

1964

Present : Abeyesundere, J., and G. P. A. Silva, J.

W. N. R. SAMICHCHI APPU, Petitioner, and
N. BARONCHIHAMY and others, Respondents

S. C. 166/64—Application for Conditional Leave to Appeal under the provisions of the Appeals (Privy Council) Ordinance in S. C. 534 of 1960/D. C. Tangalle, 6205

Privy Council—Conditional leave to appeal—Judgment allowing writ of execution of a final decree—Finality of such judgment—Appeals (Privy Council) Ordinance, Schedule, Rule 1 (a).

Where the rights of parties in an action in the District Court have been finally determined, a judgment of the Supreme Court dismissing an appeal from an order of the District Court allowing an application for writ to execute the decree is not a final judgment within the meaning of Rule 1 (a) of the Schedule to the Appeals (Privy Council) Ordinance.

APPPLICATION for conditional leave to appeal to the Privy Council.

G. T. Samerawickreme, for the Defendant-Petitioner.

H. W. Jayewardene, Q.C., with *E. A. G. de Silva, L. C. Seneviratne* and *Miss R. de Zoysa*, for the Plaintiffs-Respondents.

October 15, 1964. ABEYESUNDERE, J.—

The plaintiffs-respondents instituted action No. 6205 in the District Court of Tangalle against the defendant-petitioner and obtained a decree in their favour. The defendant-petitioner appealed from that decree and this Court dismissed that appeal by its judgment dated 22nd October 1959. Thereafter the plaintiffs-respondents made an application to the District Court of Tangalle for writ to execute the decree which they had obtained in the aforesaid action. The District Court of Tangalle allowed the writ by its order 24th October 1960. The defendant-petitioner appealed from that order and this Court dismissed that appeal by its judgment dated 14th May 1964. The defendant-petitioner has, by his petition dated 22nd May 1964, applied to this Court for leave to appeal to Her Majesty in Council from the aforesaid judgment of this Court dated 14th May 1964.

The defendant-petitioner relies on Rule I (a) of the Rules in the Schedule to the Appeals (Privy Council) Ordinance. Mr. H. W. Jayewardene, Q.C., who appears for the plaintiffs-respondents, submits that the judgment of the Supreme Court from which the defendant-petitioner seeks to appeal to Her Majesty in Council is not a final judgment within the meaning of Rule 1(a) of the aforesaid Rules. The finality of a judgment must be determined according to the principle that the finality must relate to the suit. That principle was expounded by the Privy Council in the case of *Abdul Rahaman v. D. K. Cassim* reported in

All India Reports (1953) Privy Council, page 58, and applied by this Court in the judgment in the case of *Palaniappa Chetty v. The Mercantile Bank of India Ltd.* reported in *43 N. L. R., page 352*.

All the rights of the parties that had to be determined in the aforesaid action were determined by the decree entered in that action. The appeal made from that decree to this Court was dismissed under Section 769 (2) of the Civil Procedure Code as the appellant had not appeared either by counsel or in person. Mr. G. T. Samarawickreme, who appears for the defendant-petitioner, submits that the judgment of this Court dismissing the appeal under the aforesaid section is not final as the proviso to the aforesaid section enables an appeal which is dismissed under that section to be reinstated and that, therefore, the judgment of this Court did not finally determine the rights of the parties in the aforesaid action. The appeal of the defendant-appellant which was dismissed under the aforesaid section was not reinstated. Even if the judgment dismissing that appeal did not finally determine the rights of the parties in the aforesaid action, the decree of the District Court of Tangalle entered in the aforesaid action is final as the appealable period has elapsed.

The judgment of the Supreme Court dated 14th May 1964 dismissing the appeal of the defendant-petitioner from the order of the District Court of Tangalle allowing writ did not determine any of the rights of the parties that had to be determined in the aforesaid action. As already stated, all those rights were finally determined by the decree entered in the aforesaid action. I hold that the judgment of this Court dated 14th May 1964 is not final in relation to the suit and is therefore not a final judgment within the meaning of Rule I (a) of the aforesaid Rules. The defendant-petitioner's petition is dismissed with costs.

G. P. A. SILVA, J.—I agree.

Application dismissed.
