APPELLATE CIVIL.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, and Mr. Justice Brown.

ARJUNA IYER

v.

OFFICIAL ASSIGNEE, RANGOON, AND ONE.*

1928

Mar. 19.

Letters Patent, cl. 13—*Order of Insolvency Court directing claimant to file regular suit not an adjudication of substantive right and not appealable.*

Where the Insolvency Court declined in its discretion to decide whether certain moneys in the hands of the Official Assignee on behalf of the insolvent were trust moneys and directed the petitioner, if so advised, to enforce his claim by a regular suit, *held* that such an order, which did not finally decide any substantive right between the parties, was not a judgment within the meaning of Clause 13 of the Letters Patent, and was not appealable.

Jamal Bros. & Co., Ltd. v. *Chit Moe*, 5 Ran. 381; *Ma Than Myint* v. *Maung Ba Thein*, 4 Ran. 20 ; *T. V. Tuljaram* v. *Alagappa*, 35 *Mad.* 1 ; *Yeo Eng Byan* v. *Beng Seng & Co.*, 2 Ran. 469—*referred to.*

Sastry for the appellant.

Dantra for the Official Assignee.

RUTLEDGE, C.J., and BROWN, J.—This is an appeal against an order passed on the Insolvency Side of this Court refusing to exercise the jurisdiction conferred on the Court by section 7 of the Presidency Towns Insolvency Act.

The appellant claims that certain money in the hands of the Official Assignee on behalf of the insolvent was in reality held by the insolvent in trust and is therefore not property which the Official Assignee is entitled to hold. The Official Assignee was of opinion that the adjudication on the claim would be likely to be a complicated matter and refused to allow the claim. The claimant then applied to the Judge who was of opinion that before

* Civil Miscellaneous Appeal No. 167 of 1927 against the order of the Original Side in Insolvency Case No. 58 of 1927.

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adjudicating on the claim, it would be necessary to decide on various complicated questions and he therefore refused to exercise his discretion to adjudicate on the claim and directed the petitioner if he were so advised to enforce his claim by a regular suit.

The first question which arises for consideration is whether an appeal against this order lies. Under section 8 of the Presidency Towns Insolvency Act an appeal lies from an order made by a Judge in the exercise of the jurisdiction conferred by the Act in the same way and subject to the same provisions as an appeal from an order made by Judge in the exercise of the ordinary Original Civil Jurisdiction of the Court. An appeal lies from an order made by a Judge in the exercise of the ordinary Original Civil Jurisdiction of the Court is it amounts to a judgment within the meaning of clause 13 of the Letters Patent, and the question for decision is therefore whether the order does amount to a judgment within the meaning of that section.

There have been a number of decisions by this Court as to the meaning of the word "judgment" for this purpose. In the case of *Yeo Eng Byan* v. *Beng Seng & Co. and others* (1), it was held that an order merely regulating procedure and not one giving a final adjudication of the rights of the parties was not a judgment within the provisions of clause 13 of the Letters Patent.

In the case of *Ma Than Myint and two* v. *Maung Ba Thein* (2), it was held that an order granting leave to file a suit *in forma pauperis* was not appealable. In the course of the judgment in that case, the following passage from a judgment of the High Court of Allahabad is quoted: "The order before us was not an adjudication in any stage of a suit. It was passed

(1) (1924) 2 Ran. 469. (2) (1926) 4 Ran. 20.

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upon an application which if granted would alter the order granting it, and only then have matured into a plaint in a suit. It was not therefore an adjudication deciding a right claimed in a suit."

In the case of *Jamal Bros. & Co., Ltd.* v. *Chit Moe* (1), we decided that an order under Rule 58 (1) of Order 21 of the Civil Procedure Code was not appealable.

There can be no doubt that the order appealed against in the present case does not finally decide any substantive right as between the parties. It could only be contended that the order amounted to a judgment on the ground that though not absolutely deciding on any substantive right, it did finally decide on the rights of the parties in the insolvency proceedings before the Insolvency Judge. In the case of *T. V. Tuljaram Row* v. *M. K. R. V. Alagappa Chettiar* (2), the question of what constituted a judgment was considered at some length and the learned Chief Justice laid down the following principle 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."

This Court has on more than one occasion differed from the High Court of Madras as to the meaning of the word "judgment" and we expressly differed from a decision of that Court in *Jamal Brothers*

(1) (1927) 5 Ran. 381. (2) (1910) 35 Mad. 1.

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case. We do not, however, think it necessary here to express an opinion as to how far we accept the test laid down by White, C.J., in *Tuljaram Row's* case, because, even accepting that test, we are of opinion that no appeal lies in this case. It is true that the effect of the order of the Judge on the Insolvency Side is to prevent the appellant from claiming an adjudication on his rights in a summary manner, but it is not and does not purport to be a final order by the learned Judge on his claim so far as the insolvency proceedings are concerned. The Judge has merely decided that if the appellant wishes his claim to be recognised, he must adopt the procedure of filing a regular suit. If he does that and is successful, his claim will clearly then be considered. There is therefore no final adjudication on his claim even so far as the Insolvency Court is concerned.

The case is very analogous to the case of *Jamal Brothers* which we have recently decided. In each case the order complained of is an order passed in summary proceeding, but is not final in any way as to the rights of the parties. And in this case we think that the facts are even stronger against the rights to appeal than in *Jamal Brothers'* case. In that case there had been an adjudication although it was not a final one. Here there has been no adjudication at all. The learned Judge merely said : "I will not adjudicate on your claim now, but I will consider and admit it if you follow the procedure of filing a regular suit and are successful therein."

We are of opinion that in accordance with the principles approved in a series of rulings of this Court, the order complained of is not a judgment within the meaning of clause 13 of the Letters Patent and that therefore no appeal lies. We therefore reject the appeal, but as we have come to no decision

on the merits and this point was not taken by the learned advocate for the respondents, we pass no order as to costs.

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APPELLATE CIVIL.

Before Mr. Justice Pratt, Mr. Justice Carr and Mr. Justice Das.

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Mar. 21.

RAGHUBARDAYAL
v.
RAMDULARE.*

Hindu Law—Personal law of Hindus applicable wherever a Hindu settles—Joint-Hindu family system, presumption in favour of—Separation or partition, proof of—No presumption of separation or partition, because father and son live continuously in Burma and India respectively.

Held, that the Hindu law is the personal law of the Hindus and governs them wherever they may be so long as they remain Hindus. The joint-Hindu family system is a part and parcel of such law. A joint-Hindu family remains joint until there has been an intentional act of severance. It is a presumption of Hindu law that the relations that may naturally be members of a joint-Hindu family are joint ; anyone alleging separation must prove that fact.

Where a Hindu father came to Burma many years ago and with one son lived in Burma continuously until his death, except for very occasional visits to his ancestral home in India, and had the bulk of his property in Burma, and another son all along remained in India and never saw his father except on those occasional visits, *held* that the presumption was that the father and both his sons were members of a joint-Hindu family, and that the above facts did not prove any separation between them or partition of the joint property.

Nana Tawker v. *Ramachandra Tawker*, 32 Mad. 377—*referred to.*

Mayne's Hindu Law (9th Ed.), pp. 343, 345 , *Dr. Gour's Hindu Code* (2nd Ed.), s. 134, paragraph 1473 ; *Sastri's Hindu Law* (6th Ed.), pp.455, 458—*referred to.*

A. C. Mukerjee for the appellant.

Sanyal for the respondent.

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* Civil First Appeal No. 62 of 1927 (Mandalay) against the judgment of the District Court of Lower Chindwin in Civil Regular Suit No. 2 of 1924.