

MOHIESWARA
RAO
v.
DURGAMBA.

and setting aside the decree of the lower Court, we give a direction that the plaintiff be given one room to be built as above.

The respondent will pay the appellants' costs throughout.

N.B.

APPELLATE CIVIL.

*Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice,
Mr. Justice Coultts Trotter and Mr. Justice Ramesam.*

1923,
October 24.

SATTAYYA PADAYACHI AND SIX OTHERS (APPELLANTS
AND DEFENDANTS NOS. 1 AND 3 TO 5 AND 7 TO 9),
APPELLANTS,

v.

SOUNDARATHACHI (RESPONDENT, PLAINTIFF),
RESPONDENT.*

Order 4, rule 1, Civil Procedure Code (V of 1908)--Plaint presented on last day of limitation to Judge at Club after office hours--Jurisdiction of Judge to receive.

On the last day of limitation and after the Judge had risen from Court for the day, a plaint was presented to him at 7-30 p.m. at his Club which he accepted by cancelling the stamp and initialling and dating it;

Held that the Judge had jurisdiction to constitute himself as the officer to receive plaints, that he could receive them at any time and place and that the suit was properly instituted within the meaning of Order 4, rule 1, Civil Procedure Code. *Thakur Din Ram v. Hari Das* (1912) I.L.R., 34 All., 482 (F.B.) followed.

APPEAL under clause 15 of the Letters Patent against the judgment of Mr. Justice VENKATASUBBA RAO in Appeal

* Letters Patent Appeal No. 9 of 1923,

Against Order No. 226 of 1922 preferred against the order of the District Court of East Tanjore at Negapatam in Appeal Suit No. 1 of 1922 preferred against the decree in Original Suit No. 11 of 1921 on the file of the Court of the Additional Subordinate Judge of East Tanjore at Mayavaram.

In this case a plaint was presented by a *vakil* on the last day of limitation to the Subordinate Judge of Mayavaram after the Judge had risen from Court for the day, at 7-30 p.m. at his Club. The Judge received the plaint, cancelled the stamp, initialled it and also put the date of presentation. Upholding the defendant's objection that the suit was not properly instituted, the successor of the Subordinate Judge rejected the plaint and dismissed the suit. On appeal the District Judge held that the suit was properly instituted and reversing the decree, remanded the suit for disposal on the merits.

On appeal to the High Court, by the defendant, OLFIELD, J., held that the suit was not properly instituted, while VENKATASUBBA RAO, J., held that it was. Thereupon the defendants preferred this appeal under clause 15 of the Letters Patent.

K. Bashyam Ayyangar (with *K. Narasimha Ayyangar*) for appellants.—The suit was not properly instituted. The Judge when he received the plaint at the Club was not sitting as a Court nor was he the officer constituted to receive plaints within the wording of Order 4, rule 1, Civil Procedure Code. There is nothing to show that the Judge accepted it as a proper presentation.

[Court.—What is the meaning of the Judge cancelling the stamp, and putting his initials and dating it?]

That simply proves the fact of presentation. Vide observations in *Venkatesa Aiyangar v. Kamalammal*(1)

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which are in my favour. The facts of *Thakur Din Ram v. Hari Das*(1) are different from the facts of this case.

S. Ramaswami Ayyar for *T. V. Muthukrishna Ayyar* for respondent was not called upon.

SCHWABE,
C.J.

SCHWABE, C.J.—This is an appeal under the Letters Patent, *OLDFIELD AND VENKATASUBBA RAO, JJ.*, having differed in Appeal Against Order No. 226 of 1922.

The point is a very short one. The Judge of a Court in the mufassal, having risen for the day, went to his Club. At his Club he was approached by a vakil who asked him to receive a plaint, it being the last day for the expiration of the period of limitation. The learned Judge accepted the plaint and cancelled the stamp on it by writing upon it the words “presented to me by” giving the name of the vakil “at 7-30 p.m.” and signed and dated it. It is argued that nevertheless the suit is barred, because it has not been instituted within the period of limitation. Section 3 of the Limitation Act runs thus:—

“Subject to the provisions contained in sections 4 to 25 (inclusive) every suit instituted, appeal preferred and application made after the period of limitation prescribed therefor by the first schedule, shall be dismissed.”

It is argued that the suit was not instituted on that day. Now turning to the Code of Civil Procedure, Order IV, rule 1 provides that

“Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf”.

The Judge of the Court could appoint himself or any one else as the officer to whom a particular plaint was to be presented. There is nothing in the rule to show that the presentation must be within office hours or must be to the officer appointed at the Court or at any

particular place and I see no reason at all why, if a Judge so chooses, he should not constitute himself the officer to receive the particular plaint at any place that he chooses. It is a matter which is not without authority, for precisely the same circumstances arose in *Thakur Din Ram v. Hari Das*(1). In that case the memorandum of appeal was presented to the District Judge at his private residence after office hours and he accepted it taking the precaution to state that it would be admitted subject to his having got the power to do so. The Full Bench of Allahabad held that he had the power. The Division Bench here differs, OLDFIELD, J., stating that the ruling in *Thakur Din Ram v. Hari Das*(1) had no application to Madras, because, although in Allahabad it might be the custom for Judges to be approached outside courts, in his experience it has not been so in Madras. VENKATASUBBA RAO, J., on the other hand gave instances of the numerous kinds of applications to his knowledge that had been made to Judges in Madras when away from the Court and outside ordinary office hours.

I agree with the Full Bench decision in *Thakur Din Ram v. Hari Das*(1) and I see no reason at all to say that the same principle should not be applied in Madras. The appeal will be dismissed with costs.

COURTS TROTTER, J. -- I am of the same opinion. I think that what pressed OLDFIELD, J., was the idea that, if you state that a Judge *may* receive plaints in this way out of office hours, you are committed to the further proposition that he *must*. With great respect to the learned Judge, I think that that is a fallacy. I think that it is in the discretion of the Judge to act as he did in this case, or refuse to do so; and, if the thing became a nuisance, I have no doubt that Judges would refuse to

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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.B.

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.

* Letters Patent Appeal No. 20 of 1923.