applying that and endeavouring as best as I can to see what is its true application, I think it is this, that a determination call it what you will, which has the effect, whether on a technical ground or on the merits, of putting an end to the proceedings as regards the particular people or in toto is a judgment and is appealable; but, if the pronouncement leaves the suit free to go on, then it is not a judgment within the meaning of the clause. In my opinion a distinction may be drawn which unfortunately has not been between the grant and the refusal of leave to sue. It seems to me that it may well be said that refusing leave to sue is a final determination of the matter against the proposed plaintiff. Similarly in a case where a Court held that it had no jurisdiction to entertain the suit I make no doubt that these Courts would accept that in accordance with the decision in *Tuljaram Rao v. Alagappa Chettiar* (1990) 21 MLJ 1 being a final determination. But it seems to me that, if the effect of the order is to allow the proceedings to go on, it is impossible to say that it satisfies the test laid down by Sir Arnold White in the Full Bench case. I do not desire to multiply illustrations, because it is much better to leave these things to be dealt with as they arise. I have therefore contended myself with what appears to me to be a reasonably clear illustration one way or the other. Looking at this order, its effect was to allow the suit to go on for determination on the merits and I am utterly unable to see that the order of transference of these persons from the position of the defendants to that of plaintiffs was in any way a decision the effect of which was to put an end to the suit or proceeding. In my opinion, therefore, without attempting to lay down any different test to that laid down by my learned predecessor in *Tuljaram Rao v. Alagappa Chettiar* (1990) 21 MLJ 1 I think it is not a case which is on the line. It is a case where any person applying ordinary language would without hesitation say that this was an order and not a judgment. I am therefore of opinion that no appeal lies and that this appeal must be dismissed with costs.

Ramesam, J.

4. I agree. The state of the case law has been aptly described by my Lord and, having regard to it I will not attempt any definition of the word 'judgment'. I will only say this, that I am not prepared to say that every order on a contested petition is a judgment. The line dividing judgments from orders must be drawn somewhere short of this. Having regard to the fact that in the case before us no substantial right of the defendants has been adversely affected by the order under appeal, I would say that it does not fall on the judgment side of the line. Beyond this I. make no further attempt.

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