SATTAYYA PADAYACHI v. SOUNDARATHACHI.

oblige litigants by taking documents in this way. I should like it to be understood that, so far as I am personally concerned, any such application would be received by me with great disfavour.

RAMESAM, J.

RAMESAM, J.—I agree with the judgments just delivered.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Krishnan and Mr. Justice Waller.

1923, November 16.

SONACHALAM PILLAI AND NINE OTHERS (APPELLANTS AND PETITIONERS), APPELLANTS,

v.

KUMARAVELU CHETTIAR AND SIX OTHERS (RESPONDENTS) RESPONDENTS.*

Clause 15 *of the Letters Patent—Decree of a Mufassal Court declaring plaintiffs' right and restraining the defendants by an injunction—Appeal to High Court—Single Judge's refusal to stay execution—Appeal against refusal, maintainability of.*

An order of a single Judge of the High Court refusing to stay execution of a decree of a Mufassal Court pending an appeal therefrom to the High Court is a "judgment" within the meaning of clause 15 of the Letters Patent and an appeal therefrom is maintainable under the clause. *Tuljaram Row* v. *Alagappa Chettiar* (1912) I.L.R., 35 Mad., 1 (F.B.), followed.

Held further that the fact that, in addition to the grant of a perpetual injunction against the defendants, the decree granted also a declaration in favour of the plaintiffs is no ground for refusing to stay the execution of the injunction.

Though in refusing to stay execution the Judge exercised a discretion, interference in appeal with the order is justifiable when the refusal is based upon a wrong view of the law that no stay of injunction could be granted in cases where there is also a declaration.

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* Letters Patent Appeal No. 20 of 1923.

APPEAL under clause 15 of the Letters Patent against the Order, dated 17th October 1923, of Mr. Justice WALLACE in Civil Miscellaneous Petition No. 1963 of 1923, in Appeal No. 232 of 1923 preferred to the High Court against the decree of the Subordinate Judge of Tuticorin in Original Suit No. 2 of 1920.

The facts are given in the Judgment.

Advocate-General (C. Madhavan Nayar) with *T. R. Venkatrama Sastri*, *T. Nallivasam Pillai* and *K. S. Sankara Ayyar* for (petitioners) appellants.

T. R. Ramachandra Ayyar with *T. L. Venkatarama Ayyar* and *V. Sambandham Chetti* for respondents.

ORDER.

KRISHNAN, J. KRISHNAN, J.—This is an appeal under clause 15 of the Letters Patent against the Order of WALLACE, J., sitting as a single Judge in the Admission Court, refusing to stay execution of the decree in O.S. No. 2 of 1920 on the file of the Subordinate Judge's Court of Tuticorin, pending disposal of appeal No. 232 of 1923 which has been filed against that decree and which has been admitted and is now pending in this Court. The suit was brought by certain Vaniyars of Tiruchendur in the Tinnevelly district for a declaration that they were entitled to enter the well-known temple there and go up to the figure of the Nandi in front of the inner shrine, and for an injunction to restrain the trustees and others from preventing them from doing so. The suit was decreed by the Subordinate Judge in their favour, and against that decree appeal No. 232 of 1923 has, as already stated, been filed in this Court by the trustees and others.

An application was made to WALLACE, J., for stay of execution of the decree pending the disposal of the

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appeal and, that having been refused, this present appeal is filed against that order.

A preliminary objection is taken to the appeal on the ground that no appeal lies under clause 15 of the Letters Patent against an order refusing to stay the execution of a decree. The decision of this question turns on the meaning to be given to the word "judgment" in clause 15 of the Letters Patent. There is nothing in the Letters Patent itself to enable one to say what the exact meaning of the term "judgment" is and what orders would be covered by that term. The word "judgment" is defined in section 2 of the Code of Civil Procedure as meaning "the statement given by the Judge of the grounds of a decree or order" passed by him. As this definition is intended for the construction of the word "judgment" as used in the Code of Civil Procedure only, it obviously cannot be applied to the word as used in the Letters Patent. The meaning of the word "judgment" in the Letters Patent has been, however, the subject matter of consideration in several reported cases. The earliest one which has been brought to our notice is the case of *Desouza* v. *Coles*(1), where at page 387, BITTLESTON, J., laid down that

> "It must be held to have the more general meaning of any decision or determination affecting the rights or the interest of any suitor or applicant."

It was again defined by COUCH, C.J., in the leading judgment on the point in Calcutta in *The Justices of the Peace for Calcutta* v. *The Oriental Gas Company*(2), as being

> "a decision, whether final, or preliminary, or interlocutory which affects the merits of the question between the parties by determining some right or liability,"

(1) (1868) 3 M.H.C.R., 384. (2) (1872) 8 B.L.R., 433.

and this definition was approved of by MARKBY, J. Since then, the meaning of the term has again been considered by a Full Bench of the Madras High Court in *Tuljaram Row* v. *Alagappa Chettiar*(1). There, the then learned Chief Justice, Sir ARNOLD WHITE, was of opinion that the definition given by BITTLESTON, J., went too far and that the one given by the Calcutta High Court was too narrow, and he himself laid down the test to be applied to decide whether any particular order amounted to a judgment or not within the meaning of the Letters Patent, as follows, at page 7 :—

"The test seems to me to be not what is the form of the adjudication but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a judgment within the meaning of the clause."

And he added

"An adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not, in my opinion, a judgment within the meaning of the Letters Patent."

Following this latter part of the definition as to what is not a judgment, he held in the particular case before him, which was one of an appeal against an order refusing to frame an issue, that no appeal lay, and that view was adopted by the Full Bench. KRISHNASWAMI AYYAR, J., who sat with the learned Chief Justice, also agreed with the view taken by him as to the meaning of the word "judgment" and with the order proposed by him; AYLING, J., the third Judge in the Full Bench, merely contented himself by saying that he agreed that the answer to the question, referred for disposal, should be in the negative.

(1) (1912) I.L.R., 35 Mad., 1 (F.B.)

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(1) (1912) I.L.R., 35 Mad., 1 (F.B.)

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He did not discuss the question as to what amounted to a judgment at all. This ruling has been since accepted by this Court as correctly laying down the meaning of the word "judgment," and has been cited and followed in several subsequent decisions; see, for example, the cases in *Srinivasa Iyengar* v. *Ramasawmi Chettiar*(1), *Kulasekara Naicker* v. *Jagadambal Ammal*(2), *Kanayalal Bhoja* v. *Paramasukdoss*(3), and *Krishna Reddy* v. *Thanikachala Mudali*(4). It has been brought to our notice that the same view has been accepted and followed by the Lahore High Court in *Gokal Chand* v. *Sanwal Das*(5), which, it may be noted, was an appeal against a refusal to stay the execution of a decree, and also in *Ruldu Singh* v. *Sanwal Singh*(6), where the learned Chief Justice of the Lahore High Court has considered the authorities and has adopted the view of the Madras High Court as to the meaning of the word "judgment" in *Tuljaram Row* v. *Alagappa Chettiar*(7). The learned Chief Justice elaborately discussed all the cases on the point and, as his judgment has been followed, as stated above, by this High Court since then, I think it only right that we should adopt the same definition. In explaining his meaning, the learned Chief Justice has referred to a number of instances in which he thought an appeal would lie, and one of the instances he mentions in his judgment is an order refusing a stay of execution. He says at page 8

"I should be prepared to hold that an appeal lay from an order refusing a stay of execution";

and he has resiled from his view to the contrary in *Srimantu Raja Yarlagadda Durga Prasada Nayadu* v. *Srimantu Raja Yarlagadda Mallikarjuna Prasada*

(1) (1915) 29 M.L.J., 12 (F.B.)
(2) (1919) I.L.R., 42 Mad., 352 (F.B.)
(3) (1922) 16 L.W., 608.
(4) (1923) 45 M.L.J., 153.
(5) (1920) I.L.R., 1 Lah., 348.
(6) (1922) I.L.R., 3 Lah., 188.
(7) (1912) I.L.R., 35 Mad., 1 (F.B.)

Nayadu(1), to which he was a party. No doubt, when the learned Chief Justice said that an appeal lay from an order refusing a stay of execution, in the Full Bench case, his observation was, in a sense, in the nature of an *obiter dictum*; nevertheless we are bound to follow it and we cannot treat the case *Srimantu Raja Yarlagadda Durga Prasada Nayadu* v. *Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayadu*(1), as good law. The case *Srimantu Raja Yarlagadda Durga Prasada Nayadu* v. *Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayadu*(1), as pointed out to us, has been followed in *Vairavan Chettiyar* v. *Ramanathan Chettiyar*(2) by another Bench of this Court, but in that case there is no discussion whatever on the point in issue as that case merely follows *Srimantu Raja Yarlagadda Durga Prasada Nayadu* v. *Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayadu* (1), and if I am right in thinking that *Srimantu Raja Yarlagadda Durga Prasada Nayadu* v. *Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayadu*(1), is no longer good law, *Vairavan Chettiar* v. *Ramanathan Chettiar*(2), cannot be accepted as good law.

On the respondents' side, besides the two cases, *Srimantu Raja Yarlagadda Durga Prasada Nayadu* v. *Srimantu Raja Yarlagadda Mallikarjuna Prasada Nayadu*(1), and *Vairavan Chettiar* v. *Ramanathan Chettiar*(2), above referred to, our attention was drawn to a number of unreported Letters Patent Appeals, namely, Nos. 24 of 1918, 15 of 1922, 38 of 1921 and 7 of 1923 and it was contended that it was the practice of this Court not to allow Letters Patent Appeals against orders such as the one before us. But all those cases, on a reference to them, will be found to be cases where stay of proceedings in the lower Court was refused; they did not deal with stay of execution at all. Those cases

(1) (1901) I.L.R., 24 Mad., 358. (2) (1921) 14 L.W., 701.

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stand on a different footing altogether, for they fall under the second part of the definition of the Chief Justice quoted above, namely, that

"an adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not, in my opinion, a judgment within the meaning of the Letters Patent."

In Letters Patent Appeal No. 7 of 1923, the appeal was against an order refusing an *interim* injunction. The learned Judges held an appeal lay. I have, therefore, come to the conclusion that the preliminary objection cannot stand and must be overruled, as an appeal lies under the Letters Patent against the order of a single Judge refusing stay of execution pending the disposal of an appeal or second appeal in this Court.

On the merits I quite recognize that the learned Judge of this Court having exercised his discretion in refusing to stay execution, we should not interfere with such exercise of discretion unless there are strong grounds for it. But in this particular case, unfortunately, the learned Judge seems to have been led to the passing of the order that he made, by his view that there being a declaration of the rights of the Vaniyars in the judgment of the lower Court, he could not interfere with the injunction which formed part of the decree. I am unable to adopt this view, for, if it is adopted, in all cases in which a consequential relief is granted along with the declaration, it would be impossible to stay execution. It seems to me that the issue of the injunction ordered by the lower Court in the decree could be stayed by itself, and, whatever rights the decree might have declared, it would not enable the parties to enter the temple and go to the place where they want to go to. I am, therefore, of opinion that the fact of there being a declaration is no bar to this Court staying the execution of the decree.

On the merits, I think that this is a case in which we should grant a stay with some modification of the order of the lower Court pending the disposal of the appeal here. On the one hand, the Vaniyars are anxious to enter the temple, see the deity and perform their worship, and it will be a great hardship to prevent them altogether from doing so, pending the appeal which may last for some time in this Court. On the other hand, there may be a good deal of truth in what the appellants say, viz., that, if the respondents are allowed to enter the temple and go up to the Nandi, the temple will be desecrated and they will have to perform the ceremony of purification at considerable expense, if they succeed in the appeal. I have, therefore, come to the conclusion that the respondents may be allowed to go up from the east to the *dhwajasthambham* in the temple just inside the *gopuram* wherefrom they may have a view of the idol and perform their religious worship there, but that they should not be allowed to go further pending the disposal of the appeal.

I would, therefore, order a modified stay of execution by directing the appellants not to prevent the respondents from going up to the *dhwajasthambham* at times of worship and also directing them to let the respondents have a view of the idol when such worship takes place. The order of the lower Court will be stayed with that reservation.

In the circumstances, I think the proper order as to costs is to direct each party to bear his own costs of the Letters Patent Appeal and of the petition for stay.

WALLER, J.—I agree that we should follow *Tuljaram Row* v. *Alagappa Chettiar*(1). Were the question still open to argument, I should myself be inclined to adopt the view of BITTLESTON, J., in *Desouza* v. *Coles*(2), that it is

(1) (1912) I.L.R., 35 Mad., 1. (F.B.) (2) (1868) 3 M.H.C.R., 384.

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"impossible to prescribe any limits to the right of appeal founded on the nature of the order or decree appealed against."

The word 'judgment' in section 15 of the Letters Patent includes decrees and orders. Judgment is defined in HALSBURY as

"any decision given by a Court on a question or questions at issue between the parties to a proceeding properly before the Court."

In the Civil Procedure Code an "order" is described as the formal expression of any decision of a Civil Court which is not a decree. This description is wide enough to cover all decisions of any kind *inter partes*, and so the Code has provided that only certain orders can be appealed against.

The word "judgment" as employed in section 15 of the Letters Patent is a very general term. The statute does not define it or limit its operation in any way. I venture to doubt whether we are entitled to define it or limit its operation by judicial interpretation. What has been achieved by that process is an *a priori* classification of interlocutory orders into interlocutory orders proper and interlocutory orders which amount to judgments. I think that all orders passed after contest *inter partes* are judgments within the meaning of section 15 of the Letters Patent and that, if it be desired to limit the right of appeal against certain orders, the proper method of achieving that end is by providing, as has been done in the Civil Procedure Code, that only certain orders can be appealed against.

I agree with my learned brother that the fact that part of the decree is declaratory is no bar to a stay of execution being granted. I understand that the parties are willing to accept a stay on the terms indicated. I therefore concur in the order of my learned brother.

N.R.