

The decree will, however, have to be slightly altered to fix the dates from which interest is payable and it will be declared that interest for each fasli is payable from the first day of the succeeding fasli. With this modification we dismiss the appeals with costs (one pleader's fee).

NARAYANA
PATRUDDU
v.
VEERABADRA
RAJU.
WALLACE, J.

A memorandum of objections has been filed by the respondent which is concerned with the reduction by the lower appellate Court to Rs. 600 of the trial Court's figure of Rs. 650. We do not see that the lower appellate Court has committed any error of law in fixing the figure at Rs. 600 and we therefore dismiss the memoranda of objections.

K.R.

APPELLATE CIVIL.

*Before Sir William Phillips Kt. Officiating Chief Justice
and Mr. Justice Reilly.*

MANECKJI RUSTOMJI (DEFENDANT), APPELLANT,

v.

H. H. WADIA AND OTHERS (PLAINTIFFS), RESPONDENTS.*

1927,
September
28.

Letters Patent, cl. (15)—Appeal—Judgment—Order of a single Judge of the High Court, referring back a report of the Official Referee for further consideration, whether appealable—Report, whether final without acceptance by Judge—Judge, whether competent to refer back report in the absence of objections by parties—Original Side Rules (Order XXIII, rule 12 and Order XXIV, rule 1).

An order passed by a single Judge of the High Court, referring back a report of the Official Referee for further consideration by him, is not a judgment and is not appealable under clause (15) of the Letters Patent.

* Civil Miscellaneous Petition No. 3254 of 1927 (in Original Side Appeal No. 46 of 1927).

MANECKJI
RUSTOMJI
v.
WADIA.

The report of the Official Referee is not a final order determining the rights of the parties, unless it is accepted by the Judge, who is not bound to accept the report, even though the parties did not file objections to it under the Original Side Rules.

APPEAL from the order of BEASLEY, J., passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Civil Suit No. 73 of 1918.

The material facts appear from the judgment.

K. S. Krishnaswami Ayyangar for appellant.

Vere Mockett and *S. Doraisamy Ayyar* for respondent.

JUDGMENT.

PHILLIPS,
OFFG. C. J.

PHILLIPS, OFFG. C.J.—A preliminary objection is taken to this appeal that no appeal lies because the order appealed against is not a judgment within the meaning of clause (15) of the Letters Patent. This question was considered by a Full Bench in *Tuljaram Row v. Alagappa Chettiar*(1) and it was there laid down that the test to be applied in deciding whether an order is or is not a judgment within the meaning of clause (15) is as follows:—

“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.”

The present order is an order referring back a report of the Official Referee for further consideration and it is contended that the report of an Official Referee is a final order determining the rights of the parties. Mr. Krishnaswami Ayyangar, however, had to concede that a Judge is not precluded from varying or discharging such report and that it cannot take effect until it has

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

received his *imprimatur*. It was then argued that the Judge could only alter the report if objections were taken in the manner prescribed by the rules of this Court. Rule 12 of Order XXIII distinctly lays down that at the hearing upon a report, the Court may at once proceed to give judgment in the case or may make such order as it thinks fit. There is nothing in this rule which would imply that the Court can only hear this report when objection has been taken to it; it stands to reason that when the report is submitted the Court is bound to hear it and to decide whether it shall act in accordance therewith or not, whether the parties file objections or not. Until therefore such decision has been arrived at, the report cannot be deemed a final order, for it only receives authoritative power by the order of the Court.

The only other argument adduced was with reference to the case in *Howard v. Wilson*(1) which is referred to by Sir ARNOLD WHITE, C.J., in *Tuljaram Row v. Alagappa Chettiar*(2) expressing his agreement therewith. That decision related to an order refusing to confirm an award. It has since then been dissented from both in Calcutta and in this Court; but, even apart from that, an award can hardly be said to stand in the same position as the report of an Official Referee. An award is an adjudication by arbitrators who have the power of giving a quasi-judicial decision. The Official Referee has no such power and consequently his report stands on a very much lower footing than an award. In the present case undoubtedly the order of the learned Judge does not put an end to the suit before him, for it will have to come up again on a fresh report from the Official Referee. He will then proceed to deal with it and pass final orders. No such final order having been passed, this appeal does not lie and must be dismissed with costs.

MANECKJI
RUSTOMJI
v.
WADIA.
—
PHILLIPS,
CFFS. C.J.

(1) (1879) I.L.R., 4 Calc., 231. (2) (1912) I.L.R., 35 Mad., 1 (F.B.).

MANECKJI
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v.
WADIA.
—
REILLY, J.

REILLY, J.—Mr. Krishnaswami Ayyangar has tried to persuade us that the combined effect of rule 1 of Order XXIV and rules 11, 12 and 13 of Order XXIII of the Original Side Rules is that, when the Official Referee submits his report in any matter, if no objection is raised by any party, the Judge is bound to accept the report, even though there is in it the most glaring mistake or omission which jumps to the eye at the first glance. The rules themselves do not say explicitly that the Judge must accept the Official Referee's report in such circumstances, and I find it very difficult to believe that, if it had been the intention so to tie the Judge's hands, it would not have been stated in the clearest and plainest manner. To my mind there is no such implication in the rules; and, if there were, if through some oversight the Court had by implication put itself in the power of one of its subordinates bound hand and foot, then I think it would be a matter calling for immediate amendment.

But let us suppose that the Official Referee has submitted a report in a suit and the Judge has accepted it either on consideration or, as Mr. Krishnaswami Ayyangar has suggested, on compulsion. What is the result? Under rule 13 of Order XXIII the report will then be conclusive evidence of the facts stated in it. But evidence, even the most conclusive evidence which governs the result of a suit, is not a judgment. If the Judge accepts the report, he accepts the evidence, and he then has to apply it to the issues between the parties and pronounce judgment. If he does not accept the report but refers the matter back to the Official Referee, that is, he declines to pass judgment at that stage and postpones it to a future date, how can we say that he has pronounced judgment within the meaning of clause 15 of the Letters Patent as interpreted by the Full

Bench in *Tuljaram Row v. Alagappa Chettiar*(1). We might almost as reasonably say that an order of adjournment is a judgment within the meaning of that clause.

MANECKJI
RUSTOMJI
v.
WADIA,
—
REILLY, J.

I agree that this appeal is incompetent and must be dismissed with costs.

Atkinson & Co., Attorneys for appellants.

King & Partridge, Solicitors for respondents.

K.B.

APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri.

KUMARAPPA CHETTIAR (PETITIONER), PETITIONER,

1927,
March 11.

v.

PODISAL AND ANOTHER (COUNTER-PETITIONERS),
RESPONDENTS.*

*Madras Estates Land Act, ss. 73, 74, 205—Jurisdiction of
Collector under sec. 205, only revisional.*

A mere denial by a tenant that the petitioner, under sections 73 and 74 of the Madras Estates Land Act, is the landlord or that he is entitled to appraisalment or division of crops does not oust the jurisdiction of the Revenue Officer to inquire into an application made under those sections.

As no appeal lies from an order of a Revenue Officer made under sections 74 and 75 of the Madras Estates Land Act, the power of the District Collector under section 205 of the Act in respect of such orders is purely one of revision and he cannot interfere with the order unless there was no evidence on which the Revenue Officer could have passed the order.

PETITION under section 115 of Act V of 1908 and section 107 of the Government of India Act praying the High Court to revise the decretal orders of the Court of the

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

* Civil Revision Petition Nos. 1364 and 1366 of 1925.