

MURARI RAO
v.
BALAVANTH
DIKSHIT.

involved is the question of priority of heirs under the Mitakshara Law applicable to this presidency and it is a question which can admit of no doubt, when it has been definitely laid down by this Court as the law of the land. In the present case, therefore, we think that the error was one apparent on the face of the record and that therefore the District Judge had power to grant a review under the provisions of Order XLVII. We are not prepared to accept appellants' contention that the word 'error' must necessarily be limited to errors of fact, but consider that there are cases in which an error of law can also come within the meaning of the rule.

The appeal accordingly fails and is dismissed with costs.

K R.

APPELLATE CIVIL.

Before Mr. Justice Krishnan and Mr. Justice Wallace.

SRI RAJA BOMMADEVARA SATYANARAYANA
VARAPRASADA RAO BAHADUR (PETITIONER),

v.

SRI RAJA BOMMADEVARA VENKATA BHASHYA-
KARLA RAO BAHADUR (RESPONDENT).*

Civil Procedure Code (Act V of 1908) sec. 111—Leave to appeal to His Majesty in Council—Order of a single judge of the High Court in Revision—Order, final—No appeal before two judges of the High Court under Letters Patent, as amended—Application for leave to appeal to Privy Council, whether competent—Letters Patent (Madras), clauses 39 and 44—Act of Indian legislature whether competent to abrogate provisions of Letters Patent—Sec. 111, Civil Procedure Code, whether abrogates clause 39 of Letters Patent.

* Civil Miscellaneous Petition No. 1594 of 1923.

The High Court has no power to grant leave to appeal to His Majesty in Council against an order of a single judge of the High Court passed in the exercise of its Revisional Jurisdiction. The Letters Patent are, under clause 44, subject to modification by an Act of the Indian Legislature, and the latter has, by section 111 of the Civil Procedure Code, abrogated the right of appeal to His Majesty in Council against orders passed by a single judge of the High Court.

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PETITION under clause 39 of the Letters Patent praying that the High Court will be pleased to grant a certificate of leave to appeal to His Majesty in Council against the order of KRISHNAN, J., in Civil Revision Petition No. 361 of 1922 filed against the order of the Court of the Subordinate Judge of Masulipatam in Execution Application No. 348 of 1922 in Original Suit No. 18 of 1920 on the file of the District Court of Kistna.

The plaintiff herein instituted this suit against his father for partition of the South Vallur estate and other family properties and for delivery to him of his share. A compromise was entered into and a decree was passed in the suit in accordance with the compromise. The compromise provided, *inter alia*, that the father was to be in management of the minor's share also, but if he alienated or incurred debts so as to affect the minor's interest without the consent of his mother, who acted as his guardian, the plaintiff was to be entitled to apply in execution for partition and separate possession of his share. Alleging that the father had acted contrary to the terms of the compromise, the plaintiff filed a petition in the Court which passed the decree, for the passing of the final decree in the suit, and for division and delivery of possession of his share in the properties. The defendant objected, but the Subordinate Judge allowed the petition and directed partition to be made. Against this Order, the defendant preferred a Civil Revision Petition to the High Court. The petition was heard by

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KRISHNAN, J., who dismissed it. The defendant then preferred this Civil Miscellaneous Petition for leave to appeal to His Majesty in Council.

C. V. Anantakrishna Ayyar and *M. Ramachandra Rao* for petitioners.

V. Ramadoss and *V. Krishna Mohan* for respondent, took a preliminary objection, that the petition for leave is incompetent under section 111, Civil Procedure Code, though the order of a single judge is final. Under clause 44 of Letters Patent the right of appeal, if any, is subject to the Act of the Indian Legislature. Reference was made to *In re James Currie*(1), *In re Nataraja Aiyar*(2), *Brij Indar Singh v. Kanshi Ram*(3).

C. V. Anantakrishna Ayyar for petitioner. Clause 39 of the Letters Patent gives a right of appeal in such cases.

JUDGMENT :—

This is an application for leave to appeal to the Privy Council against an order passed by one of us sitting as a single judge, under section 115 of the Civil Procedure Code and section 107 of the Government of India Act. That order confirmed the order of the lower Court and dismissed the Civil Revision Petition filed in this Court. The present petitioner, who was the petitioner in the Revision Petition has applied to us to grant him leave to appeal to the Privy Council.

A preliminary objection is taken to this application on the ground that section 111, Civil Procedure Code, bars any such application. Section 111 says notwithstanding anything contained in section 109, no appeal shall lie to His Majesty in Council among other things (a) from the decree or order of one judge of a High

(1) (1897) I.L.R., 21 Bom., 405.

(2) (1913) 25 M.L.J., 585.

(3) (1917) 42 I.C., 43 (P.C.).

Court established under the Indian High Courts Act, 1861. This is manifestly an application for an appeal from such an order. It is difficult to see how the petitioner can escape the obstacle placed in his way by this section. His learned vakil says, however, that under clause 39 of the Letters Patent a right of appeal is given in all cases of final orders or decrees of this High Court to the Privy Council and since the amendment of the Letters Patent whereby the right of appeal to two judges from the judgment of a single judge sitting in revision has been taken away, this order which was passed in such proceedings has become final and therefore he contends that he is entitled to ask for leave. Clause 44 of the Letters Patent expressly provides that any provision in the Letters Patent can be altered or controlled by the legislation of the Governor-General in Legislative Council; and such an enactment is the Civil Procedure Code, and when there is express provision in that Code, we must hold that that provision must be given effect to even if it is possible to bring the case under the general wording of clause 39 of the Letters Patent. In these circumstances we have no other alternative but to dismiss the application with costs.

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