

## PRIVY COUNCIL.

IN THE MATTER OF THE PETITION OF YARLAGADDA  
DURGA PRASADA NAYADU AND ANOTHER.

P.C.\*  
1903.  
December 2.

[On petition relating to an appeal from the High Court  
of Judicature at Madras.]

*Privy Council, practice of—Decision of High Court in execution of order in Council  
—Appeal from such decision—Erroneous interpretation of order in Council  
—Expression of opinion by Judicial Committee on petition pending appeal.*

Where the High Court, in execution of an order in Council, had interpreted the order in a manner not intended, the Judicial Committee, pending an appeal from the High Court decision, expressed an opinion as to the intention of the order.

PETITION in the matter of the consolidated appeals and cross appeals of *Mallikarjuna Prasada Nayadu v. Durga Prasada Nayadu* (Privy Council Appeals Nos. 87 and 88 of 1898) and of *Mallikarjuna Prasada Nayadu v. Venkata Ramalinganna* (Privy Council Appeals Nos. 89 and 90 of 1898) from decrees (9th March 1894) of the High Court at Madras.

The parties to the above appeals were three brothers Mallikarjuna, Durga Prasada, and Ramalinganna, the eldest of whom, Mallikarjuna, was Zamindar of the estate of Challapalli or Devarakota, and the petition, which was filed by the two younger brothers, stated the following facts;—

In 1880 Durga Prasada brought a suit for partition against his brothers which, in 1882, was dismissed by the District Judge of Kistna, decreed by the High Court in 1885, and again dismissed by the Privy Council on 1st May 1890, on the ground that the estate was impartible and that the eldest son was entitled to hold it alone (see *Srimantu Raja Yarlagadda Mallikarjuna v. Srimantu Raja Yarlagadda Durga*(1)). In that suit the High Court, having decreed partition, had on 10th November 1887 made an order allowing each of the present petitioners maintenance at Rs. 500 a month from 25th April 1887 which sum was to be debited

\* Present : Lord MACNAGHTEN, Lord LINDLEY, Sir ARTHUR WILSON and Sir JOHN BONSER.

(1) L.R., 17 L.A., 134; I.L.R., 13 Mad., 406.

IN THE  
MATTER OF  
THE PETITION  
OF  
YARLAGADDA  
DURGA  
PRASADA  
NAYADU.

against their shares of the mesne profits in the partition suit; and under that order the petitioners received that maintenance for 39 months (May 1887 to July 1890) amounting to Rs. 19,500 each.

In April 1891 the petitioners brought two separate suits against Mallikarjuna for maintenance at Rs. 2,000 a month, and for arrears of past maintenance at the same rate, and in his judgment in these suits the District Judge of Kistna, on 4th December 1891, said, "the decree will be for twelve years' maintenance at Rs. 500 a month, deducting 39 months which they" (the petitioners) "have already received: there will also be maintenance at Rs. 500 a month for seven months, the duration of these suits: there will be maintenance from this date at the rate of Rs. 750 per mensem." The decree in each suit was "that defendant do pay to plaintiff maintenance at Rs. 750 per mensem on 4th of each month beginning with January 4th, 1892, as also Rs. 56,000, with interest at 6 per cent. per annum from this date to date of payment, towards past maintenance the whole to be a charge in the Challapalli Zamindari."

From these decrees Mallikarjuna appealed to the High Court. On 22nd April 1892 he made an application to the District Judge in the partition suit for a refund of the Rs. 19,500 which had (under the order of the High Court) been paid in that suit to each of the petitioners, but his application was refused.

On 9th March 1894 the High Court, in the appeals in the maintenance suits, reversed the decrees of the District Judge as to Rs. 52,500 arrears of maintenance, but confirmed those decrees in allowing to the petitioners the sums of Rs. 19,500 received by them, as well as the sum of Rs. 3,500 for maintenance pending the suit in the District Court, and also confirmed the decrees as to future maintenance. The High Court, however, held that the petitioners must refund the sums of Rs. 19,500 received in the partition suit. On the same day (9th March 1894) the High Court reversed the order of the District Judge of 22nd April 1892 and allowed the application for a refund of the sums of Rs. 19,500 but without interest, making an order to that effect. Both the petitioners and Mallikarjuna appealed to His Majesty in Council from these orders of the High Court.

Pending the appeals Mallikarjuna, on the 28th October 1896, applied in the maintenance suits to set off the sums of Rs. 19,500, the refund of which had been ordered in the partition suit, against

the same sums decreed to the petitioners in the maintenance suits, and that application was granted, the petitioners not objecting.

On 7th August 1900 the Judicial Committee of the Privy Council reversed, in appeal, the decrees of the High Court in the maintenance suits (see *Raja Yarlagadda Mallikarjuna Prasada Nayudu v. Raja Ywrlagadda Durga Prasada Nayudu*(1)) and restored the decrees of the District Judge as to the arrears of maintenance. The decree (so far as material) was as follows:—"It is hereby ordered that the said decree of the High Court of Judicature at Madras, dated 9th March 1894, be and the same is hereby discharged in so far as it orders and decrees that in amendment of the decree of the District Court of Kistna, dated 4th December 1891, as to arrears of maintenance and property charged, the amount of Rs. 23,000 be substituted for Rs. 56,000 awarded in the said decree of the said District Court, . . . and in lieu thereof it is hereby ordered that the orders contained in the said decree of the said District Court as to the payment of Rs. 56,000, as to the interest thereon, and as to the property on which the same are to be charged be and the same are hereby restored."

IN THE  
MATTER OF  
THE PETITION  
OF  
YARLAGADDA  
DURGA  
PRASADA  
NAYUDU.

On 16th August 1900 Mallikarjuna applied to the District Court stating that he had in accordance with the order of the Privy Council paid into the treasury two sums of Rs. 52,500 (being the sum of Rs. 56,000 after deducting Rs. 3,500 which had been paid in 1892 after the decree of the District Judge), and on 22nd August 1900 the petitioners applied for payment to them of the sums of Rs. 52,500.

On 11th March 1901 the petitioners applied for execution of His Majesty's order in Council so far as it remained unexecuted, giving credit for the sums of Rs. 52,500 received out of Court. On the 13th March 1901 Mallikarjuna put in a petition claiming that the sums of Rs. 19,500 with interest ought to be deducted from the amount remaining to be recovered under the Privy Council order. The District Judge disallowed this claim, but on appeal by Mallikarjuna the High Court on 27th January 1903 decided that the petitioners must give credit for the said sums of Rs. 19,500.

The petitioners submitted that the proper construction of His Majesty's order in Council was that the petitioners should be

(1) I.L.R., 27 I.A., 151; I.L.R., 24 Mad., 147.

IN THE  
MATTER OF  
THE PETITION  
OF  
YARLAGADDA  
DURGA  
PRASADA  
NAYADU.

placed in the same position as they were placed in by the decree of the District Judge, and pointed out that the sums of Rs. 19,500 which had already been allowed for and deducted in His Majesty's order would, under the decision of the High Court, be deducted a second time.

The petitioners prayed His Majesty in Council to give such directions, make such declarations, and (if necessary) so amend the order in Council as to give it the effect intended.

Mr. *L. De Gruyther* for the defendant contended that as an appeal had been filed from the decision of the High Court in the execution of the order of His Majesty in Council, that order could not be dealt with until the appeal came on for hearing: the petition was an informal appeal from the form of the order.

[Lord MACNAGHTEN referred to *Rajunder Narain Rae v. Bijai Govind Sing*(1) as to the power of the Judicial Committee in dealing with orders in Council.]

Sir *W. Rattigan*, K.C., and Mr. *Cowell* contended that, it being certain that there was no intention that the sums of Rs. 19,500 should be twice deducted, words should be added to the order in Council which would make that clear to the Court that had to execute the order, and so render the expense of an appeal unnecessary.

Mr. *De Gruyther* replied.

On 2nd December 1903 their Lordships expressed the following opinion which was delivered by Lord MACNAGHTEN.

JUDGMENT.—Their Lordships are of opinion that the orders of His Majesty in Council of the 7th August 1900 were intended to uphold the decrees of the First Court, and to decide that the sum due to the petitioners at the date of His Majesty's orders was the balance of Rs. 56,000, after deducting the sum of Rs. 19,500 in question between the parties.

Their Lordships will make no order as to the costs of this petition, and direct the petition to stand over generally.

Solicitors for the petitioners—Messrs. *Frank Richardson and Sadler*.

Solicitor for Raja Yarlagadda Mallikarjuna—Mr. *R. T. Tasker*.

(1) 2 Moo. I.A., 181 at pp. 207 and 216.