

(1946) 08 MAD CK 0003
In the Madras High Court

K. Kandaswami and Another

APPELLANT

Vs

K.K. Neelamagam Pillai

RESPONDENT

Date of Decision : 02-08-1946

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1947 Mad 112 : (1946) 59 LW 666 : (1946) 2 MLJ 368

Hon'ble Judges : Chandrasekhara Aiyar, J

Bench : Division Bench

Judgement

Chandrasekhara Aiyar, J.—The Rent Controller, Kumbakonam, made an order for delivery of a house to the petitioner. The order is in

these terms:

The petitioner and 1st respondent are present. The 1st respondent agrees to put the petitioner in possession of the property on 11th December,

1945. The petitioner agrees to this proposal. It is ordered accordingly.

2. Possession of the house was not delivered as per the order and the petitioner sought execution of it in the Court of the Subordinate Judge of

Kumbakonam not only against the 1st respondent, Muthuswami Thevar, but also against respondents 2 and 3, K. Kandaswami and K.

Kamalambal Ammal, the second respondent being the brother-in-law of the first respondent and the third respondent being the second

respondent's wife. They were party-respondents to the application for eviction before the Rent Controller. It is pointed out by the learned

Subordinate Judge that the second respondent agreed to the eviction order and that the third respondent had no rights independently of her

husband. Their objections to delivery of the house were overruled and possession

was ordered to be delivered by a particular date. Respondents 2 and 3 to the original petition thereupon preferred an appeal to the District Judge of West Tanjore. A preliminary objection was taken to this appeal by the original petitioner to the effect that no appeal lay from an order in execution by the Subordinate Judge. This preliminary objection was upheld by the learned District Judge and the appeal was dismissed with costs. Respondents 2 and 3 to the original petition, who were the appellants before the lower Court, have now preferred this Civil Miscellaneous Second Appeal and it is urged on their behalf that the view taken by the learned District Judge is wrong and that once the order of the Rent Controller is sought to be executed before the Subordinate Judge "" as if it were a decree of his Court"", as provided in Section 7-A (2-A) of the Madras House Rent Control Order, section. 47 of the CPC becomes applicable and the parties are entitled to an appeal. The contention on their behalf is that the Rent Control Order itself provides that it is to be executed as if it were a decree passed by the Subordinate Judge's Court, and that the orders of the executing Court are subject to the appeals provided in the Code, though finality attaches to the order of the Rent Controller, in so far as eviction is directed.

3. The ground on which the learned District Judge held that no appeal lay to him is that no right of appeal is expressly conferred under the Madras House Rent Control Order, which provides that the order made by the Rent Controller is final. He read the words "" as if it were a decree passed by him "" to mean executable in a like manner as if it was a decree of a Court and not as investing the Court with the jurisdiction of an executing Court and the attendant consequences of an appeal from an order in execution.

4. It is true that a right of appeal must be given by an express enactment. But if by virtue of a special enactment, an order of a particular tribunal is to be treated as an order of a regular court for certain purposes, then the right of appeal is attracted under the general law. The learned District.

Judge relied on the Full Bench decision in A.S. Nagappa Chettiar and Another Vs. Annapoorani Achi alias Karuppayi Achi and Another, as an

authority supporting his view. Really it does not; for we find at page 274 observations to the effect that proceedings u/s 19 of the Madras

Agriculturists' Relief Act are not in the nature of proceedings in execution and

hence Section 47 of the CPC has no application. If however they are to be treated as proceedings in execution, it is reasonably clear that Section 47 will apply. The order of the Rent Controller has to be executed by the principal Subordinate Judge as if it were a decree of his Court and this means that for purposes of execution it should be regarded as a decree of the Subordinate Judge. Once we reach this position it is difficult, if not impossible, to resist the applicability of Section 47 of the Code.

Only a few decisions need be referred to as justifying the view that an appeal lies. To start with, there is the leading case of National Telephone

Company Ltd. v. Postmaster General (1913) A.C. 546. Viscount Haldane L.C. says at page 552:

When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches.

Lord Parker observes at page 562:

Where by statute matters are referred to the determination of a Court of record with no further provision the necessary implication is, I think, that the Court will determine the matters, as a Court. Its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal from its decision remain the same.

The decision in Secretary of State for India v. Chelikani Rama Rao (1916) 31 M.L.J. 324 : L.R. 43 IndAp 192 : ILR 39 Mad. 617 explains away

the prior decision of the Board in Rangoon Botatoung Company Limited v. The Collector, Rangoon (1912) 23 M.L.J. 276 : L.R. 391.A. 197 :

ILR 40 Cal. 21 (P.C.) as based upon the fact that the proceedings were from the beginning to end ostensibly and actually arbitration proceedings.

Lord Shaw says:

The claim was the assertion of a legal right to possession of and property in land; and if the ordinary courts of the country are seized of a dispute of

that character it would require, in the opinion of the Board, a specific limitation to exclude the ordinary incidents of litigation;

and the Board overruled the objection that no appeal lay. This decision is followed in Mating Ba Thaw v. Ma Pin (1934) 66 M.L.J. 404 : L.R. 61

IndAp 158 : ILR 12 Rang 194 (P.O.) where it was laid down that where a Court is

appealed to as one of the ordinary Courts of the country, the ordinary rules of the CPC apply. To the same effect more or less are the observations of the Privy Council in *Hem Singh v. Mahant Basant Das* (1936) L.R.63 IndAp 180 : ILR 17 Lah.146 (P.C.). The case was under the Sikh Gurudwaras Act. There too the original tribunal from which an appeal was provided to the High Court was not a Court within the Civil Procedure Code, but was an ad hoc tribunal.

5. The cases relied on by the respondent in *Chinnasami Mudali v. Tirumalai Pillai* and the Right Honourable the Secretary of State for India ILR

(1901) Mad. 572. *Kadir Mohideen Marakkayar Vs. Muthukrishna Aiyar and Another*, and *Ibrahim Khan Sahib v. Rangasami Naicken* ILR

(1905) Mad. 420 have really no bearing on the point now in dispute. The question really is not so much the conferring of a right of appeal as

including within the jurisdiction of the particular Court mentioned a new subject matter. To quote the words of Lord Atkinson in the *National*

Telephone Company, Limited v. Postmaster-General (1913) A.C. 546.

It is not, in substance, in my view, at all a question of giving a right of appeal by implication. It is simply the question of extending the jurisdiction of

an existing Court of law, with all its incidents including a right of appeal, to a new matter closely resembling in character those matters over which it

has already jurisdiction as a Court of law.

6. The words of the Madras Rent Control Order are clear and make an order of the Rent Controller a decree of a particular Court for the purpose

of execution and in my opinion Section 47 clearly applies conferring on the parties a right of appeal from orders of the executing Court, though the

order of the Rent Controller himself directing eviction is final and cannot be challenged in Civil Court.

7. The order of the lower Court is set aside and the appeal remanded for fresh disposal according to law. The respondent will pay the appellants'

costs of this appeal. The costs of the lower Court will abide the ultimate result.