APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Sadasiva Ayyar.

1913. September 18.

N. VENKATARANGA ROW GARU (FIRST RESPONDENT IN APPEALS NOS. 133 AND 134 OF 1904 ON THE FILE OF THE HIGH COURT), PETITIONER IN BOTH,

v.

RAJA K. V. NARASIMHA RAO GARU *et al* (THE OTHER RESPONDENTS AND APPELLANTS IN BOTH), RESPONDENTS.*

Privy Council, appeal to, maintainability of—Civil Procedure Code (Act V of 1908), sec. 109—Orders remanding, not final orders, so as to be appealable to Privy Council—Civil Procedure Code (Act V of 1908), sec. 105.

Orders of the High Court reversing on appeal two decisions of the lower Court, and remanding the cases for trial, one of them on the ground that the lower Court was wrong in dismissing the suit for insufficiency of the pleadings, and the other on the ground that the lower Court was wrong in dismissing the suit on the plea of bar contained in section 43 of the old Civil Procedure Code, are purely preliminary or interlocutory orders, which do not decide, the respective rights of the parties, and are not *final* orders within the meaning of section 109, Civil Procedure Code, so as to be capable of being appealed against to the Privy Council.

Tirunarayana v. *Gopalasami* (1890) I.L.R., 13 Mad., 349, followed.

Saiyid Muzhar Hossein v. *Mussamat Bodha Bibi* (1895) I.L.R., 17 All., 1912, applied.

Forbes v. *Ameeroonissa Begum* (1865) 10 M.I.A., 340 at p. 359, referred to.

Section 105, Civil Procedure Code, does not apply to appeals to His Majesty in Council.

PETITIONS praying that the High Court will be pleased to grant leave to appeal to His Majesty in Council against the orders of MILLER and SADASIVA AYYAR, JJ. of the High Court, Madras, in Appeals Nos. 133 and 134 of 1904, presented against the decrees of M. D. BELL, the District Judge of Kistna at Masulipatam, in Original Suits Nos. 45 and 56 of 1895.

The necessary facts appear from the order.

T. Ranga Achariyar and *S. V. Padmanabha Ayyangar* for the petitioner.

* Civil Miscellaneous Petitions Nos. 283 and 284 of 1910.

VENKATA-RANGA ROW v. NARASIMHA RAO.

MILLER AND SADASIVA AYYAR, JJ.

K. Srinivasa Ayyangar, *S. Gopalaswami Ayyangar*, *P. Somasundram* for *P. Narayanamurti* and *S. Varada Achariyar* for the respondents.

ORDER.—We find ourselves unable to give the certificate applied for, for the reason that the orders of this Court are not final orders within the meaning of section 109 of the Civil Procedure Code.

In these cases, no question between the parties in regard to their rights as against one another has been decided, one case has been remanded for trial on the ground that the District Judge was wrong in deciding that the pleadings were insufficient and the other on the ground that he was wrong in applying section 43 of the former Code of Civil Procedure in bar of the suit. These are clearly preliminary points having no connection with the merits of the suits. We are invited for the petitioners to hold that the orders of remand are final orders within the meaning of section 109 of the Civil Procedure Code; but we are unable to accept the invitation. In this Court the only authority cited, *i.e.*, *Tirunarayana* v. *Gopalasami*(1) is against the petitioners. We have been referred to the decisions of the Privy Council in *Rahimbhoy Habibhoy* v. *C. A. Turner*(2), *Saiyid Muzhar Hossein* v. *Mussamat Bodha Bibi*(3), *Radha Krishnan* v. *The Collector of Jaunpur*(4), and *Chandra Kunwar* v. *Chaudhri Narpat Singh*(5). None of these cases, as we understand them, is an authority in favour of the petitioner. In *Rahimbhoy Habibhoy* v. *C. A. Turner*(2) and *Saiyid Muzhar Hossein* v. *Mussamat Bodha Bibi*(3), where appeals were held competent, issues on the merits on which the decision of the disputes depended had been decided, and in the latter case their Lordships distinguished the case before them from cases in which the decision reversed had proceeded upon a preliminary point, and observe with reference to such cases that the practice of the Allahabad High Court in treating orders of remand as interlocutory was probably quite correct. In *Chandra Kunwar* v. *Chaudhri Narpat Singh*(5), the appeal was heard by the Privy Council, but it is not clear to us that the decision reversed by the High Court had proceeded merely upon a preliminary point; there is no discussion of this question in the

(1) (1890) I.L.R., 13 Mad., 349. (2) (1891) I.L.R., 15 Bom., 155 (P.C.).
(3) (1895) I.L.R., 17 All., 112. (4) (1901) I.L.R., 23 All., 220.
(5) (1907) I.L.R., 29 All., 184 (P.C.).

report and it does not appear that objection was taken to the competency of the appeal.

In *Ahmed Husain* v. *Gobind Krishna Narain*(1), the High Court declined to grant a certificate in a case similar to the present cases and did not refer to *Chandra Kunwar* v. *Chaudhri Narpat Singh*(2). In *Forbes* v. *Ameeroonissa Begum*(3) an order of remand is described as an interlocutory order. There is thus no decision of the Privy Council to the effect that orders like those made in the cases before us are final orders within the meaning of the provision of law which we are considering; and the only authority in this Court points the other way.

We are asked to hold that under the present Code of Civil Procedure these orders must be deemed to be final, because under section 105 of that Code it is necessary to appeal against them without waiting for the final decision of the case. Section 105 of the Code does not apply to appeals to His Majesty in Council and does not, we think, operate to give a new meaning to the word "final" in section 109, or supply a guide to the interpretation of that section on this point. We agree with the observations in *Ahmed Husain* v. *Gobind Krishna Narain*(1). A different view was taken in *Sarasmani Debi* v. *Basa Krishna Banerjee*(4) where most of the decisions are considered and it may be that that case is distinguishable from *Krishna Chandra* v. *Ram Narain*(5), where the judgment does not give reasons at length. But we think that the observation in *Saiyid Muzhar Hossein* v. *Mussamut Bodha Bibi*(6) supports the authority of *Tirunarayana* v. *Gopalaswami*(7) and that we ought to follow that decision.

We reject the petitions. The petitioner will pay to the first, second, third, fifth, sixth, seventh, ninth, eleventh, fifteenth, and sixteenth respondents in Civil Miscellaneous Petition No. 283 of 1910, Rs. 102 and to the first, second, fourth, seventh, to twelfth, eighteenth, and nineteenth respondents in Civil Miscellaneous Petition No. 284 of 1910, Rs. 102 for their costs of these petitions.

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(1) (1911) I.L.R., 33 All., 391.
(2) (1907) I.L.R., 29 All., 184.
(3) (1865) 10 M.I.A., 340 at p. 359.
(4) (1907) 10 C.L.J., 336.
(5) (1913) 18 C.L.J., 124.
(6) (1895) I.L.R., 17 All., 112.
(7) (1890) I.L.R., 13 Mad., 349.