

Sri Rajah Nallaparaju Mirja Atchutharamaraju Garu and others - *Appellants*

*v.*

Kruttiventi Perraju Garu and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 21ST OCTOBER, 1929.

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*Present at the Hearing :*

VISCOUNT DUNEDIN.

LORD DARLING.

LORD TOMLIN.

SIR GEORGE LOWNDES.

SIR BINOD MITTER.

[*Delivered by* VISCOUNT DUNEDIN.]

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The suit in this case was a suit as regards a mortgage, and the real point at issue between the parties was whether one rate of interest was to be allowed or another. The suit was filed before the Government Agent at Godavari. He had power to transfer the case, and he did transfer it to the Assistant Commissioner, Agency Division, Vizagapatam, and he was in favour of the plaintiff. Under the Agency Rules—which in this part of India prevail, to the exclusion of the general Code of Civil Procedure, with certain exceptions which it is immaterial to mention—there was an appeal to the Agency Commissioner, and he decided against the plaintiff.

The plaintiff then applied to the High Court. His right to apply depended upon Rule 13. Rule 13 of the Rules in question was this: “All decrees passed by the Agency Commissioner on appeals from decree of his subordinates”—and this particular decree was such a one—“shall be final, the High Court having

the power on special grounds to require him to review his judgment as may be directed by them." Accordingly, this application to the High Court was properly presented, because at page 124 of the record the petition is described in the judgment of the High Court in this way: "Petitions under Rule 13 of the Agency Rules (Civil Justice) praying that, on the grounds set forth therein, the High Court will be pleased to issue an Order directing the Additional District Judge, Agency Division, Waltair, to review his judgment." That is precisely in the terms of Rule 13.

Upon that the High Court delivered judgment. The first part of the judgment deals with the merits, and need not be read. At the end of the judgment it is said:—

"On the best consideration I can give to both the facts and law of this case, I am bound to say, I think, that the learned Additional District Judge was wrong in the view he took of this transaction as far as it affects the sons. In my view, the petition must be allowed with costs, and the decree of the Additional District Judge set aside, and the first Court's decree restored."

Strictly speaking, their Lordships do not think that the phraseology of that order is quite correct. The learned Judge ought to have followed the phraseology of the petition with which he was dealing, and he ought to have directed the Additional District Judge to review his judgment to the effect set forth; but their Lordships are not of opinion that a mere fault of expression can have any effect upon what is the substance of the matter. The Court was sitting upon a petition to review, and they are of opinion that what was said was practically a direction to the Judge to review.

That being so, that is all the appeal that is given, and the case cannot be carried further. As a matter of fact, the present appellants went to the High Court and purported to say that this was an appeal in the ordinary sense, and asked for leave to appeal to His Majesty in Council. There is obviously no authorisation for that in the Rules that have been mentioned; but there is one other fact that must be mentioned. By the time that the High Court pronounced their order new Rules had come into force, and these new Rules, differing from the old Rules, provided by Rule 48:—

"From every decree passed by the Government Agent or the Agent to the Governor in appeal from an original decree passed by any Court subordinate to him an appeal shall lie to the High Court, on the grounds specified in Section 100, Civil Procedure Code."

That means on grounds that deal with law and do not deal with fact. The simple answer is that there was no such appeal, nor, as a matter of fact, could at that time any such appeal have been made, because Rule 56 of the new Rules says this:—

"The period of limitation for an appeal from the decree of an Agent *Munsif* or an Agent Divisional Officer or for review of a judgment shall be six weeks from the date of the passing of the decree."

An appeal, therefore, was out of the question at that time, and, on the other hand, the Court was perfectly right to carry

on, so to speak, the procedure that had been started under the old Rules. Their hands were not tied, because, as has been pointed out by one of their Lordships, under the General Clauses where any Act made after the commencement of this Act repeals any enactment made, the repeal shall not *inter alia* effect the previous operation of any enactment or repeal any Act duly done or suffered thereunder. Even without that, under the general principles of law, it would have been obvious that the Court, if this new provision of appeal could not apply, would necessarily be right in carrying out the procedure perfectly properly initiated before them.

The result of all that is, that there is no appeal, because there has been no proper decree of the High Court which can be appealed in the ordinary way ; there has been only a petition to review. Therefore their Lordships are of opinion that this preliminary objection must be sustained, and they will humbly advise His Majesty accordingly. There will be no order as to costs.

In the Privy Council.

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SRI RAJAH NALLAPARAJU MIRJA  
ATCHUTHARAMARAJU GARU AND OTHERS

vs.

KRUTTIVENTI PERRAJU GARU AND  
OTHERS.

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DELIVERED BY VISCOUNT DUNEDIN.

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