

LAHORE HIGH COURT

Firm Shaw Hari

Vs

Sohna Mal Beli Ram

(Dalip Singh, J.)

06.01.1942

ORDER

Dalip Singh, J.

1. The point arising in this case is whether a certain order made by a learned Judge in Single Bench is or is not a judgment within the meaning of Clause 10, Letters Patent. The facts of this case are given in the referring order and need only be briefly summarized here. The trial Court on a suit brought by the plaintiff held that it had no jurisdiction and returned the plaint for presentation to, the proper Court. On appeal to this Court, a learned J Judge in Single Bench held that the Court had jurisdiction and directed it to proceed with the suit. From this order a Letters Patent appeal was taken to this Bench and a preliminary objection was raised that the order in question did not amount to a judgment. As there were judgments of this Court which were difficult to reconcile and the subject itself has been a matter of controversy in the Courts in India for a long time and as the controversy has not yet been settled and as further it was contended that the controversy had been settled by decisions of their Lordships of the Privy Council the Letters Patent Bench decided to refer the matter to a Full Bench in order to secure an authoritative decision on the point. In the course of the arguments which have been very ably and fairly conducted on both sides we have been referred to the rulings on the subject of all the different High Courts. I will briefly proceed to mention these decisions and I take first the Calcutta High Court. The classical decision on the point is that contained in *Justices of the Peace for Calcutta v. Oriental Gas Co. Ltd.*¹ where the following definition was attempted of the word 'judgment.' Couch C.J. stated:

We think that 'judgment' in Clause 15 (corresponding to Clause 10 of our Letters Patent) means a decision which affects the merits of the question between the parties 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 and an interlocutory judgment determines only a part of it leaving other matters to be determined.

2. This definition has been generally accepted in the Calcutta High Court but while the definition has been accepted its scope has been considerably widened so that some

¹(72) 17 W.B. 364

of the learned Judges in more recent cases have remarked that the Calcutta High Court while paying lip service to this definition actually and generally disregarded it in practice as being not comprehensive enough and have gradually drifted to the definition given in *Tuljaram Row v. Allagappa Chettiar*² a Full Bench of the Madras High Court: see the observations in this connexion in *Lea Badin v. Upendra Mohan Roy*³, and *Ernest Bruno Nier v. George Reinhart*⁴ There is one Calcutta case to which I consider special reference should be made, namely, *Hadjee Ismail v. Hadjeo Mahomed*⁵ There the question was whether an order refusing to set aside an order granting leave to sue to the plaintiff under Clause 12, Letters Patent, was a judgment or not. In this case Couch C.J. who was responsible for the definition given in Justices of the *Peace for Calcutta v. Oriental Gas Co. Ltd*⁶. stated as follows:

It is not a mere formal order or an order merely regulating the procedure in the suit but one that has the effect of giving a jurisdiction to the Court which it otherwise would not have. And it may fairly be said to determine some right between them, namely the right to sue in a particular Court and to compel the defendants who are not within its jurisdiction to come in and defend the suit, and if they do not, to make them liable to have a decree passed against them in their absence.

3. I conclude from this that the author of the definition which has been accepted whether actually or formally by the Calcutta High Court considered that an order determining the forum of the Court in which the suit was to be tried was an order affecting the rights and liabilities of the parties in the suit. This is exactly the case in the present circumstances. The order of this Court has determined the forum in which the suit is to be tried and therefore according to the definition of the Calcutta High Court as interpreted by its own author this order (would be a judgment within the meaning of Clause 10, Letters Patent, corresponding to Clause 15 of the Calcutta Letters Patent. I will therefore not proceed to any further analysis of the Calcutta judgments except to mention that we were referred to *Ebrahim v. Fackhrunnissa Begum*⁷ *Mathura Sundari Dasi v. Haran Chandra Saha*⁸ and *Ludhu Lal v. Chattu Gope*⁹ in this connexion. In the last mentioned case, namely *Ludhu Lal v. Chattu Gope*¹⁰ Mookerjee, J. remarked that the definition given in Justices of the *Peace for Calcutta v. Oriental Gas Co. Ltd. (72) 17 W.B. 364(Supra)* while quite correct so far as it went was not comprehensive and there might be orders which would be judgments though they did not fall within the four corners of the definition attempted in Justices of the *Peace for Calcutta v. Oriental Gas Co. Ltd*¹¹.

4. I next take up the Bombay High Court. We were referred to the following cases: *Miya Mahomed Haji Jan Mahomed v. Zorabi*¹² and *Charandas Chaturbhuj v. Chhaganlal Pitambardas*¹³ In both these cases 17 W. 3648 was followed. *Ibrahimbhai Fazalbhay v. Yoosuf Ismailbhay*¹⁴ This was an appeal from an order fixing a date of sale and it was held that no appeal lay. In *Maria Flaviana Almeida v. Ramehandra Santuram*¹⁵ an order setting aside an abatement was held not to be a

²(12) 35 Mad. 1

⁴3 C.W.N. 697

⁶(72) 17 W.B. 364

³ AIR 1935 Cal 35

⁵(74) 13 Reng. L.K. 91

⁷(79) 4 Cal. 531

⁸ A.I.R. 1916 Cal. 361

¹⁰ A.I.R. 1918 Cal. 850

⁹ A.I.R. 1918 Cal. 850

¹¹(72) 17 W.B. 364

¹⁴ A.I.R. 1932 Bom. 134

¹²(09) 11 Bom. L.R. 241

¹³ A.I.R. 1921 Bom. 320

¹⁵ A.I.R. 1938 Bom. 408

judgment and Justices of the *Peace for Calcutta v. Oriental Gas Co. Ltd*¹⁶.

was followed. In *Vaijayantappa Shirasappa v. Anasuya*¹⁷ the order excusing a delay in filing an appeal was held not to be a judgment. Two Judges delivered judgments but emphasis was laid on the fact that the proceedings had not terminated by this order and therefore it could not be said to be a final order or a judgment. Hence, according to those learned Judges, both under the definition in *Tuljaram Row v. Allagappa Chettiar*¹⁸ and in Justices of the *Peace for Calcutta v. Oriental Gas Co. Ltd.* (72) 17 W.B. 364 (Supra) the order was not a judgment. I do not think it is necessary to enter into any detailed analysis of these judgments.

5. I next come to the Allahabad High Court. The Allahabad High Court as pointed out in the commentary of Mulla on the Civil Procedure Code in Edn. 10 at p. 1351 at first held that the Letters Patent were controlled by Section 104 and Order 43 Rule 1, Civil Procedure Code, corresponding to Section 588 of the old Civil Procedure Code. It has subsequently been pointed out that this view having regard to the change of the wording of Section 104 could not possibly now be considered correct. The earlier Allahabad decisions, therefore, need not detain us. In *Sadiq Ali v. Anwar Ali*¹⁹ the definition given in *Tuljaram Row v. Allagappa Chettiar*²⁰ was followed, and an order setting aside an abatement was held to be appealable. In *Ishwari Prasad v. Sheotahal Rai*²¹, again *Tuljaram Row v. Allagappa Chettiar* (12) 35 Mad. 1 (Supra) was followed and *Sevak Jeranohod Bhogilal v. Dakore Temple Committee*²², was explained as referring only to Clause 39 of the Letters Patent of that Court and to govern only appeals to the Privy Council. All these cases, however, were set aside by *Mt. Shahzadi Begam v. Alakh Nath*²³, a Full Bench ruling of the Allahabad High Court where *Tuljaram Row v. Allagappa Chettiar* 12 35 Mad. 1 (Supra) was dissented from and it was stated that their Lordships of the Privy Council had settled the question by the decision in *Sevak Jeranohod Bhogilal v. Dakore Temple Committee*²⁴. This view has since prevailed in the Allahabad High Court. I come now to the Madras High Court. The earliest case of Madras to which we have been referred is *DeSouza v. Coles*²⁵. It is unnecessary to dwell on this case because it is universally now conceded that that case went too far in defining 'judgment' as any order which affected some right or liability of the parties. The classic definition so far as Madras is concerned is given in *Tuljaram Row v. Allagappa Chettiar* (12) 35 Mad. 1 (Supra) by Sir Arnold White, C.J. and this definition has really never seriously been departed from in Madras. In this case Sir Arnold White, C.J. stated as follows:

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 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. An adjudication on an application

¹⁶(72) 17 W.B. 364

¹⁸(12) 35 Mad. 1

¹⁷AIR 1940 Bom 196 : (1940) 42 BOM LR 377

¹⁹ A.I.R. 1923 All. 44

²⁰(12) 35 Mad. 1

²² AIR 1925 PC 155 : 87 Ind. Cas. 313 : 1925-22-LW 246

²¹ AIR 1926 All 669 : (1926) ILR 48 All 684

²³ AIR 1935 All 620 : 1935 AWR (H.C.) 791 : 157 Ind. Cas. 119

²⁵(67) 3 M.H.C.R. 384

²⁴ AIR 1925 PC 155 : 87 Ind. Cas. 313 : 1925-22-LW 246

which is nothing more than a step towards obtaining a final adjudication in the suit is not, in my opinion, a judgment within the meaning of the better Patent. I think too an order

on an independent proceeding which is ancillary to the suit (not instituted as a step towards judgment but with a view to rendering the judgment effective if obtained) e.g., an order on an application for an interim injunction, or for the appointment of a receiver is a 'judgment' within the meaning of the clause.

6. This definition has been followed in *Krishna Reddy v. Thanikachala Mudali*²⁶ and *Govinda Ramanuja Pedda v. Tiruvengada Krishnamacharlu*²⁷, I now pass on to consider the Rangoon High Court. We were referred to the following cases *Chidambaram Chettyar v. N.A. Chettiar Firm*²⁸ *Raman Chettyar v. Bank of Chettinad Ltd*²⁹. *Dayabhai Jiandas v. A.M.M. Murgappa* A.I.R. 1935 Rang. 267 and *Nagoor Gani v. A.K.A.C.T.A.L.C. Chettiar*³⁰ It is unnecessary to go in any detail into these rulings except *Dayabhai Jiandas v. A.M.M. Murgappa*³¹ which has settled the view of Rangoon. In a Court consisting of seven Judges Page C.J. expressed the view that the matter was not open to any controversy now by reason of three decisions of their Lordships of the Privy Council reported in *Sevak Jeranohod Bhogilal v. Dakore Temple Committee*, AIR 1925 PC 155 : 87 Ind. Cas. 313 : 1925-22-LW 246(supra). *Tata Iron and Steel Co. v. Chief Revenue Authority*³² and *Mt. Sabitri Thakurain v. Savi*³³ Some reference was also made to the Privy Council decision in *Abdul Rahman v. D.K. Cassim & Sons*³⁴, This decision, however need not detain us as the decision was merely whether a certain order was appealable to the Privy Council under Section 109, Civil Procedure Code, and their Lordships of the Privy Council held that the order in that case not being a final order was not so appealable. We have also been referred to a decision of the Federal Court reported in *Hori Ram Singh v. Emperor*³⁵, In that case Sir Shah Sulaiman expressed the view that no appeal lay and he referred to his own judgment in *Mt. Shahzadi Begam v. Alakh Nath*³⁶, which has already been referred to as laying down what, according to that learned Judge, was the decision of the Privy Council in *Sevak Jeranohod Bhogilal v. Dakore Temple Committee*, AIR 1925 PC 155 : 87 Ind. Cas. 313 : 1925-22-LW 246.(Supra) It is sufficient here merely to note that the other two Judges of the Federal Court, namely, the Chief Justice and Varadachariar, J. do not seem to have accepted this view for they proceeded to admit and decide on the appeal but no reasons were given in the judgment of Varadachariar J. and the only brief reference in the judgment of the learned Chief Justice was that no narrow construction should be put upon the word 'judgment' and it is unnecessary to go at length into this case.

7. I now proceed to consider the oases of our own High Court. The earliest case is that reported in *Gokul Chand v. Sanwal Das*³⁷ where an order refusing stay of execution was held appealable. The next case is the main decision on this point and is reported in *Ruldu Singh v. Sanwal Singh*³⁸ There the learned Chief Justice Sir Shadi Lal stated that in his opinion the best

²⁶ A.I.R. 1924 Mad. 90

²⁸ A.I.R. 1929 Rang. 41

³⁰ A.I.R. 1941 Rang. 227

²⁷ A.I.R. 1927 Mad. 398

²⁹ A.I.R. 1933 Rang. 15

³¹ A.I.R. 1935 Rang. 267

³² A.I.R. 1923 P.C. 148

³⁴ AIR 1933 PC 58 : 1933 AWR (P.C.) 1 222 : 1933-37-LW 331.

³³ A.I.R. 1921 P.C. 80

³⁵ AIR 1939 FC 43 : 1939-50-LW 95

³⁶ AIR 1935 All 620 : 1935 AWR (H.C.) 791 : 157 Ind. Cas. 119

³⁸ A.I.R. 1922 Lah. 380

³⁷ A.I.R. 1920 Lah. 326

definition of 'judgment' so far attempted was contained in *Tuljaram Row v. Allagappa Chettiar (12) 35 Mad. 1(Supra)* Without, however, laying down that even that definition was entirely comprehensive that learned Judge proceeded to lay down that it must be considered in the circumstances of each case whether the order amounts to a judgment or not though the test afforded by the Madras decision Was probably the best test obtainable. In *Firm Badri Das*

*Jankiclas v. Mathanmal*³⁹ the same definition was followed, the judgment again being by Sir Shadi Lal. Similarly, in *Nanak Chand v. Sajjad Hussain*⁴⁰ the same principles were applied. In *Shibba Mal v. Rup Narain*⁴¹ Sir Shadi Lal and Broadway JJ., considered the meaning to be given to the Privy Council decision in *Sevak Jeranohod Bhogilal v. Dakore Temple Committee*, AIR 1925 PC 155 : 87 Ind. Cas. 313 : 1925-22-LW 246(supra). The learned Judges there pointed out that the counsel in the case were unable to explain why their Lordships of the Privy Council having held that the appeal to His Majesty in Council should not have been admitted proceeded to allow the appeal and set aside the judgments or decrees on the ground that these judgments were incompetent. Their Lordships, however, also further pointed out that the judgment in question obviously referred to Clause 39 corresponding to Clause 29 of our Letters Patent and was only dealing with the words 'final judgment' contained in that clause and not with the word 'judgment' in Clause 10 of our Letters Patent corresponding to Clause 15 of the Letters Patent of the High Courts of Calcutta, Bombay and Madras. I think it is fairly clear that what their Lordships of the Privy Council in this case meant was that the appeal to His Majesty in Council should not have been admitted by the High Court on the ground that it was admitted, namely, that a substantial question of law was involved between the parties. Their Lordships of the Privy Council allowed the appeals on the ground that the appeal to the High Court was itself incompetent and therefore the orders passed on appeal by their Lordships of the High Court were not passed in the exercise of any jurisdiction conferred on them and were, therefore, mere waste paper, and hence the acceptance of the appeal. Great stress has been laid on the fact that in this case their Lordships of the Privy Council expressed themselves as follows:

The term 'judgment' in the Letters Patent of the High Court means in civil cases a decree and not a judgment in the ordinary sense.

8. If by these words their Lordships had intended to set at rest the controversy which had aged for over 70 years in the Indian High Courts on the meaning of the term 'judgment' in Clause 10 of our Letters Patent or Clause 15 of the Letters Patent of Calcutta, Bombay and Madras then following the usual practice of their Lordships, their Lordships would have expressed the fact that they noticed the controversy and intended to set it at rest and would not merely have proceeded in a casual sentence in a judgment which did not deal with this point at all to have laid down the proposition that they have laid down. Their Lordships, it must be remembered, were in that case dealing with the question of the right to appeal to the Privy Council. The clause which gives that right contains the word 'final judgment'. In Clause 10 the word is used without any qualifying adjective at all. Following the usual rule of construction of statutes it would be impossible to hold unless driven to it that the word 'final' was merely a superfluity in Clause 29 of our Letters Patent. There seems to be obviously

³⁹ A.I.R. 1922 Lah. 185

⁴¹ A.I.R. 1928 Lah. 904

⁴⁰ A.I.R. 1924 Lah. 412

some distinction between the words 'final judgment' and the word 'judgment.' I am fortified in this view by the construction of the term of Clause 10 of our own Letters Patent which reads as follows:

And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by

a Court subject to the superintendence of the said High Court

9. If the word 'judgment' meant only a decree what would be the point of excluding a judgment in respect of a decree or order. It seems to me clear, therefore, that orders other than judgments in a decree are contemplated by Clause 10 of the Letters Patent. I do not think, therefore, that *Sevak Jeranohod Bhogilal v. Dakore Temple Committee*, AIR 1925 PC 155 : 87 Ind. Cas. 313 : 1925-22-LW 246(Supra) should be interpreted in the sense that the Allahabad and the Rangoon High Courts have interpreted it. I may point out that apart from what was stated in *Shibba Mal v. Rup Narain*⁴² much the same view about this judgment was expressed in *Govinda Ramanuja Pedda v. Tiruvengada Krishnamacharlu*⁴³ and in *Sital Din v. Anant Ram*⁴⁴, I, therefore, do not consider that this judgment has overruled all the previous definitions given in the Indian High Courts whether of Calcutta or of Madras which have so long held the field. The next Privy Council case to which reference was made in the Eangoon judgment in *Dayabhai Jiwandas v. A.M.M. Murgappa* A.I.R. 1935 Rang. 267(supra) is *Tata Iron and Steel Co. v. Chief Revenue Authority* A.I.R. 1923 P.C. 148(Supra) I am quite unable to see how this case can be held to be any authority for the interpretation of the word 'judgment' in Clause 10 of our Letters Patent. Their Lordships of the Privy Council were again dealing with Clause 39 of the Bombay High Court Letters Patent and laid down that no appeal lay from a case stated by an Income Tax authority for the opinion of the High Court. The gist of the judgment as I read it is that such a decision by the High Court is only advisory and cannot be said to decide anything final. The real question before their Lordships was whether such a decision could be considered a final judgment. It is true that the words 'judgment' and 'final judgment' appear to be used interchangeably in the course of the discussion in the judgment of their Lordships of the Privy Council but I am quite unable to see that any such inference can be drawn from it as has been drawn in the Rangoon case with all respect to their Lordships of the Rangoon High Court. The next case decided by their Lordships of the Privy Council is *Mt. Sabitri Thakurain v. Savi* A.I.R. 1921 P.C. 80 (Supra). Here again the point before their Lordships of the Privy Council was whether Order 41, Rule 10, Civil Procedure Code, applied to Letters Patent appeals. There is just one word in the course of this judgment at p. 487 from which inferences have been drawn by their Lordships of the Rangoon High Court. The sentence runs as follows:

Section 15, Letters Patent, is such a law and what it expressly provides, namely an appeal to the High Court's appellate jurisdiction from a decree of the High Court in its ordinary original jurisdiction is thereby saved.

⁴² A.I.R. 1928 Lah. 904 ⁴⁴ AIR 1933 All 262 : 1933 AWR (H.C.) 1 355 : (1933) ILR 55 All 326

⁴³ A.I.R. 1927 Mad. 398

10. It is contended that as their Lordships of the Privy Council have used the word 'decree' instead of the word 'judgment' therefore, the word 'judgment' and the word 'decree' are synonymous in the opinion of their Lordships of the Privy Council. I do not consider that any such inference can be drawn. As rightly pointed out in *Ernest Bruno Nier v. George Reinhart*⁴⁵ it is difficult to understand what would be the bearing of this remark when their Lordships were considering whether Section 104 governed the Letters Patent appeal clause or not. Section 104 obviously applies only to appeals from orders and not to appeals from decrees. If, therefore, the Letters Patent appeal clause only applied to decrees the short answer would be that Section 104 could have no bearing on the question at all and there would be no need to discuss the operation of the saving clause of Section 104 whereby appeals provided by any other law were saved. It

seems to me that this argument is conclusive on the subject and *Mt. Sabitri Thakurain v. Savi A.I.R. 1921 P.C. 80(supra)* cannot by the use of the word 'decree' in place of the word "judgment" be held to have overruled the previous decisions of the Indian High Courts or indeed ever have intended to give any interpretation of Clause 10 of the Punjab Letters Patent, whereby the word "judgment" should be made synonymous with the word "decree."

11. I have now dealt with all the rulings referred to before us in the course of the arguments in the different High Courts and in the Privy Council and in the Federal Court. There remains only to notice two rulings of our own High Court: *Pahlad Rai y. Shiv Ram A.I.R. 1927 Lah. 540* is a decision by Sir Shadi Lal and Broadway JJ. In that case an order transferring a suit and an order refusing to transfer a suit were distinguished and it was held that an order refusing to transfer a suit was not a judgment within the meaning of Clause 10, Letters Patent. With the greatest respect to the learned Judges who decided that case, I am unable to follow the reasoning in the case. The proceeding which terminated by the refusal to transfer the suit could never have taken place in the trial Court trying the suit at all. An application to have the suit transferred could only be made to the High Court and the proceeding so far as the right to have the suit transferred was concerned was entirely terminated by the order refusing the transfer. If then the reasoning of *Tuljaram Row v. Allagappa Chettiar (12) 35 Mad. 1(Suupra)* was to be applied to the case the order was a judgment within the meaning of the clause and therefore appealable. This judgment does not differ from the previous view expressed in *Ruldu Singh v. Sanwal Singh A.I.R. 1922 Lah. 380(supra)*. On the contrary it applies the test laid down in *Tuljaram Row v. Allagappa Chettiar (12) 35 Mad. 1(supra)*. But with great respect it seems to consider that as the suit still continued therefore no right or liability had been determined in that suit and, therefore, that no appeal lay. If this decision were correct then an order refusing to stay execution would also not be a judgment for the execution proceedings would continue in the original Court as a result of the refusal. Yet the same learned Judge, namely Sir Shadi Lal who delivered the judgment in *Pahlad Rai y. Shiv Ram A.I.R. 1927 Lah. 540* had held that an order refusing stay-of execution was a judgment within the meaning of Clause 10. I am unable to see that if the test proposed in *Tuljaram Row v. Allagappa Chettiar (12) 35 Mad. 1(Supra)* and approved in *Ruldu Singh v. Sanwal Singh A.I.R. 1922 Lah. 380(Supra)* is correct, how this decision can be said to have been correct.

⁴⁵43 C.W.N. 697

12. In *Tola Ram Singh v. Fazal Ahmad*⁴⁶ a Division Bench (Addison and Abdul Bashid JJ.) held that an order registering a decree as that of a revenue Court is not a judgment. With great respect to the learned Judges I am again unable to see how their Lordships came to the conclusion on which they based their decision that nothing had been decided by this order. Section 100, Punjab Tenancy Act, lays down that before any such thing can be done the High Court has to be satisfied (1) that the proceedings were bona fide, (2) that no prejudice has been caused to any party and (3) that there has been a mistake of jurisdiction and then and only then can the High Court register a decree of the subordinate Court as a decree of the revenue Court of a corresponding rank. It is obvious, therefore, that when a decree of a civil Court is registered by order under Section 100, Punjab Tenancy Act, as a decree of the revenue Court three things have been decided and it is impossible to say that by this order nothing has been decided and that the order is only an administrative order. With great respect, therefore, to their Lordships who decided that case, I am of opinion that that case was wrongly decided.

13. I may now briefly summarise my conclusions which are as follows: I do not consider that their Lordships of the Privy Council have overruled the series of decisions both in the Calcutta High Court and in the Madras High Court which though they have propounded a different test certainly have not laid down that the word 'judgment' is synonymous with 'decree.' I do not think their Lordships of the Privy Council either intended to lay down any such principle of interpretation nor would their Lordships have done so without noticing the controversy and expressly overruling the cases which had decided to the contrary. I, therefore, do not see that the views propounded in the Allahabad and Rangoon Full Benches which have been discussed above are correct, with all respect to the learned Judges who decided those cases. I do not consider that it is necessary in the present Pull Bench to decide finally whether the view of the Calcutta High Court as expressed in Justices of the *Peace for Calcutta v. Oriental Gas Co. Ltd. (72) 17 W.B. 364* is correct or whether the test given in *Tuljaram Row v. Allagappa Chettiar (12) 35 Mad. 1* is correct. Under both the tests the present case is one in which the order would be a judgment and therefore appealable. It is really unnecessary to say any more except that I would agree entirely with the remarks in *Ruldu Singh v. Sanwal Singh A.I.R. 1922 Lah. 380* that the best test propounded so far is the test laid down in *Tuljaram Row v. Allagappa Chettiar (12) 35 Mad. 1* It is not, however, necessary to decide whether that test is comprehensive so as to exclude all other tests. It is sufficient to say that each case must be considered on its own facts and circumstances and while the tests propounded in Madras and in the Calcutta High Courts serve as a good guide for this Court it is not necessary to hold that those tests are comprehensive and exclude other cases. I would, therefore, answer the reference to the Pull Bench by holding that the order in the present case is a judgment and therefore appealable under Clause 10, Letters Patent. The case will now go back to the Division Bench for disposal on merits.

Din Mohammad, J.

14. I agree.

Blacker, J.

15. I agree.

⁴⁶ A.I.R. 1936 Lah. 785