
(1911) ILR (Mad) 228

Madras High Court

Case No: None

Raja Dhamara Kumar
Thimma Nayanam
Bahadur Garu

APPELLANT

Vs

Bukkapatnam
Venkatacharlu and
Others

RESPONDENT

Date of Decision: April 12, 1910

Citation: (1911) ILR (Mad) 228

Hon'ble Judges: Benson, J; Abdur Rahim, J

Bench: Division Bench

Judgement

1. We are of opinion that the appellant in the present case did appeal against the decree, within the meaning of Section 591 of the CPC (Act XIV

of 1882), though the only reason for the appeal was the erroneous decision in regard to the interlocutory order. But the terms of the section in our

opinion allow such an appeal. The decision of the Subordinate Judge as to the construction of Section 591 of the CPC is, no doubt, in accordance

with the decisions in Sher Singh v. Diwan Singh ILR (1900) All. 366 and Caussanal v. Soures ILR (1900) Mad. 260. But the former is based on

an obiter dictum in Sheo Nath Singh v. Ram Din Singh ILR (1896) All. 22 and the decision in Caussanal v. Soures ILR (1900) Mad. 260 is

doubted in Godavari Samulo v. Gajapathi Narayana Deo ILR (1900) Mad. 494 where it is pointed out that it is doubtful if it can be reconciled

with the earlier decision reported in Sankaralinga Mudali v. Ratnasabhapatil Mudali ILR (1898) Mad. 324. The decisions in Googlu Sahoo y.

Premalal Sahoo ILR (1881) Cal. 148 and Savitri v. Ramji ILR (1890) Bom. 232, are directly in favour of the appellant's contention and they are,

we think, in accordance with the language of the section and the principle on which it is based as explained by the Privy Council in Maharajah

Mohesur Singh v. The Bengal Government (1859) 7 M.I.A. 283. at P.302. ""We are of opinion that this objection cannot be sustained. We are not

aware of any law or regulation prevailing in India which renders it imperative Upon the suitor to appeal from every interlocutory order by which he

may conceive himself aggrieved, under the penalty, if he does not so do, of forfeiting for ever the benefit of the consideration of the Appellate

Court. No authority or precedent has been cited in support of such a proposition, and we cannot conceive that anything would be more

detrimental to the expeditious administration of justice than the establishment of a rule which would impose upon the suitor the necessity of so

appealing; whereby on the one hand he might be harassed with endless expense and delay, and on the other inflict upon his opponent similar

calamities. We believe there have been very many cases before this Tribunal in which their Lordships have deemed it to be their duty to correct

erroneous interlocutory orders, though not brought under their consideration until the whole cause had been decided and brought hither by appeal

for adjudication."" We therefore set aside the decree of the Subordinate Judge and remand the appeal to the District Judge for decision on the

merits. Costs will abide the event.