

(2017) 07 MAD CK 0024

MADRAS HIGH COURT

Case No: 10263 of 2017 in SA SR No 32373 of 2014

Sathish Kannan

APPELLANT

Vs

R.Bhavani, & Ors.

RESPONDENT

Date of Decision: July 25, 2017

Acts Referred:

- Code of Civil Procedure, 1908, Section 100, Section 96, Order 41 Rule 1, Order 20 Rule 6A - Second appeal - Appeal from original d

Hon'ble Judges: D.Krishnakumar

Bench: SINGLE BENCH

Advocate: D.Krishnakumar

Judgement

1. According to the petitioner, the respondents filed O.S.No.19 of 2004 before the Additional District Munsif, Cuddalore against the petitioner for declaration of title and permanent injunction. The petitioner filed counter claim. By a common judgment and decree dated 13.8.2013, the suit was decreed and the counter claim was dismissed. The petitioner has filed A.S.No.53 of 2013 challenging the judgment and decree in counter claim and A.S.No.54 of 2013 against the judgment and decree in the suit. Both the appeals were partly allowed. As against the Judgment and decree passed in A.S.No.53 of 2013, the petitioner has filed the Second Appeal before this Court. Since the petitioner failed to get the certified copy of the decree in A.S.No.53 of 2013, the petitioner has filed the present petition to dispense with the filing of the certified copy of the decree passed in A.S.No.53 of 2013.

2. The learned counsel for the petitioner relied upon the decision rendered by the Division Bench of this Court in A.S.SR No.7543 of 2016 and

M.P.SR No.7545 of 2016, dated 4.2.2016 wherein the Division Bench of this Court considered the maintainability of the appeal filed for

numbering the appeal under Order XLI Rule 1 of C.P.C. The relevant portion of the order reads as follows:

""4. On a perusal of the Order XLI Rule 1, as quoted above, it is evident that the decree of the Court below is not a mandatory

document to be annexed with the appeal papers and, therefore, the documents submitted by the learned counsel for the appellant is in

accordance with the said provision of law and, therefore, the objection raised by the Registry cannot be sustained.""

3. According to the petitioner/appellant, as per the provisions of the Code, Memorandum of Grounds shall be accompanied by a copy of the

Judgment. Hence, the Registry cannot insist upon filing the certified copy of decree in the appeal, by virtue of Code of Civil Procedure

(Amendment) Act 46 of 1999, dated 1.7.2002.

4. There is a difference of opinion in the Bar, whether certified copy of the decree is a mandatory document for filing an appeal or the same shall

be dispensed with for the present by the Court for numbering the appeal. This Court has requested the learned Advocate General

Mr.R.Muthukumarasamy to assist the Court.

5. The learned Advocate General has drawn the attention of this Court to the report submitted by the Justice Malaimath Committee. It is useful to

extract relevant portion of the report hereunder:

Certified Copy of the Decree need not accompany Memorandum of Appeal:

The Law Commission of India in its One Hundred Twenty Fourth report expressed the view that Order XLI Rule 1 of the C.P.C.

should be amended so as to dispense with the requirement of annexing a certified copy of the decree to the memorandum of appeal

and to allow the appeal being filed by producing the operative part of the judgment along with the memorandum of appeal. It was

observed in the report that the period of limitation within which the appeal is to be preferred gets extended to the extent of the time-

lag between the date the copy of the decree is applied for and is made ready and that occasionally the delay is such that the limitation

gets extended twice, thrice and in rare cases even ten times. The copy of the decree, according to the report, is hardly relevant or

necessary or even looked into for the purpose of deciding whether the appeal should or should not be admitted under Order XLI

Rule 11 of the Code of Civil Procedure and therefore, the provision regarding the annexation of a copy of the decree to the

memorandum of appeal become anachronistic and is of doubtful utility. (Para 3.26).

We are in agreement with the view that the requirement of annexing a certified copy of the decree to the memorandum of appeal is of

doubtful utility, having regard to the fact that for the purpose of deciding the appeal, whether at the preliminary stage or at the stage of

final hearing, the decree is hardly ever referred to. However, since the law requires the compliance of this formality and the drawing

up of a decree by the trial court often takes considerable time after the judgment is ready and pronounced, the period of limitation

within which the appeal is to be preferred gets extended and thereby the duration of litigation is also increased. [Para 3.27]

It may be pointed out in this connection that under Ss.96 and 100 of the Code of Civil Procedure, an appeal lies from a decree. Order

XLI Rule 1 of the Code, inter alia, provides that the memorandum of appeal shall be accompanied by a copy of the decree appealed

from. Order XX Rule 6 of the Code, which deals with the contents of decree, provides, inter alia, that the decree shall agree with the

judgment and that it shall contain the number of the suit, the names and description of the parties, their registered addresses,

particulars of the claim and the amount of costs incurred in the suit. Order XX, Rule 7 of the Code provides, inter alia, that the decree

shall bear date the day on which the judgment was pronounced. Article 116 appearing in the Second Division of the Schedule to the

Limitation Act prescribes the period of limitation for preferring an appeal to a High Court from any decree or order under the Code

of Civil Procedure and the time from which the period begins to run is the date of the decree or order. Section 12 of the Limitation

Act provides, inter alia, that in computing the period of limitation for an appeal the time requisite for obtaining a copy of the decree

appealed from shall be excluded. [Para 3.28].

On a combined reading of these various statutory provisions it is apparent that an appeal lies from a decree, that the requirement of

annexing a copy of the decree appealed from the memorandum of appeal is mandatory, that the period of limitation is computed with

reference to the date of decree and that the time requisite for obtaining a copy of the decree is excluded while computing such period.

[Para 3.29].

It is thus, apparent that the requirement of annexing a copy of the decree along with the memorandum of appeal is relaxable if the

decree is not drawn up provided a party desirous of appealing against the decree obtains the requisite certificate from the Court

passing the decree.

Taking into consideration the various statutory provisions bearing upon the point under consideration, we are of the view that the

requirement of annexing a copy of the decree to the memorandum of appeal needs to be dispensed with. We, therefore, recommend

that not only Order XLI Rule 1 of the Code of Civil Procedure but also S.96 and 100 of C.P.C. and S.12 and Article 116 of the

Limitation Act will require to be suitably amended in order to achieve the purpose of cutting short the length of litigation and the

extension of the period of limitation on account of the requirement of annexing a copy of the decree to the memorandum of appeal. A

portion of Order XX, Rule 6-A will also have to be deleted. The amendment can take the form of a deeming provisions similar to the

one found in Order XX, Rule 6-A, sub-rule (2) Clauses (a) and (b) which enables the last or operative part of the judgment being

treated as decree. At the same time, however, the requirement of annexing a certified copy of the judgment to the memorandum of

appeal will have to be made mandatory and it will also have to be provided that the judgment shall indicate the names, descriptions

and registered addresses of all the parties to the suit and particulars of the claim including the valuation for the purpose of jurisdiction

and Court fee. Such a provision, in our opinion, will go a long way in minimising the length of period between the date of

pronouncement of judgment and the presentation of appeal [Para 3.31].

6 Order XLI Rule 1, C.P.C. reads as follows:

ORDER XLI-APPEALS FROM ORIGINAL DECREES 1 . Form of appeal. What to accompany memorandum- (1) Every appeal

shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer

as it appoints in this behalf. The memorandum shall be accompanied by a copy of the Judgment:

[Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or

more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the

Appellate Court dispense with the filing of more than one copy of the judgment.

(2) Contents of memorandum-The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the

decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may

allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.

6. The aforesaid provision was amended with effect from 1.7.2002.

Order XX Rule 6-A Preparation of Decree (1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible

and, in any case, within 15 days from the date of judgment is pronounced; but where the decree is not drawn up within the time aforesaid, the

Court shall if requested so to do by a party desirous of appealing against the decree, certify that the decree has not been drawn up and indicate in

the certificate the reasons for the delay, and thereupon.

(a) An appeal may be preferred against the decree without filing copy of the decree and in such a case last paragraph of the judgment shall,

for the purpose of Rule 1 of Order XLI, be treated as a decree; and

(b) So long as the decree is drawn up, the last paragraph of the judgment shall be deemed to be the decree for the purpose of execution and the

party interested shall be entitled to apply for a copy of that paragraph only without being required to apply for a copy of the whole of the judgment;

but as soon as a decree is drawn up, the last paragraph of the judgment shall cease to have the effect of a decree for the purpose of execution or

for any other purpose.

7 It is useful to extract Section 96, C.P.C. as follows:

Appeals from original decrees 96. Appeal from original decree- (1) Save where otherwise expressly provided in the body of this

Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original

jurisdiction the Court authorized to hear appeals from the decisions of such Court.

28 (2) An appeal may lie from an original decree

passed ex parte. (3) No appeal shall lie from a decree passed by the Court with the consent of parties. [77] [(4) No appeal shall lie,

except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Cause, when the amount or value

of the subject-matter of the original suit does not exceed three thousand rupees.

8. Section 100, C.P.C. reads as follows:

Section 100: Second appeal- (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time

being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court,

if the High Court is satisfied that the case involves a substantial question of law. (2)

An appeal may lie under this section from an

appellate decree passed ex parte. (3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial

question of law involved in the appeal. (4) Where the High Court is satisfied that a substantial question of law is involved in any case,

it shall formulate that question. (5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of

the appeal, be allowed to argue that the case does not involve such question : Provided that nothing in this sub-section shall be

deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial

question of law, not formulated by it, if it is satisfied that the case involves such question.""

9. On a perusal of the report submitted by Justice Malaimath Committee, Justice Malaimath has recommended not only to amend Order XLI Rule

1 C.P.C. but also Section 96 and 100 C.P.C. and Section 12 and Article 116 of Limitation Act to achieve the purpose of cutting short the length

of litigation and the extension of the period of limitation on account of the requirement of annexing a copy of the decree to the memorandum of

appeal. But the provision of Order XX Rule 6-A C.P.C. alone has been amended for dispensation of decree. But under Order XX, Rule 6-A

C.P.C., the Judgment shall cease to have the effect of decree when the copy of the decree is available to the party and Section 96 and 100,

C.P.C. has not been amended.

10. It is clear from the report submitted by the Justice Malaimath Committee that the Committee has recommended to amend the provisions under

Order XX Rule 6-A, Section 96 and 100 of C.P.C. and Section 12 and Article 116 of Limitation Act. Order XLI Rule 1 C.P.C. has been

amended under Amendment Act 46 of 1999 with effect from 1.7.2002 for dispensation of decree and Order XX Rule 6-A C.P.C. has been

amended as per Amendment Act 46 of 1999 with effect from 1.7.2002. But the provisions under Section 96 and 100 C.P.C. have not been

amended. Therefore, the provisions under Section 96 and 100 C.P.C. are mandatory. Hence, dispensation of decree is only for numbering of the

Second Appeal as decided by the Division Bench of this Court in A.S.SR No.7543 of 2016 and M.P.SR No.7545 of 2016, dated 4.2.2016

11. It is clear from the aforesaid provision under Order XLI Rule 1 C.P.C. that every appeal shall be preferred in the form of Memorandum,

which shall be accompanied by a copy of the Judgment.

12. The learned Advocate General has also drawn the attention of the Court that the provisions of Section 96 and 100 C.P.C. have to be

complied with in the light of the Order XX Rule 6-A, C.P.C. Once decree is made available to the party by the Court, the Judgment shall cease to

have the effect of the decree for the purpose of execution or any other purpose.

13. Therefore, I am of the view that after receipt of the certified copy of the decree, the same shall be filed in the appeal to satisfy the amended

provision under Order XX Rule 6-A of C.P.C. Hence, Registry is also directed to number the appeal on compliance of the Order XLI Rule 1

C.P.C. on furnishing particulars of filing the certified copy of the decree in the appeal. It is made clear that dispensation of filing the certified copy

of the decree in appeal under Order XLI Rule 1 C.P.C. is only for the purpose of numbering the appeal. As per the aforesaid provisions of the

Code, once the decree is drawn up, the Judgment is cease to have the effect of the decree.

14. In the light of the aforesaid amended provisions of the C.P.C. and the order passed by the Division Bench of this Court cited supra, the

Memorandum of appeal shall be accompanied by a copy of the Judgment for filing a Second Appeal. Therefore, Registry has to entertain the

appeal without insisting upon certified copy of the decree at the time of numbering the appeal for the present with an undertaking to file certified

copy of the decree.

In the result, the petition is disposed of with the above directions. No costs.