

APPELLATE CIVIL

*Before Sir Lionel Leach, Chief Justice, and
Mr. Justice Somayya.*

C. R. BALANAGAYYA CHETTI (RESPONDENT),
PETITIONER,

1939,
February 8.

v.

CHETTI VARADARAJULU CHETTI AND ANOTHER
(APPELLANTS), RESPONDENTS.*

*Code of Civil Procedure (Act V of 1908), O. XLV, r. 4—
Consolidation of suits under—Order for—Condition of—
One of questions only being common to two suits—Right to
order for consolidation in case of.*

Order XLV, rule 4, of the Code of Civil Procedure, which provides for a consolidation of two suits, requires that the questions for determination in both suits shall substantially be the same. The fact that there is a question common to the two suits does not entitle a petitioner to an order for their consolidation when there are other questions which are not common. The basis of an order for consolidation is that the two suits involve substantially the same questions.

PETITIONS praying that the High Court will be pleased to grant leave to the petitioner therein to appeal to His Majesty in Council against the decrees of the High Court, dated 20th October 1938 and passed in Appeals Nos. 288 and 275 of 1934 preferred against the decrees of the Court of the Subordinate Judge of Salem in Original Suits Nos. 57 and 56 of 1933 respectively (Original Suit No. 21 of 1929 and Original Suit No. 25 of 1928 on the file of the District Court of Salem); and petition praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to pass an order under Order XLV, rule 4, of

* Civil Miscellaneous Petitions Nos. 5512 to 5514 of 1938.

BALANAGAYYA
v.
VARADA-
RAJULU.

the Code of Civil Procedure for consolidation of the Appeals Nos. 275 and 288 of 1934 on the file of the High Court, Madras, preferred against Original Suits Nos. 56 and 57 of 1933 on the file of the Court of the Subordinate Judge of Salem (Original Suit No. 25 of 1928 and Original Suit No. 21 of 1929 on the file of the District Court, Salem).

T. R. Venkatarama Sastri and *B. V. Viswanatha Ayyar* for petitioner.

A. Srirangachariar for respondents.

LEACH C.J.

The ORDER of the Court was delivered by LEACH C.J.—We have before us two applications for certificates permitting appeals to His Majesty in Council and for an order consolidating the two appeals. The appeals were heard together and dealt with in one judgment. In the trial Court the suits were tried together, but there were separate judgments. The first suit was Original Suit No. 56 of 1933 of the Court of the Subordinate Judge, Salem, and was filed by the second respondent for the dissolution of a partnership with the petitioner and the taking of the partnership accounts. He valued his relief at Rs. 6,000. The petitioner denied that the partnership ever existed. The second suit was Original Suit No. 57 of 1933 of the Court of the Subordinate Judge, Salem, and was filed by the petitioner against both respondents. The first respondent is the father of the second respondent. In this suit the petitioner alleged that he had paid to the respondents various sums of money with the direction that they should be paid to one Raja Hanu-mappa Chetti in discharge of his indebtedness to him. The petitioner said that the monies had not been paid over to his creditor according to his direction and that he had been compelled to pay twice over. On this footing the petitioner asked for a decree for

Rs. 6,436-5-0 against the first respondent and a decree for Rs. 802-8-0 against the second respondent. The suits were entirely different, but there was a common question, namely, whether there had been a settlement of matters in dispute between the petitioner and the respondents. It was said that the disputes had been settled by a third party and that the terms of the settlement had been embodied in a letter marked as Exhibit C. The Subordinate Judge held that there had been no settlement and dismissed the second respondent's suit, but in the petitioner's suit he found for the petitioner and granted him a decree for Rs. 7,924-4-4. The second respondent appealed to this Court in Appeal No. 275 of 1934 against the dismissal of his suit and both the respondents appealed in Appeal No. 288 of 1934 against the decree granted to the petitioner.

BALANAGAYYA
v.
VARADA-
BAJULU.
LEACH C.J.

The judgment of this Court recognised that all the questions were not common to the two suits but allowed both the appeals on the ground that a settlement had in fact been arrived at. The petitioner contends that in these circumstances he is entitled to certificates permitting appeals to His Majesty in Council and an order consolidating the two appeals. Order XLV, rule 4, of the Code of Civil Procedure states that for the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated; but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination. Totalling the values placed on the respective claims, the suits, if consolidated, would comply with the condition with regard to value, but this does not mean that the petitioner is entitled to

BALANAGAYYA
 ²
VARADA-
RAJULU.
LEACH C.J.

certificates permitting him to appeal to the Privy Council. Order XLV, rule 4, requires that the questions for determination in both suits shall substantially be the same. Now there is one common question, namely, the question with regard to the settlement, but there are other questions which are not common and if the question with regard to the settlement is answered in the way that it was answered by the Subordinate Judge it would involve the decision of the questions which are not common. The fact that there is a common question does not entitle a petitioner to an order for consolidation when there are other questions which are not common. The basis of an order for consolidation must be that the two suits involve substantially the same questions. This is not the position here. Moreover, the rule says that suits "may" be consolidated. It does not say that they shall be consolidated. Therefore the Court is not bound to grant an order for consolidation. But apart from the question of discretion the present cases do not come within the rule, and this decides the matter.

The applications will be dismissed with costs in the first application (No. 5512 of 1938).

A.S.V.
