Tirumalachetti Rajaram

Vs

Tirumalachetti Radhakrishnayya Chetty

Civil Appeal No. 92 of 1961

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo, K. C. Das Gupta, N. Rajgopala Ayyangar JJ)

27.04.1961

JUDGMENT

GAJENDRAGADKAR, J. -

If the appellate decree passed by the High Court makes a variation in the decision of the trial Court under appeal in favour of a party who intends to prefer an appeal against the said appellate decree, can the said decree be said to affirm the decision of the trial court or not under Art. 133(1) of the Constitution ? That is the short question which arises for our decision in the present appeal.

The appellant Tirumalachetti Rajaram filed a suit in forma pauperis in the Court of the Subordinate Judge, Chittoor, for his half share in the properties which once belonged to the joint family consisting of himself and his father and to this suit he impleaded his father and several alienees from him. His case was that the alienations effected by him father as well as the sales held in execution proceedings against his father were not binding on him and so his share in the properties covered by the said alienations was not affected by them. It is on this basis that he claimed his half share in all the said properties. The trial court rejected his contention that the alienations did not bind him, upheld all the alienations and so dismissed his suit. On appeal the High Court of Madras reversed the trial court's decree in respect of alienations which covered items 2, 10 and 14 in Schedule A as well as item 5 in the Schedule B. It held that the alienations in respect of these items did not bind the appellant's share and so a preliminary decree for partition was passed in his favour in respect of the said items. The rest of the decree passed by the trial court was confirmed. The appellant then applied to the High Court for a certificate under Art. 133(1) of the Constitution. This application was rejected on the ground that the decree sought to be appealed from was one of affirmance and there was no substantial question of law raised by the proposed appeal. In coming to this conclusion the High Court followed an earlier Full Bench decision in Chittam Subba Rao v. Vela Mankanni Chilamayya [I.L.R. [1953] Mad. 1]. The appellant then applied for and obtained special leave from this Court, and on his behalf it is urged that the view taken by the Madras High Court in the case of Chittam Subba Rao [I.L.R. [1953] Mad. 1] proceeds on a misconstruction of the relevant clause in Art. 133(1). That is how the short question which falls to be considered in the present appeal relates to the construction of the said relevant clause in Art. 133(1). It is common ground that the test of valuation prescribed by Art. 133(1)(a) is satisfied in this case.

Article 133(1) which corresponds to s. 110 of the Code of Civil Procedure reads thus :

> "133(1). An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies -

(a) that the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or

(b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the Supreme Court;

and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law."

In the present case we are concerned with the clause "where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c)". It is common ground that if the appellate decree of the High Court makes a variation in the decision of the trial court against the intending appellant the appellate decree is not a decree of affirmance but variation, and this position is not affected even if the variation in question is to a very small extent and may be of very minor significance. The decisions of the High Courts, however, show a sharp conflict in regard to the question as to the character of the appellate decree where it makes a variation in favour of the intending appellant. Broadly stated the majority of the High Courts have taken the view that an appellate decree which makes a variation in favour of the intending appellant is a decree of affirmance and it is only the Punjab High Court and the majority decision of the Patna High Court which have taken a contrary view. The decisions of different High Courts bearing on this point show that the learned Judges did not always try so much to construe the terms of the relevant constitutional provision as to reconcile their earlier decisions which disclosed a different approach and a tendency to reach different conclusions. Indeed, on occasions some judgments have expressed the hope that the sharp conflict of judicial opinion resulting from the difference in approach adopted in dealing with the problem can be effectively resolved only when this Court considers the matter and makes its authoritative pronouncement. Thus it would be clear that though this important question lies within a narrow compass it is not free from difficulty.

In dealing with this question we think the best course to adopt would be to consider the problem of construction without reference to the previous decisions on the point, and in construing the relevant clause it is obviously necessary to bear in mind that the clause under discussion deals with the constitutional right of the litigant to make an appeal to this Court; and so it would be inappropriate to adopt a technical or pedantic approach in interpreting the material words used in the relevant clause. Reading the clause as a whole and giving the material words their plain grammatical meaning it seems prima facie to show that the test of affirmance prescribed by the clause can best be satisfied if we take the appellate decree in its entirety and enquire whether the said decree affirms the decision of the trial court considered in its entirely. It is a matter of comparing the appellate decree with the decision of the trial court under appeal. If the appellate decree affirms the decree of the trial court it is a decree of affirmance; if there is a variation made by the appellate decree in the decision of the trial court the appellate decree is not a decree of affirmance and this position would not be affected whether the variation is made in favour of the intending appellant or against him and whether the variation made is minor or major.

It is, however, urged that the words "judgment, decree or final order appealed from" denote that part of the judgment, decree or final in appeal which is intended to be challenged in the proposed appeal to this Court. In other words, the word "decree", it is suggested, refers to the part of the decree under appeal. On this construction a decree has to be split up into different parts and the words "appealed from" have to be treated as words of limitation. The argument in a slightly different form has also been pressed before us. It is suggested that in cases where different causes of action and different claims and reliefs have been combined different decrees are in fact passed though in form there may be one paper on which one decree is drawn; and so it is argued that the decree appealed from must mean the decree under appeal dealing with the subject-matter or matter in dispute proposed to be brought to this Court by the intending appellant. For one thing argument may not be available where there is only one cause of action, and it is quite clear that the word "decree" must have one meaning applicable to all cases. Besides, in our opinion, this construction on which the argument is based is far too technical and artificial and cannot be regarded as reasonable. Normally, in each suit there is one decree, and so it would be inconsistent with the scheme of the Code to divide the decree into several parts by reference to its relation to different claims or subject-matters or to treat one single decree as consisting in fact of several decrees. The normal, natural and reasonable construction to place on the first part of the relevant clause is to hold that it refers not merely to that part of the decree which is sought to be challenged in the appeal but the entire decree from which the appeal arises or the decree giving rise to the appeal. On this construction the clause "appealed from" is not a clause of limitation. It is merely a descriptive clause and it describes the decree as one from which the appeal arises. If that be so, in determining the character of the decree it would be necessary to take the decree as a whole and enquire whether it is a decree of affirmance or not.

In support of the argument that there can be more decrees than one in a suit which combines different causes of action and different claims made against different defendants in respect of different subject matters Mr. Tatachari, for the respondent, has relied on the decision of the Calcutta High Court in Dhirendra Nath Sarkar v. Nischintapore Company [[1916] 36 I.C. 398; 22 C.W.N. 192]. In that case the Court was dealing with a decree which was made in favour of the plaintiffs for the recovery of arrears of rent in respect of three tenancies held by three different tenants and the question raised was one of limitation under Art. 182, cl. (5) of the Limitation Act (IX of 1908). The court held that although the decree was passed in one suit and was set out on one sheet of paper the position was precisely the same as if the plaintiffs had brought three distinct suits against the defendants and had obtained three different decrees. It appears that the decree-holder's claim for execution was in time in respect of one of the tenants but not in respect of the two others, but he urged that since the decree was one it was not open to the two other tenants to plead limitation by splitting up the decree into three different decrees and by seeking to invoke the provisions of art. 182, cl. (5) severally as against each one of the said decrees. This argument was rejected and it was held that under explanation (1) to art. 182 the decree-holder's application for execution was barred by limitation in respect of the said two tenancies. It would thus be clear that the discussion about the character of the decree and the conclusion that though in form there was one decree in fact and law the decrees were three are based on the provisions of explanation (1) and so must be confined to the said explanation. Explanation (1) provides that where the decree or order has been passed severally in favour of more persons than one distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in cl. (5) of art. 182 shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representative, shall take effect in favour of them all. The facts in

the case of Dhirendra Nath Sarkar [[1916] 36 I.C. 398; 22 C.W.N. 192] were converse of the case contemplated by the first part of explanation (1), and so the principle laid down by the said part of explanation (1) was applied and it was held that in respect of the two tenancies the decree-holder's application for execution was barred by art. 182, cl. (5). It would be idle to contend that considerations which are relevant and material under explanation (1) are of such a general application as to support the plea that in a suit where different causes of action are included and different reliefs are claimed against different individuals several decrees are passed and not one. There are cases in which more than one decree can be and are passed under the Code of Civil Procedure, for instance cases where preliminary decrees are passed, but the normal rule is one decree is passed in one suit and so we are not prepared to accede to the argument that the first part of the relevant clause of Art. 133(1) should be read on the basis that every decree passed in a suit should be held to be a composite decree made up of several decrees in respect of several claims or reliefs and that the decree appealed from is only that particular decree which is proposed to be brought in appeal to this Court.

The next question to consider is : what is the denotation of the word "decision" used in the said clause. The argument for the respondent is that the word "decision" does not mean the whole of the decision but the decision on that part of the controversy between the parties which is brought to this Court in appeal. In support of the argument that the decision does not mean the entire decision of the trial court reliance is placed on the provisions of O. 20, rr. 4 and 5. Rule 4 of O. 20 deals with the judgments of Small Cause Courts and judgments of other Courts, and it provides that the judgments falling under the first clause need not contain more than the points for determination and decision thereon, whereas the judgments falling under the latter class should contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. There is not doubt that the decision in the context means the decision on the points for determination. That of course is the meaning of the word "decision", but whether or not the word "decision" means the decision on one point or the decision of whole suit comprising of all the points in dispute between the parties must inevitably depend upon the context, and the context is plainly inconsistent with the argument that the decision should mean the decision on a specific point. If the word "decree" in the first part of the relevant clause means not a part of the decree but the whole of the decree then it would be reasonable to hold that the word "decision" must likewise mean the entire decision of the trial court and not a part of it.

Then it is urged that O. 41, r. 33 seems to contemplate that there can be an appeal against a part only of the decree and so the word "decree" in the first part of the relevant clause may well mean a part of the decree under appeal. It is true that under the interpretation clause in s. 2 the word "decree" means, inter alia, the formal expression of an adjudication which conclusively determines the rights of parties with regard to all or any of the matters in controversy in suit, and it is also true that a party aggrieved by a decree may appeal only against a part of it and is not bound to file an appeal against the whole of the decree, but we do not see how this can assist the respondent in contending that the word "decree" must mean a part of the decree when the context clearly speaks to the contrary. Therefore, we are inclined to hold that both "the decree" and "the decision" referred to in the clause mean the decree and the decision respectively taken as a whole and not in part.

The question as to the meaning of the word "decision" in the corresponding provision of the Code of 1882 (s. 596) was considered by the Privy Council in Rajah Tasadduq Rasul Khan v. Manik Chand [[1902] L.R. 30 I.A. 35]. The question which arose for the decision of the Privy Council was whether the appellate decree in that case was one of affirmance or not. The appellate decree had confirmed the trial court's decision though on different grounds, and so it was urged that the

appellate decree was not one of affirmance. In rejecting this argument the Privy Council stated that "the natural, obvious and prima facie meaning of the word "decision" is decision of the suit by the Court, and that that meaning should be given to it in the section" (s. 596). The Privy Council examined the definition of the word "judgment" in the Code of 1882 and came to the conclusion that the word "decision" meant the decision of the suit by the trial court and not the grounds stated in support of the said decision; in the result it was held that the appellate decree which confirmed the decision of the trial court though on different grounds was in law a decree of affirmance. It would thus be seen that this decision undoubtedly supports the conclusion that the word "decision" in Art. 133(1) should mean not a part of the decision or the grounds given for it but the decision of the suit as a whole; and if that be so, the clause could be harmoniously construed to mean that in determining the character of the appellate decree we have to look at the appellate decree as a whole, compare it with the decision of the trial court as a whole and decide whether the appellate decree one of affirmance or not. In this enquiry the nature of the variation made whether it is in favour of the intending appellant or otherwise would not be relevant.

It is then argued that this construction is inconsistent with the provision made by Art. 133(1)(a) in regard to the value of the subject-matter of the dispute. There is no doubt that in applying the test of the value of the subject-matter of the dispute what we have to consider is the dispute in the Court of First Instance and the dispute on appeal. In other words, the value of the subject-matter has to be determined by reference to the subject-matter which is actually the subject-matter of the proposed appeal to this Court. The argument is that if for determining the value of the subject-matter it is necessary to consider only that part of the decree and subject-matter which are actually proposed to be brought to this Court in appeal, in interpreting the word "decree" in the relevant clause a similar approach should be adopted and only that part of the decree should be considered which is proposed to be brought to this Court in appeal. We do not see the materiality of this consideration nor even its relevance. The test prescribed by Art. 133(1)(a) is an independent additional test and its effect has to be judged by interpreting the words used by the relevant clause. If the said clause refers to the amount of the value of the subject-matter still in dispute on appeal quite plainly we must take into account only the subject-matter in dispute in appeal and nothing more. The words used in this connection are clear and unambiguous but they cannot reasonably control the meaning of the word "decree" in the relevant clause which provides for an additional and an independent condition. Therefore, in our opinion, the argument based on the construction of Art. 133(1)(a) is not well founded.

The same comment falls to be made in regard to the other argument based on the provision which requires the High Court further to certify that the appeal involves some substantial question of law. It is urged that this requirement has to be satisfied by reference to that portion of the decree which is proposed to be brought to this Court under appeal and that would suggest that even the test of affirmance should be applied by reference to the part of the decree under appeal and not by reference to the whole of the appellate decree. Here again, the words used are that the appeal involves some substantial question of law which must necessarily mean the appeal as it is proposed to be brought and that must refer only to the decree brought under appeal. Therefore, even this argument does not afford material assistance in construing the relevant clause with which we are concerned.

There is yet another argument which must be examined. It is contended that the adoption of the literal construction of the relevant clause relating to affirmance would lead to anamolous and unreasonable consequences. It is pointed out that if the decision of the trial court is wholly confirmed the intending appellant would not be entitled to come to this Court as a matter of right

unless there is a substantial question of law. On the literal construction, however, he would be entitled to come to this Court even if there is a very minor and slight modification in the decision of the trial court and that too in his favour. Prima facie it may no doubt seem somewhat unreasonable that even a slight modification made in the decision should give the intending appellant the right to come to this Court; but, on the other hand, even this position cannot be regarded as unreasonable because it would really be found to be consistent with the principle underlying the doctrine of affirmance. What is the basic idea underlying the relevant provision ? If two courts which have judged the dispute between the parties and applied their independent minds to it agree in their conclusions the appellate decision is one of affirmance and unless there is a substantial question of law no further right to appeal should lie. That is the basis of the provision. When, however, a variation is made by the appellate court it tends to show that the two courts have not entirely agreed and so it is not a case of affirmance. The extent of the difference does not matter so much as the fact that there is a difference in the result, and so in prescribing the doctrine of affirmance the Constitution makers may well have intended that the said doctrine should be confined only to cases where there is a complete affirmance and not to cases of partial affirmance. We do not think that the consequence of the view we are inclined to take can be reasonably characterised as opposed to commonsense. Besides, if on a fair and reasonable construction the words used in the relevant clause lead to the conclusion which we are inclined to draw it would be unreasonable to limit the scope of the said words on hypothetical considerations of unreasonable consequences. As we have already observed we are dealing with a constitutional right conferred on litigants, and, unless the limitation contended for by the respondent can be said to flow reasonably from the words used in the relevant clause, it would not be open to us to adopt that limited construction merely on such hypothetical considerations.

Then it is urged that the majority of the High Courts in India have taken the same view which the Madras High Court has taken in the present case and so we should be slow to interfere with the majority decision. In support of this conclusion the principle of stare decisis is pressed into service. We are not impressed by this argument. It is perfectly true that in construing the clause we would carefully have to bear in mind the views expressed by the majority of our High Courts, but as we have already indicated there is a sharp conflict of opinion on this point and it can be stated generally that in almost all the High Courts different views have been expressed at one time or the other. Besides, it would be singularly inappropriate to invoke the doctrine of stare decisis in a case of this kind where High Courts have differed and the matter has been brought to this Court for resolving the said difference of opinion. In such a case it is open to us, and indeed it is our duty, to construe the relevant clause and decide which of the two conflicting views should hereafter prevail. Therefore the argument based on the practice prevailing in the majority of the High Courts in this country is not of much assistance.

At this stage we may deal with another argument urged by Mr. Rama Reddy who appeared for some of the respondents. He contends that in construing the relevant clause we may have regard to the fact that the Constitution intended to restrict the right of the appellant to come to this Court and not to widen it. In support of this argument he relies on the fact that the value of the subject-matter prescribed by Art. 133(1)(a) is now made Rs. 20,000 whereas formerly it was Rs. 10,000, and he also relies on the provisions of Art. 133(3) under which no appeal shall lie to the Supreme Court from the judgment, decree or final order of one judge of a High Court. In our opinion, there is no substance in this contention. It is well known that in raising the amount of the value of the subject-matter Art. 133(1)(a) has merely partially recognised the fall in the price of the rupee and so it cannot be read as showing the intention to restrict the appellant's right in any manner. In regard to the provisions of Art. 133(3) there is no material change made by the Constitution since the position

under s. 111 of the Code of 1908 as well as s. 597 of the Code of 1882 was substantially the same. We would accordingly hold that in determining the question as to whether the appellate decree passed by the High Court affirmed the decision of the trial court the appellate decree must be considered as a whole in relation to the decision of the trial court similarly considered as a whole. That is the proper approach in applying the test of affirmance. If there is a variation made in the appellate decree in the decision of the trial court it is not a decree of affirmance and this is not affected either by the extent of the variation made or by the fact that the variation is made in favour of the intending appellant and not against him.

In this connection it would be interesting to refer to three decisions which afford judicial background for the controversy that has been agitated in the several High Courts for so many years past. In Raja Sree Nath Roy Bahadur v. The Secretary of State for India in Council [(1904) 8 C.W.N. 294] a Full Bench of the Calcutta High Court had occasion to consider the effect of the relevant provisions of s. 596 of the Code of 1882. In a land acquisition case the applicant had claimed a sum of Rs. 77,000 odd as the value of his land. The Collector had assessed the value at Rs. 28,287. On a reference the judge upheld the Collector's award. The applicant then moved the High Court by appeal and in his appeal he valued his claim at Rs. 49,000. The High Court partially allowed the appeal and granted him an additional sum of Rs. 7,000. The applicant then applied for leave to appeal to the Privy Council and urged that the decree passed by the High Court on appeal was not a decree of affirmance and since the test of the value of the subject-matter was satisfied he was entitled to go to the Privy Council. This application was rejected by the High Court. "The appellant desires", observed Maclean, C.J., "to appeal only against the decision of this Court so far as it affirmed the decision of the court below, nothing else. This seems to be, in substance, as far as the subject of the appeal goes, a decree of affirmance". The learned Chief Justice also added that whilst the decree of the High Court modified in the petitioner's favour the original decree, as regards the subject-matter of the proposed appeal to His Majesty in Council it most certainly affirmed the decree of the first court. This judgment was pronounced in 1904; and the construction which it put on the relevant clause of s. 596 is in conformity with the views for which the respondents contend in the present appeal.

The same point was raised before the Privy Council in Annapurnabai v. Ruprao [(1924) L.R. 51 I.A. 319]. In that case the plaintiff who claimed to have been adopted by the senior widow of Shanker Rao sued the junior widow of Shanker Rao (defendant 1) as well as the person who claimed to have been adopted by her (defendant 2) for possession of half the property of Shanker Rao. Both the defendants denied the plaintiff's adoption and set up the adoption of defendant 2. The trial court held that the plaintiff's adoption had been proved and that the alleged adoption of defendant 2 had not been proved. It, however, found that the plaintiff was bound to provide maintenance for defendant 1 at the rate of Rs. 800 per annum. Defendant 1 had in that behalf claimed Rs. 3,000 per annum for her maintenance out of the estate. Upon appeal by the defendants to the Court of the Judicial Commissioner the trial court's decree was modified by increasing the maintenance from Rs. 800 to Rs. 1,200 per annum. In other respects the decree was affirmed. The defendants then applied to the Court of the Judicial Commissioner for leave to appeal to the Privy Council. Their argument that they were entitled to appeal to the Privy Council was rejected on the ground that the appellate decree was one of affirmance, and that a small change made by it in favour of the defendants did not affect that position. It was this decision which was challenged before the Privy Council. Lord Dunedin, who delivered a very short judgment on behalf of the Board, stated that in the opinion of their Lordships the contention of the petitioners' counsel as to the effect of s. 110 of the Code of Civil Procedure is correct, and the petitioners had a right of appeal. In other words, this decision clearly shows that though the trial court's decision had been varied to some extent in favour of the

intending appellants it was held that the appellate decree was not one of affirmance and so the intending appellants were entitled to obtain leave to appeal to the Privy Council. It does appear that the appellants in that case confined their appeal only to the amount of maintenance having regard to the concurrent findings made by the courts below in respect of other matters; and so the special leave granted to them was limited to the question of the said maintenance allowance. That, however, had nothing to do with the decision of the Privy Council as the character of the appellate decree. The appellants did not want to agitate the other points and asked for permission to limit their appeal only to the question of their maintenance; that is bout all. Thus it is clear that the decision of the Privy Council in that case construed the relevant provisions of s. 110 literally and held that if the appellate decree makes any variation in the decision of the trial court - may be in favour of the intending appellant - it is not a decree of affirmance and the intending appellant was entitled to go to the Privy Council in appeal. It is true that the judgment does not purport to discuss the question of construction but the conclusion has been emphatically recorded and there can be no doubt that that conclusion proceeds on the literal construction of s. 110 of the Code. This judgment was pronounced in 1924.

Three years later the same question arose before the Calcutta High Court in Narendra Lal Das Chaudhury v. Gopendra Lal Das Chaudhury [A.I.R. 1927 Cal. 543]. In that case the intending appellant had brought a suit for partition of the joint family property valued at Rs. 10,00,000. A preliminary decree was passed against which an appeal was brought to the High Court. It appeared that the first question which the plaintiff-appellant raised was that the preliminary decree had given him a smaller share in the property than what he was entitled to get. This contention was upheld by the High Court and in consequence his share was increased. In that respect the High Court reversed the finding of the trial Court. On other points raised by the plaintiff-appellant the High Court confirmed the judgment of the trial court. It was against this appellate decision that an application was made for leave to go to the Privy Council; and it was urged that as a result of the decision of the Privy Council in Annapurnabai's case [(1924) L.R. 51 I.A. 319] the appellant was entitled to obtain leave; and that squarely raised the question about the effect of the decision in Annapurnabai's case [(1924) L.R. 51 I.A. 319]. Chief Justice Rankin took the view that the only effect of the said decision was to reverse the conclusion of the Calcutta High Court in Raja Sree Nath Roy's case [(1904) 8 C.W.N. 294] and nothing more. "It appears to me", observed the learned Chief Justice, "that the case of Annapurnabai [(1924) L.R. 51 I.A. 319] is not in itself a sufficient authority to justify this Court in abandoning the principle which it has with other High Courts acted upon; that is to say, I do not think that it shows that it is an erroneous view that we have to look to the substance and see what is the subject-matter of the appeal to His Majesty in Council". The learned Judge then proceeded to express his doubt as to whether "in the end even that principle would be found to be in accordance with the construction to be put upon s. 110", but he added, "this Court and other High Courts have for many years acted upon that principle and I am not prepared to accept the case of Annapurnabai [(1924) L.R. 51 I.A. 319] as going further than this that where there is a dispute as to the amount of decree or as to the amount of damages the reasoning of Raja Sree Nath Roy's case [(1904) 8 C.W.N. 294] is not a correct application of that principle". "We may take it", said the learned Chief Justice, "that where the amount is a question in dispute the fact that the courts differ and that the higher court differs in favour of the applicant does not mean that the decision is one affirmance, but I am not, in a case of this kind, prepared to say that because on a totally different point, namely, a point about the share, the applicant has succeeded and succeeded altogether so that he has no further grievance in that matter, he can without showing a substantial question of law have a right to litigate upon other points upon which both the courts have been in agreement". It is the interpretation thus put by Chief Justice Rankin on the decision in the case of Annapurnabai [(1924)

L.R. 51 I.A. 319] that subsequently became the starting point of elaborate discussion in which legal subtlety was pressed into service and distinction was made between action arising on a single cause of action and giving rise to a single claim and actions in which different causes of actions were combined against different persons and different reliefs were claimed. As we have just indicated, the learned Chief Justice undoubtedly entertained a doubt as to the correctness of the test of substance which was then applied by some of the High Courts in interpreting the provisions of s. 110 of the Code. One feels tempted to observe with respect that if the learned Chief Justice had examined the question of construction afresh without reference to the prevailing practice or the decisions already pronounced by Indian High Courts he might have adopted the literal construction of s. 110 and in that event perhaps all controversies that subsequently arose may have been avoided.

It now remains to indicate very briefly the position taken by different High Courts in this controversy. In Chittam Subba Rao v. Vela Mankanni Chelamayya [I.L.R. [1953] Mad. 1] a Full Bench of the Madras High Court was constituted to deal with this point because reported decisions of the said Court showed a difference of approach and a conflict of opinion. Rajamannar, C.J., who delivered the judgment of the Full Bench, carefully examined the previous decisions of the Court and evolved three principles to govern the decision of the point. These principles have been stated in the judgment thus :

> (i) If the judgment or decree of the High Court varies the decision of the lower court in respect of a matter in controversy in the proposed appeal to the Privy Council, then there is a right of appeal not only to the person against whom the variation has been made, but even to the party in whose favour the variation has been made. But it is necessary that the matter in respect of which there has been a variation should be the subject-matter of the proposed appeal to the Privy Council.
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> (ii) A matter in controversy cannot be split up or analysed or dissected into component parts or arbitrary divisions. The true test will be to determine the nature of the dispute or controversy.
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> (iii) If the matter in respect of which there has been a variation is not the subject-matter of the proposed appeal, then such variation would not confer a right of appeal as regards matters unconnected with the matter in respect of which there has been a variation. Ex hypothesi, this will be the case when the variation has been completely in favour of the applicant.

Having evolved these principles the learned Chief Justice observed that every one of the decisions cited before the Court can be justified by an application of the principles thus set up. It is evident from the judgment that the task which the Full Bench attempted to achieve was one of reconciling the different expressions of opinion found in the reported decisions of the Court. In doing so more attention has naturally been paid to the said decisions and the reasons on which they were based than to the words used in Art. 133 itself. In regard to the said Article the learned Chief Justice has observed that courts cannot add to the language actually employed and thus give an unwarranted extension to the scope of the statutory provision. "At the same time, I do not think", observed the learned Chief Justice, "that the letter of the statutory provisions should compel a Court to an unreasonable construction if it is possible to take a reasonable view by taking the letter of the provision along with its substance". Assuming that this principle can be legitimately invoked in construing a constitutional right of making an appeal it must be borne in mind that hypothetical considerations about unreasonable consequences would not justify the imposition of a strained

meaning on the relevant words used in the Article. If in discussing the problem we first begin with the enquiry as to what would be reasonable, and having reached a conclusion in that behalf on a priori consideration if we seek to import that conclusion on the words used in Art. 133 that would not be a proper approach to adopt. The proper approach to adopt would be to take the material words as they occur in Art. 133 and construe them fairly and reasonably. We have already indicated our conclusion on a fair and reasonable construction of the clause. The Madras decision no doubt attempted to find principles on which its previous decisions could be explained and has in fact evolved three such principles. Even if these principles are assumed to be logical and consistent with each other and even if they are assumed to explain the earlier decisions of the Court it does not follow that the said principles can be legitimately assimilated within the scope of the Article because it seems to us that unless words are added in the Article and the meaning of the words used is unduly strained it would be difficult to justify the said principles as flowing from the said Article. This Madras view has been applied by the Andhra High Court in V. Lakshminarayana Sastry v. V. Sitaramma Sastry [A.I.R. 1959 Andh. 20]. The majority judgment of the Allahabad High Court in Rani Fateh Kunwar v. Raja Durbijai Singh [I.L.R. [1952] 2 All. 605] which in fact preceded the Madras decision has adopted substantially the same approach and has come to the same conclusion. Mr. Justice Bhargava, who agreed with the majority decision, has, however, placed his conclusions on grounds similar to those which we have adopted. To the same effect are the decisions of the Assam, Bombay, Mysore and Nagpur High Courts (vide : G.C. Bardoloi v. Collector of Kamrup [A.I.R. 1952 Ass. 134] Kapurji Magniram v. Pannaji Debichand [31 B.L.R. 619, S.C.; A.I.R. 1929 Bom. 359], Govind Dhondu Kulkarni v. Vishnu Keshav Kulkarni [I.L.R. [1948] Bom. 881], Kanakarathnammal v. V.S. Loganatha Mudaliar [A.I.R. 1959 Mys. 112], Ramchandra v. Ganpati [I.L.R. [1953] Nag. 784]. The Calcutta High Court has generally adopted the view taken by Rankin, C.J., but as its decision in Probodh Chandra Roy v. Hara Hari Roy [A.I.R. 1954 Cal. 618], shows the practice in the Calcutta High Court appears to be to treat the point as one of doubt and as Chief Justice Chakravarti has observed "where there is a doubt I would resolve it by deciding in favour of the applicant and granting him leave". On the other hand, the Full Bench decision of the Punjab High Court in Union of India v. Kanahaya Lal Sham Lal [I.L.R. [1957] Punj. 255] and the majority decision of the Patna High Court in Kanak Sunder v. Ram Lakhan [I.L.R. [1956] 35 Pat. 499] have taken the view which we have adopted.

Before we part with this appeal we would like to make it clear that if an appellate decree confirms the decision of the trial court but merely makes a variation in regard to the order as to costs such a variation would not affect the character of the decree which would in law amount to a decree of affirmance, whether the variation as to costs in made in favour of one party or the other. The position with regard to interest, however, is different; for instance, in regard to a claim for interest before the date of the decree which is a part of the dispute between the parties if the appellate court makes a variation in respect of the award of interest that would affect the character of the appellate decree. Unlike the order of costs which is entirely in the discretion of the Court under s. 35 of the Code of Civil Procedure an order as to interest which the Court can make under s. 34 of the Code forms part of a dispute between the parties, and in that sense if a variation is made in regard to it it is an integral part of the decision or the decree. In this connection it may also be necessary to make it clear that if the appeal court makes a variation in the decision of the trial court either because a concession has been made in that behalf or the variation has been obtained by parties by consent or a part of the subject-matter covered by the decree has been withdrawn such variation cannot affect the character of the appellate decree. The principle of affirmance on which the provision rests postulates either affirmance or variation by the appeal court as an act of adjudication and that necessarily means the decision of the appeal court on the merits.

The result is the appeal must be allowed, the order passed by the High Court by which the appellant's application for certificate has been refused must be set aside and the matter sent back to the High Court for disposal in accordance with law. Parties to bear their own hearing costs but the respondent to pay the cost of court fees which the appellant would have had to pay if he had not been allowed to appeal as a pauper.

Appeal allowed.

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