

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

IBRAHIMBHAI FAZALBHAI JOOMABHAILALJI (ORIGINAL DEFENDANT No. 9),
APPELLANT *v.* YOOSUF ISMAILBHAI ABDULLABHAI LALJI AND OTHERS
(ORIGINAL PLAINTIFF AND DEFENDANTS Nos. 1 TO 8A and 10 TO 14), RESPONDENTS.*

1931
September 25.

Letters Patent, of the Bombay High Court, clause 15—Interlocutory order in the suit fixing date for sale of partnership property—Whether such order is a “judgment”—Appeal from such order whether maintainable.

An order passed by a Judge on the original side of the Bombay High Court fixing a date, or varying a date, for sale of partnership property, is not a “judgment” within the meaning of clause 15 of the Letters Patent of the Bombay High Court, and accordingly no appeal lies from such an order.

The Justices of the Peace for Calcutta v. The Oriental Gas Company⁽¹⁾ and *Hadjee Ismail Hadjee Hubbeeb v. Hadjee Mahomed Hadjee Joosub*,⁽²⁾ relied on.

Miyu Mahomed v. Zorabi,⁽³⁾ followed.

PARTNERSHIP action.

The facts of this case are set out at some length at pp. 231-232 *ante*.

On August 6, 1931, Wadia J. passed an order directing that the sale of the salt pans belonging to the partnership be stayed till April 30, 1932. The judgment of Wadia J. is reported at p. 231 *ante*.

Defendant No. 9 appealed against the order passed by Wadia J.

M. L. Manekshah, for the appellant.

F. J. Coltman, for the respondents.

At the hearing of the appeal, the respondents raised a preliminary objection that the order of Wadia J. was not a “judgment” within the meaning of clause 15 of the Letters Patent, and that no appeal lay.

BEAUMONT, C. J. :—This is an appeal from an order of Mr. Justice Wadia extending the time for sale of certain partnership property. The action is a partnership action

*O. C. J. Appeal No. 40 of 1931; Suit No. 2638 of 1921.

⁽¹⁾ (1872) 8 Beng. L. R. 433.

⁽²⁾ (1874) 13 Beng. L. R. 91.

⁽³⁾ (1909) 11 Bom. L. R. 241.

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started in 1921 and in 1927 an order was made directing the Commissioner to sell certain salt pans at Aden which formed part of the partnership property. On October 9, 1930, an order was made by consent of most of the parties, including the present appellant who is defendant No. 9, and *in invitum* against the plaintiff and I think one of the defendants, and by that order the Commissioner was directed to sell the salt pans on November 15, 1931. On July 24, 1931, certain defendants, other than the appellant, moved the Court to extend the time for sale and that application was opposed by the appellant. On August 6, 1931, the learned Judge made an order extending the time of the sale until next April. From that order the appellant appeals, his contention I gather on merits being that the order of October 9, 1930, was a consent order which could not be varied.

A preliminary point has been taken by the respondents on this appeal that no appeal from the order lies under clause 15 of the Letters Patent. That question involves consideration of the meaning of the word "judgment" in clause 15 of the Letters Patent—a question which has frequently come before the Courts in the past. The case which is always referred to on this point in this Court is the case of *Miya Mahomed v. Zorabi*,⁽¹⁾ where it was laid down, adopting the views which had been accepted by the Calcutta High Court, that "judgment" in clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability, but that if the order or judgment in question merely regulates procedure of the suit then it is not a judgment within clause 15. Now one may easily get into a metaphysical discussion as to what exactly is meant by a "right". In a sense I suppose nearly every order either confers some right on one party or deprives another party of some right. But we have to deal with the question in the light of common sense. Mr. Manekshah says that the right here,

⁽¹⁾ (1909) 11 Bom. L. R. 241.

which he obtained under the consent order of October 9, 1930, was a right to have the salt pans sold on November 15, 1931, and that the effect of the order appealed from is to deprive him of that right. No doubt that is so, but there is the further question whether the order affects the merits of the question between the parties. I think the real question between the parties is whether the salt pans should be sold, and that an order fixing the date of sale is in the nature of an order regulating the procedure under the order for sale. That being so, I think it is not a "judgment" within clause 15 of the Letters Patent and is not appealable. I think the preliminary objection must prevail and the appeal must be dismissed with costs.

Appeal dismissed with costs. The appellant to pay only one set of respondents' costs. The balance of the respondents' costs as appearing through different solicitors will come out of the assets of the partnership estate.

RANGNEKAR, J. :—This is an appeal from an order made by Mr. Justice Wadia in a partnership action and it involves a point of some importance. In the action itself a receiver was appointed to take charge of the partnership assets including certain salt pans owned by the partnership and situate at Aden. In November 1927, the Commissioner of this Court was directed to sell the salt pans, but for some reason or other which is not clear from the record, the order was not complied with and the salt pans were not sold. Thereafter in October 1930, by consent of all the parties, an order was made on a notice of motion directing the Commissioner to sell the salt pans on November 15, 1931. On July 24, 1931, all the parties concerned, except the appellant who is defendant No. 9 in the suit, applied for an order to have the sale postponed till April 1932. The appellant objected to the order applied for, but Mr. Justice Wadia overruled the objection and postponed the sale till April 1932. The appellant appeals on the ground that the learned

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Judge was in error in varying the previous consent order of July 1931, and that he had no jurisdiction to do so.

Mr. Coltman, on behalf of the respondents, has raised a preliminary objection that no appeal lies from the order made by Mr. Justice Wadia postponing the sale. To determine this question we have to turn to clause 15 of the Letters Patent. Omitting unnecessary words, the clause in terms provides that an appeal will lie from the judgment of one Judge of the High Court to the High Court, i.e., to a Division Bench of the High Court. The question, therefore, is whether the order complained of is a "judgment" within the meaning of clause 15 of the Letters Patent. The meaning of this word "judgment" has been the subject of many judicial decisions from a very early time not only in this Court but in other Courts of this country, and, as not unexpected, considerable judicial diversity does exist as to the precise meaning to be attached to that word. As far as this Court is concerned, however, it is clear on the authorities that it has consistently accepted the meaning given to the word by the Calcutta High Court in the case of *The Justices of the Peace for Calcutta v. The Oriental Gas Company*⁽¹⁾ and *Hadjee Ismail Hadjee Hubbeeb v. Hadjee Mahomed Hadjee Joosub*.⁽²⁾ This is pointed out by Sir Basil Scott C. J. in *Miya Mahomed v. Zorabi*⁽³⁾ where the learned Chief Justice, who for a number of years was the Advocate General of this Court before he became the Chief Justice, observed as follows (p. 245) :—

"For a considerable number of years in this Court those two decisions have to my knowledge been regarded as the leading decisions to be followed on the question whether an order in any particular case is a 'judgment' within the meaning of clause 15 of the Letters Patent."

In the earliest case (*Justices of the Peace for Calcutta case*⁽¹⁾) decided by the Calcutta High Court the definition of the

⁽¹⁾ (1872) 8 Beng. L. R. 433.

⁽²⁾ (1874) 13 Beng. L. R. 91.

⁽³⁾ (1909) 11 Bom. L. R. 241.

term "judgment" is given by Couch C. J. in these words (p. 452) :—

"We think that 'judgment' in clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final, or preliminary, or interlocutory, the difference between them being that a final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined."

In *Ebrahim v. Fackhrumissa Begum*⁽¹⁾ Garth C. J. said (p. 534) :—

"I think that word 'judgment,' means a judgment or decree which decides the case one way or the other in its entirety, and that it does not mean a decision or order of an interlocutory character, which merely decides some isolated point, not affecting the merits or result of the entire suit."

Applying this meaning to the word "judgment" what is the position in this case? Here we have an interlocutory order made by the learned Judge by which he postponed the sale of the salt pans on the materials placed before him. It is clear, having regard to the nature of the action, that the partnership assets have to be realised and applied in the first instance in discharge of the debts of the partnership firm. This work is normally done by the receiver appointed in the action. The receiver in this case took no action but the parties for reasons which are obvious obtained an order from the learned Judge that the Commissioner of the Court should sell the salt pans instead of the receiver. This, of course, is a course which is more beneficial to the parties and less expensive. If the parties had not applied by consent to the learned Judge to fix a date for the sale of the property and if the action had followed its ordinary course, the Court itself would have had to order the sale of the salt pans and fix a date for it. This obviously is a matter entirely within the discretion of the learned Judge. I am unable to see how an order fixing a date for the sale of the partnership property would determine a right or liability affecting the merits of the action. I think, therefore, that such an order or a subsequent order varying the date of the sale is not a "judgment"

⁽¹⁾ (1878) 4 Cal. 531.

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within the meaning of clause 15 of the Letters Patent. If this is the true effect of such an order, I am unable to see that the mere fact that the learned Judge varied it by the order in question and fixed a date for sale of the partnership assets, proposed by the parties by consent, would amount to a "judgment" within the meaning of clause 15 of the Letters Patent. Every interlocutory order would, in a loose sense, affect a right of some of the parties or impose a liability on others. But to hold that if some right, however unsubstantial it may be, is affected by an interlocutory order made by the Court, the order would be appealable, would, in my opinion, lead to an absurd position. What is to be looked at in such cases is the substance of the matter and the importance of the order made. I hold, therefore, that the order in question is not a "judgment". The preliminary objection, therefore, must be upheld and the appeal must be dismissed.

Attorneys for appellant : Messrs. *Wadia, Gandhi & Co.*

Attorneys for respondents : Messrs. *Merwanji, Kola & Co.* : Messrs. *Sahiar & Co.* : Messrs. *Payne & Co.* : Messrs. *Wadia, Gandhi & Co.* : Messrs. *Edgelow, Gulabchand, Wadia & Co.* : Messrs. *Mulla & Mulla.*

Appeal dismissed.

B. K. D.

APPELLATE CIVIL.

FULL BENCH.

*Before Sir John Beaumont, Chief Justice, Mr. Justice Rangnekar and
Mr. Justice Nanavati.*

NAGINDAS NARANDAS LAVAR (ORIGINAL DEFENDANT No. 1), APPELLANT
v. SOMNATH PREMCHAND LAVAR AND ANOTHER (ORIGINAL PLAINTIFFS),
RESPONDENTS.*

*Bombay Regulation II of 1827, section 21 (1)—Civil Procedure Code (Act V of 1908),
section 9—Suit to enforce right to inspect accounts and papers of a caste—Suit of
Civil nature—Caste question.*

The plaintiffs who were members of the Lodha section of the Lohar Caste of Hindus at Ahmedabad filed a suit against the defendants, who were the managers of the caste

*Second Appeal No. 157 of 1929.

1931
October 15.