

(1902) 12 MAD CK 0007
In the Madras High Court

Gandham Veeraswami and Others

APPELLANT

Vs

Manager, Pittapur Estate

RESPONDENT

Date of Decision : 17-12-1902

Acts Referred:

Citation : (1903) ILR (Mad) 518 : (1903) 13 MLJ 296

Judgement

1. This is an appeal from an order of the District Judge reversing a finding of the Sub-Collector in proceedings under Act VIII of 1865 and

remanding the suit for disposal on the merits. The order purports to have been made u/s 562 of the Code of Civil Procedure.

2. A preliminary objection has been taken that no appeal lies. In support of the objection it has been argued that the adjudication by the Sub-

Collector was not a "" decree"" within the meaning of Section 562 of the Code, that this being so, the order of remand cannot be taken to have been

made under that section, and that inasmuch as Section 588(28) of the Code only gives a right of appeal when the order is made u/s 562, if the

order was not under that section no appeal would lie.

3. We are of opinion that it was competent for the District Judge to make the order u/s 562.

4. No doubt Section 69 of Act VIII of 1865 uses the word "" Judgment,"" but we think the Judgment, or adjudication, by the Sub-Collector in the

present case is a formal expression of an adjudication upon a right claimed within the meaning of the definition of decree contained in Section 2 of

the Code. We also think it is a "" formal expression...upon a right claimed in a Civil Court.

5. In Kotappa v, Venkataramiah 10 M.L.J. R. 398 this Court considered this last

point with reference to the right of second appeal conferred by

Section 584 of the Code and held that for the purposes of that section an adjudication by the Collector in proceedings under Act V11I of 1865

amounted to a decree as defined by the Code. As pointed out by the Judicial Committee in the case reported in Nilmoni Singh Deo v. Taranath

Mukerjee ILR 9 Cal. 295 there is a distinction between Civil Courts and Rent Courts, but a Rent Court is a Civil Court in the sense that it decides

a civil question between persons seeking their civil rights.

6. There is nothing in the Section 4 of the Code which is inconsistent with the view above expressed.

7. To say that the adjudication in question in the present case is a "decree" within the meaning of Section 540 of the Code does not affect any

special procedure" prescribed by Act VIII of 1865. Moreover Section 4 A, a comparatively recent enactment clearly contemplates Revenue

Courts being governed by the provisions of the Code of Civil Procedure.

8. We think the preliminary objection fails and must be overruled.

9. On the merits, in our judgment, the question of the propriety of the pattah cannot be satisfactorily determined until there have been findings on

the other issues in the case. On this ground we think the order of remand ought not to be interfered with.

10. The appeal is dismissed. The costs of this appeal will abide the result of the suit.