
(1939) 12 MAD CK 0031
In the Madras High Court

Chidambaram Chettiar

APPELLANT

Vs

Muthukumaraswami Chettiar

RESPONDENT

Date of Decision : 11-12-1939

Acts Referred:

Citation : AIR 1940 Mad 417 : (1940) 51 LW 447 : (1940) 1 MLJ 317

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The petitioner claims to be an agriculturist within the meaning of the Madras Agriculturists' Relief Act, 1938. On the 8th October, 1938, he filed an application in the Court of the District Munsif of Cuddalore asking for the amendment u/s 19 of the Act of a money decree which had been passed against him, By an order dated the 4th May, 1939, the District Munsif dismissed the application. The petitioner then filed the application now before us asking this Court to reverse the District Munsif's decision under the powers of revision conferred by Section 115 of the Code of Civil Procedure. The respondent says that the petition does not lie because the Government has amended the rules framed under the Act and by the amendment has provided for an appeal against an order passed u/s 19. The petitioner contends that the new rules cannot have retrospective effect. This question calls for decision before the Court examines the reasons advanced by the petitioner for the order which he seeks.

2. The amendment of the rules framed under the Act was made by an order of the Government dated the 27th October, 1939. The amendment is said to have been made in exercise of the powers conferred by Sub-section (1) and Clause (c) of Sub-section (2) of Section 28 of the Act. By the order Rule 8 was added to the rules and this rule inter alia provides that an appeal shall lie from an order u/s 19 amending or refusing to amend a decree or entering or refusing to enter satisfaction in respect of a decree, as if the order related to the execution, discharge or satisfaction of the decree within the meaning of Section 47 of the Code of Civil Procedure, 1908. Sub-section (1) of Section 28 of the Act states

that the Provincial Government may make rules for carrying into effect the purposes of the Act. Sub-section (2)(c) says that in particular and without prejudice to the generality of the power conferred by Sub-section (1), the Provincial Government may make rules for removing any difficulty in giving effect to the provisions of the Act. The Court is not called upon in this case to decide whether u/s 28 the Government has power to make provision for appeals by amendment of the rules, because it is quite clear that the amended rules cannot have retrospective effect, and therefore they do not govern the present case. There is nothing in the Act or in the rules which supports the respondent's contention that retrospective effect, should be given to the amended rules. The amendments to the rules are not of a declaratory nature. Rule 8 makes an entirely new provision. This being the case it cannot have retrospective effect in the absence of a provision to that effect. The rules were amended long after this petition had been filed and long after the period of limitation for an appeal had expired. Therefore the objection that the petition does not lie by reason of the amendment of the rules must be rejected.

3. Then their Lordships dealt with the case on the merits.