

(1961) 09 KL CK 0018
In the High Court Of Kerala
Case No : Writ Appeal No. 89 of 1961

Arumugham Chettiar

APPELLANT

Vs

Joseph Velivath

RESPONDENT

Date of Decision : 19-09-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Kerala High Court Act, 1958 — Section 5

Citation : (1961) KLJ 1074

Hon'ble Judges : T.K. Joseph, J; M.S. Menon, J

Bench : Division Bench

Advocate : K. Velayudhan Nair and V.S. Moothathu, for the Appellant; N. Kumaran Achen and V. Rama Shenoi Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—This is an appeal against the judgment of Vaidialingam J. dismissing O. P. No. 412 of 1961. The O. P. was directed against Ext. P. 2 dated 29-11-1960 which reversed Ext. P. 1 dated 28-11-1959. In Ext. P. 1 the Principal Munsiff of Ernakulam held that the order in R. C. P. No. 212 of 1955 and the statement of compromise filed on 3-1-1956 cannot be read together and construed as an order capable of execution. In Ext. P. 2 the Rent Control Revisional Authority, Ernakulam, came to the conclusion that Ext. P. 1 cannot be supported, that the order in R. C. P. No. 212 of 1955 and the statement of compromise above mentioned should be read together, and that when so read, there is an order capable of execution as contended by the respondent before us.

2. The only article of the Constitution invoked in the petition is Article 227. The contents of the petition also indicate that the petition is one under that article.

3. It is settled law that the jurisdiction under article 227 unlike the jurisdiction under article 226 is not an "original" but a "revisional" jurisdiction, a power which can conveniently be compared to the revisional power conferred by section

115 of the Code of Civil Procedure, 1908 (see 1961 Supreme Court Notes, page 144). In A. I. R. 1955 Madras 287 Satyanarayana Rao J. said:

The jurisdiction that was invoked whether it rightly falls u/s 115, Civil P. C., or under Art. 227 of the Constitution in our opinion, is the revisional jurisdiction and not the extraordinary original jurisdiction like the jurisdiction of this Court under Art. 226 of the Constitution.

To the same effect are A. I. R. 1953 Calcutta 636 and A. I. R.;1957 Allahabad 414 (F. B.). In the latter case Beg J. said:

The power exercised under Article 226 is original. On the other hand, the power exercised under Article 227 is not original.

4. Section 5 of the Kerala High Court Act, 1958, provides:

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. An appeal shall lie to a Bench of two Judges from a judgment of a Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Subordinate Court, where the Judge who passed the judgment declares that the case is a fit one for appeal.

It must follow that in cases where a Single Judge exercises his jurisdiction under article 227 of the Constitution-a jurisdiction which can in no sense be considered as "original"-no appeal will lie from his judgment or order, and that this appeal which is from a judgment under article 227 of the Constitution should be dismissed.

5. In the light of what is stated above no other question arises for consideration and the appeal is hereby dismissed. No costs. Before parting with this case we place on record our appreciation of the assistance we derived from Mr. V. Rama Shenoï who addressed us as an *amicus curiae*.