

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Curgenven.

1927,
March 24.

C. T. NARASA REDDI (PETITIONER), APPELLANT,

v.

HAJEE TAR MOHAMMAD AYUB SAIT (RESPONDENT),
RESPONDENT.*

Letters Patent, cl. 15—Judgment—Appeal—Order, refusing to transfer suit, passed by a single Judge of the High Court, whether a judgment and appealable.

No appeal lies under clause 15 of the Letters Patent against an order of a single Judge of the High Court, refusing to transfer a suit from the City Civil Court to a mufassal Court.

Tuljaram Rao v. Alagappa Chettiar, (1912) I.L.R., 35 Mad., 1 (F.B.), applied; *Official Assignee of Madras v. Ramalingappa*, (1926) I.L.R., 49 Mad., 539, followed; *Krishna Reddi v. Thanikachela Mudali*, (1924) I.L.R., 47 Mad., 136, distinguished.

APPEAL under clause 15 of the Letters Patent against an order of JACKSON, J., in C.M.P. No. 4451 of 1926, refusing to transfer O.S. No. 275 of 1926 from the file of the City Civil Court, Madras, to the District Munsif's Court of Vellore.

The material facts appear from the judgments.

Watrap S. Subrahmanya Ayyar for appellant.

G. Krishnaswami Ayyar for respondent.

JUDGMENT.

ODGERS, J.

ODGERS, J.—This is a Letters Patent Appeal from the order of Mr. Justice JACKSON, dated the 22nd February 1927, refusing to transfer the suit of the plaintiff Hajee Tar Mohammad Ayub Sait from the City Civil Court to the Court of the District Munsif of Vellore. Hajee Tar Mohammad and the defendant in the City Civil Court suit, C. T. Narasa Reddi, did business together

* Letters Patent Appeal No. 109 of 1927.

and the City Civil Court suit alleges that the defendant owes the plaintiff a sum of about Rs. 1,300. Subsequently C. T. Narasa Reddi filed a suit in the Vellore Court against Hajee Tar Mohammad Ayub Sait alleging that on the other hand a sum of about Rs. 700 was due to himself. Narasa Reddi moved the High Court to transfer the City Civil Court suit to the Vellore Court. This was refused and the matter now comes before us on Letters Patent Appeal. Now the question is whether this is a matter within the purview of the Full Bench case in *Tuljaram Rao v. Alagappa Chettiar*(1). This case has recently been considered and its meaning expressed by the present CHIEF JUSTICE and Mr. Justice RAMESAM in the *Official Assignee of Madras v. Ramalingappa*(2). The present learned CHIEF JUSTICE recognised that the question is a difficult one and adopts the language of Sir ARNOLD WHITE, i.e.,

NARASA
REDDI
v.
HAJEE TAR
MOHAMMAD
AYUB SAIT.
—
OGBERS, J.

“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 later the learned CHIEF JUSTICE observes that

“If the effect of the order is to allow the proceedings to go on it is impossible to say that it satisfies the test laid down by Sir ARNOLD WHITE in the Full Bench Case.”

Now on the objection that no Letters Patent Appeal lies it appears to me that applying this principle matters are left exactly as they were and that it is that that distinguishes this case from the case in *Krishna Reddi v. Thanikachala Mudali*(3) (Sir WALTER SCHWABE and Mr. Justice RAMESAM), which is a case similar in this way,

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

(2) (1926) I.L.R., 49 Mad., 589.

(3) (1924) I.L.R., 47 Mad., 136.

NARASA
REDDI
v.
HAJEE TAR
MOHAMMAD
AYUB SAIT.
ODGERS, J.

namely, that the order of a Judge is there said to be a judgment within article 15 of the Letters Patent and therefore appealable and this is put on the ground that in that case the Judge by his order put an end to the case as it stood in Chingleput and conferred a jurisdiction on this Court in respect of that particular case. It seems to me that the case before us is different and that the order of the learned Judge does not put an end to any of the rights of the parties and the effect of the order now appealed from is to allow the proceedings to go on. I therefore think that on this ground it must be held that the Letters Patent Appeal so far as the order refusing to transfer is concerned does not lie and the party has no right to have the case transferred. The Letters Patent Appeal is dismissed with costs.

The C.M.P. No. 1033 of 1927 is also dismissed but without costs.

CURGENVEN,
J.

CURGENVEN, J.—I agree. It may be conceded that an order transferring a suit would amount to a judgment within section 15 of the Letters Patent on the ground explained by Sir WALTER SCHWABE, C.J., in *Krishna Reddi v. Thanikachala Mudali*(1), namely, that it terminates the case in one Court and creates a jurisdiction in the other to try it. The learned Chief Justice's view was based primarily upon the construction put upon the word "judgment" in the Full Bench Case *Tuljaram Rao v. Alagappa Chettiar*(2) and applying that construction it seems to me that the nature of the order now under consideration was not to put an end to any right which the party enjoyed to have the suit transferred, because, in fact, he had no such right, but that it was simply to leave matters as they were before the application was made. In *D. K. Asher v. V. C. Gopalaratnam*(3),

(1) (1924) I.L.R., 47 Mad., 136.

(2) (1912) I.L.R., 35 Mad., 1.

(3) (1927) 52 M.L.J., 192.

KUMARASWAMI SASTRI, J., considered the effect of certain orders refusing to grant various prayers, such as for the issue of a commission, the raising of an issue, or to amend the pleadings, and in the actual matter before him, which was a refusal of an application to grant inspection, he held that it would come within the same category and so would be unappealable, basing his judgment upon the test proposed in the Full Bench case. Similarly in *Official Assignee of Madras v. Ramalingappa*(1), the present learned CHIEF JUSTICE, applying the same definition, concluded that if the effect of the order in question is to allow the proceedings to go on as before it does not amount to a judgment within the clause. I think the order in this case answers to the same test and accordingly that it is not appealable. I agree therefore that the appeal should be dismissed with costs. The C.M.P. also will be dismissed but without costs.

NARASA
REDDI
v.
HAJEE TAR
MOHAMMAD
AYUB SAIT.
—
CIRGENVEN,
J.

K.R.

APPELLATE CRIMINAL.

Before Mr. Justice Anantakrishna Ayyar.

NOKOLO BEHARA AND TEN OTHERS (ACCUSED NOS. 2 TO 12),
PETITIONERS.*

1927,
August 29.

Indian Penal Code (XLV of 1860), sec. 378.—Fish—Confined in ponds—Caught by baling water out—Theft—If can be subject of.

Fish, confined in ponds, and caught by baling the water from the ponds, can be the subject of theft. *Munchu Paidigadu v. Kadimchetti Tummayya*, (1914) M.W.N., 168 followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to

(1) (1926) 1.L.R., 49 Mad., 539.

* Criminal Revision Case No. 353 of 1927.