KERALA HIGH COURT

S. Govinda Menon

Vs.

K. Madhavan Nair

Writ Appeal No. 60 of 1963

(T.K. Joseph and S. Velu Pillai, JJ.)

01.07.1963

JUDGMENT

Joseph, J.

1. The appeal and the petitions arise from the order of Raman Nayar, J., dated the 12th February, 1963 dismissing O.P. No. 2306 of 1962. That was a petition by one Madhavan Nair, Manager of Pulpalli Devaswom, for quashing an order of the Commissioner Hindu Religious and Charitable Endowments, placing him under suspension and appointing another in his place. The first respondent to the petition was the Commissioner, Hindu Religious and Charitable Endowments, Kerala. The appellant in the appeal who is also the petitioner in the two petitions was the Commissioner at the time of passing the order of suspension and he continued as such only till 19-10-1962. The main ground urged in the original petition was that the order of suspension was actuated by mala fides. According to tile petitioner in the original petition, the appellant was directing the disposal of valuable forest lands and timber belonging to the Devaswom to his nominees, in violation of law; the petitioner did not agree to some of his proposals and was thus "a stumbling block in his way" and this was the real reason for the order of suspension. Raman Nayar, J., held that the charge of mala fides was not true inasmuch as the petitioner in the original petition never stood in the way of the Commissioner in the matter of disposal of the land and timber. The other ground, namely, that the order was passed without jurisdiction, was also found against and the original petition was dismissed. However in considering the charge of mala fides Raman Nayar, J., observed that there were grave irregularities in the matter of disposal of the land and timber belonging to the Devaswom and that it was improper for the Commissioner who was to exercise a general power of superintendence over the acts of the Trustees to have initiated certain proposals for the grant of land and timber and to have acted in the manner referred to in, the order. The learned Judge observed :

> "I am however, tempted to observe that reasons, however compelling, and administrative decisions however high the level at which they are taken, cannot alter the law or the fact that the 1st respondent Commissioner, who is by law charged with the duty of seeing that endowments coming within the scope of the Act are properly administered and that the

> trustees do their duties faithfully and properly, has been taking an undue interest in the disposal of very valuable properties belonging to the Devaswom in favor of particular persons leading, literally, to the charge of nepotism, and that he has been directing disposal otherwise than in accordance with the law." (pp. 26-27, para 17).

Although it was stated in the order that the Court was not directly concerned with the conduct of the first respondent in the original petition, it was also observed that the case has served to expose a disquieting state of affairs regarding the disposal of valuable forest lands belonging to a religious institution known as the Sree Pulpally Devaswom of which, I trust due notice will be taken by the competent authority in the interests of the public administration and preservation of our forest wealth no less than in the interests of this particular institution."

2. This is the order which has given rise to the appeal before us. C.M.P. No. 2264 of 1963, is a petition for leave to appeal from the order and C.M.P. No. 3852 of 1963 is for converting the appeal into a petition if the appeal is found to be not maintainable.

3. When C.M.P. No. 2264 of 1963 came before a Bench notice was ordered to the Advocate General who appeared and rendered great assistance to us in deciding the matter. Notice was ordered to the respondents in the petition, but except the Government Pleader who appeared for the Commissioner and the petitioner in the original petition, the others did not choose to appear
.

4. The first question for consideration is whether leave to appeal should be granted. It is admitted that the appellant was not eo nomine a party to the original petition. The Commissioner is a corporation sole under Section 80 of the Madras Hindu Religious and Charitable Endowments Act, 1951. As Commissioner, the appellant was a party to that petition until he ceased to hold that office on 19-10-1962, so that subsequently and at the hearing of the original petition he was not a party. The fact that the appellant filed certain affidavits even after 19-10-1962, perhaps in support of or in continuation of prior affidavits would not make him a party to the proceeding : See *Mans Chandra v. Secy., Local Self-Govt*[1]*.,* The Code of Civil Procedure does not provide who can prefer an appeal. A party to a proceeding has a right to prefer an appeal when such appeal is allowed by law. As to whether a person who is not a party can file an appeal under such circumstances, Courts in India have been following-the practice of the Chancery Court, which is summarised in Halsbury's Laws of England as follows :

> "Any of the parties to an action or matter and any persons served with notice of the judgment or order may appeal (by leave, where leave is necessary). A person who is not a party and who has not been served with such notice, cannot appeal without leave, but a person who might properly have been a party may obtain leave to appeal." (Vol. 30, p. 461).

The dictum of Lumley, L.J., in In re, Securities Insurance Co., (1894) 2 Ch 410 which has been followed by the High Courts in India is extracted below :

[1] AIR 1952 Ass 119

> "Now, what was the practice of the Court of Chancery before 1862, and what has it been

since ? I understand the practice to be perfectly well settled that a person who is a party can appeal (of course within the proper time) without any leave, and that a person who without being a party is either bound by the order or is aggrieved by it, or is prejudicially affected by it, cannot appeal without leave..... If a person alleging himself to be aggrieved by an order can make out even a prima facie case why he should have leave he will get it; but without leave he is not entitled to appeal."

We may mention here some of the decisions in which this principle has been followed : *Province of Bombay v. W. I. Automobile Association*[2], *Heersingh v. Veerka*[3], and *Shivaraya v. Siddamma*[4], This Court also adopted this view in *Executive Officer v. Raghavan Pillai*[5], It has also been pointed out in these decisions that the question whether such, leave should be granted or not is a matter which lies in the discretion of the Court of appeal and that no hard and fast rule can be laid down in the matter, the decision in each case depending upon its own facts and circumstances. We may observe that one test in granting leave is whether he could properly have been made a party to the original proceeding. The following passage in Seton on Judgments may with advantage be extracted :

"Leave will not be given unless his interest is such that he might have been made a party". Vol. 1, p. 825.

This principle may be gathered from *In re B., an Infant*[6], The Advocate General while contending that the appellant must be held to be a party to the original petition was prepared to grant that in the circumstances of the case the appellant could have been made eo nomine a party; we also entertain no doubt that lie might have been so made a party. It may therefore be taken as settled law that a person who is not a party to the decree or order may with leave prefer an appeal from such decree or order.

5. Coming back to Lindley, L.J.'s decision referred to earlier, it is laid down that leave in appropriate cases is granted to a person,

"who without being a party is either bound by the order or is aggrieved by it or is prejudicially affected by it".

In *P. Animal v. State of Madras*[7], the question considered was whether the applicant was a person bound by the order, and it was held that ordinarily leave to appeal should be granted to persons who, though not parties to the proceeding, would be bound by the decree or judgment in that proceedings and would be precluded from attacking its correctness in other proceedings. With great respect to the learned Judges, the effect of this is to restrict the benefit of appeal by leave to one who though not a party is a privy to the proceeding sought to be appealed from and to deny the same to the other categories of persons referred to by Lindley, L.J., viz.,

[2] AIR 1949 Bom 141 [4] AIR 1963 Mys 127 [6](1958) 1 QB 12
[3] AIR 1958 Raj 181 [5] AIR 1961 Ker 114 [7] AIR 1953 Mad 485

persons aggrieved and persons prejudicially affected whose case was not specifically considered. *D. Pullayya v. A. Nagabhushanam*[8], purported to follow the Madras case, but it also followed AIR 1949 Bombay 141. The analogy attempted to be drawn by the Advocate General with an

appeal from a finding in a judgment is neither apposite nor complete. Under the Code of Civil Procedure, appeals are provided against decrees and orders of specified categories. As explained by Varadachariar, J., in *United Provinces v. Atiqa Begum*[9], it was by judicial decisions that an extension was made conceding a right of appeal to a party who might be bound by a finding in the judgment though there was no decree against him. Here the appeal is filed under Section 5 of the Kerala High Court Act, 1958, which provides that

> "an appeal shall lie to a Bench of two Judges from a judgment or order of a Single Judge in the exercise of original jurisdiction".

6. We have now to consider whether the leave applied for should be granted. We have already stated that the appellant was not a party to the original petition. He cannot therefore be said to be bound by the order. It has to be considered whether he is aggrieved by the order. There is the oft-quoted dictum of James, L.J., in Ex parte, Sidebotham, (1880) 14 Ch D 458 :

> "But the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something or wrongfully affected his title to something".

We may also refer to the following passages from Corpus Juris Secundum :

> "Broadly speaking, a party or person is aggrieved by a decision when, and only when it operates directly and injuriously upon his personal, pecuniary or property rights".
> "In legal acceptation a party or person is aggrieved by a judgment, decree, or order, so as to be entitled to appeal..... whenever it operates prejudicially and directly upon his property of pecuniary rights or interests, or upon his personal rights and only when it has such effect". (Vol. 4, P. 356 - 1st Edn.)

We do not consider it necessary to refer to the numerous decisions on the subject as in our opinion the appellant is a person on whose personal rights the order directly operates.

7. The appellant is a senior officer of the Indian Administrative Service. There are grave imputations on his character in the order sought to be appealed against. It cannot be disputed that these observations operate injuriously upon his reputation - a personal right. We were told that after the date of the order in the original petition disciplinary proceedings have been started against him and that he has been placed

[8] AIR 1962 And Pra 140 (FB)
[9] AIR 1941 FC 16

under suspension. In these circumstances, we consider this a fit case to grant the leave applied for. C.M.P. No. 2264 of 1963 is therefore allowed.

8. Coming to the appeal, counsel for the appellant urged that the findings against the appellant are wrong in fact and untenable in law. A good deal of fresh evidence was sought to be adduced

in appeal. Two courses are open in the case : One is to direct that the appellant be made a party to the original petition and to remand the same for fresh decision. The other is to decide the appeal here on the merits. As far as the first course is concerned we do not consider it propel to remand the original petition which has been dismissed as against the petitioner therein. As pointed out by Raman Nair, J., the Court is not directly concerned with the conduct of the appellant. There is therefore no point in remanding the case.

9. As regards the latter course, the appellant wants to rely on additional evidence produced in appeal. This is hardly feasible or proper. In the view that we take, namely, that the appellant was not a party to the proceeding, we do not consider it necessary to express any opinion on the merits, as the findings cannot bind him. It seems to us that all that is necessary and proper in the circumstances is to declare that the appellant not having been a, party to the decision under appeal and not having been heard in his individual capacity, the findings and observations against him in the order cannot bind him and ought not to prejudice him in any proceeding. We do so, and the appeal is disposed of accordingly. C.M.P. No. 3852 of 1963 is dismissed.

10. In the circumstances, we make no order as to costs.
Order accordingly.