

(1952) 10 MAD CK 0031

In the Madras High Court

Case No : Second Appeal No. 2206 of 1948

Kalavagunta Sriramarao

APPELLANT

Vs

Kalavagunta Suryanarayanamurthi and Others

RESPONDENT

Date of Decision : 10-10-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Madras Debt Conciliation Act, 1936 — Section 25

Citation : AIR 1954 Mad 340 : (1953) 66 LW 287 : (1953) 1 MLJ 542

Hon'ble Judges : Venkatarama Aiyar, J

Bench : Single Bench

Advocate : Ramakrishna Rao, for the Appellant; B.V. Ramanarasu, for the Respondent

Final Decision : Dismissed

Judgement

Venkatarama Aiyar, J.—This second appeal raises an interesting question as to whether the Registrar functioning under the Madras Co-operative Societies Act is a civil court within the meaning of that expression in Section 25, Madras Debt Conciliation Act 11 of 1936. The facts are not in dispute. The first plaintiff is the father and plaintiffs 2 and 3 and defendant 3 are his sons and they are the members of a joint undivided Hindu family. The first plaintiff became indebted to the Co-operative Society of Kalavagunta and on the application of the Society an award was passed against the first plaintiff by the Deputy Registrar of Cooperative Societies, Vijayawada, Award No. 1011 of 1933. In execution of the said award the suit properties were attached in E. P. No. 503 of 1940-41 on his file and the sale was fixed for 29-4-1942. On 27-4-1942 the first plaintiff filed a petition u/s 4, Madras Debt Conciliation Act, D.C. E. No. 6 of 1942 on the file of the Debt Conciliation Board Bandar, for settlement of his debts and among the debts included in the petition was the debt due to the Co-operative Society under Award No. 1011 of 1933. No notice, however, of the presentation of this petition was given either to the Registrar or to the sales officer. On 29-4-1942 the sale

was actually held and the properties were purchased by the appellant for a sum of Rs. 60. On 16-5-1942 the Debt Conciliation Board dismissed the application D. C. B. No. 6 of 1942 on the ground that as a result of the sale which had taken place on 29-4-1942 what was left of the properties of the petitioner was only a land of the extent of two cents and that, therefore, a settlement was impracticable. The first plaintiff moved the department for setting aside the sale but without success: vide the order of the Joint Registrar dated 26-3-1943, Ex. P. 8. Thereupon the present action was instituted in the court of the District Munsif of Gudivada for setting aside the sale on the ground that it was in contravention of Section 25, Madras Debt Conciliation Act and therefore void and for recovery of possession of the properties from the auction-purchaser who was impleaded as the arid defendant in the suit. The District Munsif held that the sale was in violation of Section 25 of the Act and decreed the suit and this decision was affirmed on appeal by the Subordinate Judge, Masulipatam. The auction-purchaser has preferred this second appeal.

2. The only point for determination In this appeal is whether the sale held on 29-4-1942 was within the prohibition enacted in Section 25, Debt Conciliation Act. In view of the long course of decisions ending with -- Rathnasabapathi Ayyer Vs. Subramania Pillai and Others, , it has not been argued in this Court that even if the proceedings in E. P. No, 503 of 1940-41 fell within the purview of Section 25, Debt Conciliation Act, the sale should be upheld for the reason that no notice of the presentation of D. C. B. No. 6 of 1942 was given to the Registrar or to the Sales Officer. The argument that has been pressed on behalf of the appellant is that the sale proceedings conducted by the Department under the provisions of the Madras Co-operative societies Act are not proceedings in a civil court and that, therefore, unaffected by Section 25, Debt Conciliation Act, The substantial question for determination is whether the proceedings in E. P. No. 503 of 1940-41 were proceedings before a civil court within the meaning of that expression in Section 25, Debt Conciliation Act.

3. Mr. Ch. Ramakrishna Rao, the learned advocate for tile appellant in an able argument contended that the Registrar and the Arbitrators acting under the provisions of the Co-operative Societies Act are performing functions more or less of a ministerial character, that even if those functions are judicial, the authorities are not acting as courts and in any event they are not acting as civil courts as required by Section 25, Debt Conciliation Act when a question is raised as to whether an authority constituted under a special statute is an administrative body or a tribunal discharging the functions of a judicial character or a court, the answer to it must depend on the nature of the powers conferred on the authorities by the provisions of the statute. It is, therefore, necessary in the first instance to examine the provisions of the Madras Co-operative Societies Act so far as they bear on this contention. u/s 51 of the Act when there is a dispute between a society and its members and of the nature mentioned therein "such dispute shall be referred to the Registrar for decision." He may himself decide the dispute u/s 51(2)(a); he may transfer it to a person who is authorised

by the Government to hear the dispute u/s 51(2)(b) or he may refer it to the decision of an arbitrator or arbitrators u/s 51 (2)(c). The decision of the Registrar is final and not liable to be "called in question in any civil or revenue court." The decision of the person to whom the dispute is transferred u/s 51 (2)(b) or of the arbitrator or arbitrators appointed u/s 51 (2) (e) is open to revision by the Registrar u/s 51 (5).

4. Subject to it the decision is final and cannot be called "in question in any civil or revenue court." Turning next to the rules framed by the Government in exercise of the power conferred by Section 65 of the Act Rule 15 prescribes the procedure to be followed when proceedings are taken u/s 51. Sub-rule (1-A) provides that the period of limitation for reference u/s 51 shall be regulated by the provisions of the Indian Limitation Act as if the dispute were a suit and the Registrar a civil court. Sub-rule (3) provides that

"the Registrar, the arbitrator or the body of arbitrators or other persons deciding the dispute shall have power to administer oaths, require the attendance of all parties concerned and all witnesses and to require the production of all books and documents relating to the matter in dispute."

Sub-rule (4) enacts that the Registrar or the arbitrators would record notes of evidence and pronounce a decision on a consideration of all the evidence in the case. Section 57-A confers on the Registrar or any person empowered by him in that behalf power to recover the amounts due under the decision or award passed u/s 51 of the Act by sale of the property of the person who is liable under the decision or award, with or without attachment of the property. Section 57-B declares that in exercising the powers u/s 57-A the Registrar or the person empowered by him in that behalf "shall be deemed to be civil court for purposes of Article 182 of the first schedule to the Indian Limitation Act of 1908." Rule 22 prescribes the procedure to be followed in executing the decision or award passed u/s 51 of the Act. It contains elaborate provisions for attachment of moveables, of shares in a company, of negotiable instruments, of decrees and of debts. Then follow provisions for attachment of Immovable properties, for settlement of sale proclamations and for sale in public auction. There are provisions for setting aside the sale on the deposit of the amount payable under the award or on the ground of irregularity or fraud in the conduct of the sale; for confirmation of sale and for delivery of possession to the purchaser; provision is also made for investigation of claims by third persons to the properties attached and for institution of claim suits. In short Rule 22 is in substance a replica of Order 21, C. P. C. There is also a provision that the decision or award passed u/s 51 shall on application to the civil court having jurisdiction over the subject-matter of the decision or award, be enforced "as if it were a final decree of the court" (Rule 11 (7) (c)).

5. Such being the provisions of the Madras Co-operative Societies Act and the rules framed thereunder, the question is how far they support the contentions of the appellant that the Registrar and the arbitrators are not civil courts. It was

firstly urged that the functions of the Registrar and of the Arbitrators under the Act are administrative and not Judicial and reference was made to the decision in -- "Rajah of Mandasa v. Jagannayakulu", AIR 1932 Mad 612 (B), as supporting this position. There the point for decision was whether the High Court had power to entertain a revision against the order of a revenue officer making settlement of rent under Chapter 11 of the Madras Estates Land Act and it was held by the majority of the Full Bench that the Revenue Officer was exercising under that chapter powers of a ministerial character and was, therefore, not a court over which the High Court had powers of interference. The reason for this conclusion was thus stated by Reilly J.

"This examination of the provisions of Chapter XI shows, I think, that neither in the preparation of record of rights nor in the settlement of rents is the Revenue Officer acting as a civil court. The reliefs which can be sought and given in settlement of rents include reliefs which no civil court could grant. They can be refused by an order of the Executive Government. They can be imposed between parties neither of whom had moved the supposed court for any relief. The procedure prescribed is wholly inappropriate and in some particulars would be nothing less than scandalous in a civil court. I find it impossible to believe that by these provisions the Legislature intended to create a civil court of any kind. Such a creation would be a unique monstrosity not a kind of a civil court but a travesty of a court."

6. The distinction between acts which are ministerial and acts which are judicial has been the subject of consideration in numerous cases in English courts and they were reviewed by the Supreme Court in the -- "Province of Bombay Vs. Kusaldas S. Advani and Others", . A definition of a judicial act which was pronounced to be "one of the best definitions of a judicial act as distinguished from an administrative act" (per Lord Atkinson in -- "Fromme United Breweries Co. v. Bath County Borough Justices", (1926) AC 586 (D), is that given by May C.J. in -- "Reg v. Dublin Corporation (1878) 2 LR 371 (E). He observed:

"A judicial act seems to be an act done by a competent authority upon a consideration of facts and circumstances and imposing liability or affecting the rights of others."

It will be seen from this definition that the essential ingredients of a judicial act are three in number: It must be that of a person or persons who have legal authority to determine questions affecting the rights of parties and in a judicial manner: vide also observations of Lord Justice Atkins in -- "Rex v. Electricity Commrs.", (1924) 1 KB 171 (P) and of Lord Justice Slesser in -- "Reg v. London County Council", (1931) 2 KB 215 (G). Judged by these tests the functions of the Registrar and of the Arbitrators under the Madras Co-operative Societies Act are clearly judicial. They are invested by the Act with powers to decide the disputes mentioned in Section 51 of the Act and to execute the decisions as provided in Sections 57-A and 57-B. In exercising their powers under Sections 51, 57-A and 57-B they are enjoined to hear and decide on evidence, that is, to act judicially

and the decisions given by them are in respect of rights and obligations of individuals.

7. In -- " Srinivasa Tholappachar Vs. K. Seshagiri Rao, Sale Officer to the Co-operative Societies at Bellary, , the point for determination was whether the Sales Officer acting under the provisions of the Madras Co-operative Societies Act was acting judicially so as to be entitled to protection under the Judicial Officers Protection Act. The Sales Officer had adjourned the sale and that had resulted in damage to the appellant. In an action for damages the Sales Officer claimed protection under the Judicial Officers Protection Act. The appellant contended that it was an administrative act and that, therefore, the sales officer was not entitled to protection. In repelling this contention the court observed:

"There were here proceedings analogous to proceedings in execution under the CPC and if the Registrar of the District had passed an order directing the postponement of this sale, there would be no doubt that he would have been acting in a judicial capacity. The sales officer is given equal power of ordering an adjournment and he exercised this power in execution proceedings regularly instituted. The fact that the order is not appealable does not turn it from a Judicial act into an administrative act. There are orders contemplated by the CPC which are judicial orders and which are not appealable."

This is clear authority that the proceedings under the Act are judicial and not administrative. It was next argued that even if the functions assigned to the authorities under the Act were judicial in character, that would confer "on them the status of a tribunal but not that of a court. That there is a real distinction between a tribunal and a court cannot be disputed; though it may often be fine and sometimes difficult to define. There is no definition of court either in the Madras Co-operative Societies Act or the Madras Debt Conciliation Act, nor one under the General Clauses Act. Section 3, Evidence Act defines court as including all judges and Magistrates and all persons except arbitrators legally authorised to take evidence. It was argued that as the reference to Section 51, Madras Co-operative Societies Act is to arbitrators and as their decision is termed an award the authorities acting under that Act are not courts according to this definition. This contention was repelled by this court in -- Velayuda Mudali and Another Vs. Co-operative Rural Credit Society and Others, , where the question was whether the Registrar acting under the Madras Co-operative Societies Act was a court. Dealing with the argument that the decision is by an arbitrator and that it is an award Walsh J. observed :

"Several points with regard to this position may be noted. The first is that he is not an arbitrator in the sense in which that word is understood under the Arbitration Act or in schedule II of the Civil Procedure Code, and, therefore, Section 3, Evidence Act which excludes arbitration from the definition of court is not of much assistance. The essential characteristic of an arbitrator is that the matter is referred to him by consent of both parties. But under Rule. 14 (now Rule 15) any one party may make a reference to the Registrar and on receipt of

such reference he is bound to dispose of the case. He can, no doubt, refer it to an arbitrator appointed by him or the several arbitrators (the word is used in a special sense here). But his position in this matter is that of a court to whose decision one party can compel the other party to submit."

It must, however, be remembered that the definition in the Evidence Act is only for the purpose of that Act. Vide -- "Queen Empress v. Tulja", 12 Bom 36 (J).

8. In Halsbury's Laws of England, Vol. VIII page 525, paragraph 1166, court is defined as follows :

"The term court has "inter alia" the original meaning of the King's palace and has acquired the meaning of the persons who exercise judicial functions under authority derived either immediately or mediately from the king."

It is unnecessary for the purpose of the present case to attempt an exhaustive definition of the features which distinguish a court from a tribunal. The right of the Co-operative Society for the recovery of the amounts lent is a civil right which but for the provisions of the Co-operative Societies Act would have to be brought before a civil court. Does it lose that character because the Act constitutes a special authority for its adjudication? The authorities dealing with that claim under the Madras Co-operative Societies Act are exercising the functions of a civil court. The very procedure prescribed for hearing disputes and for enforcing the decision or award is closely modelled on the provisions of the Civil Procedure Code. It would, therefore, be right to conclude that the Registrar and the Arbitrators are acting as courts in the discharge of then- functions under the Act.

9. There is also considerable authority in support of this position. In -- "Subbi Eeddi v. Emperor", AIR 1930 Mad 869 (K), the Registrar of Co-operative Societies was held to be a court for purposes of Section 195, Crl. P. C. In Velayuda Mudali and Another Vs. Co-operative Rural Credit Society and Others, , already referred to it was held that the Registrar of co-operative Societies was a court within the meaning of Section 52, Transfer of Property Act and that an alienation made while the proceedings were pending before him would be affected by the doctrine of "lis pendens". The following observations of Walsh J. might be quoted:

"Then it has to be noticed that the whole procedure under Rule 14 appears to be devised as a short cut by which the Registrar takes the place of the court, decides a matter which would otherwise have been referred to it, and passed an award which becomes a decree of a civil court having jurisdiction over the subject-matter of the decision when the court is asked to , enforce it."

This decision was followed by Somayya J. in -- Narayana Venkatachalamiah Vs. Putika Venkatiah and Others, , where he observed:

"The word "court" as mentioned in Section 52 appears to me to be comprehensive enough to include the Registrar or the arbitrator appoint^ ed by

him. under the Act."

In -- Sheosaran Singh and Others Vs. Gaya Amla Co-operative Society and Others, , a Bench of the Patna High. Court consisting of Fazl Ali and Varma JJ. held that the Registrar hearing a dispute under the Act was acting as a court.

10. The learned advocate for the appellant cited several decisions in which it had been held that the authorities constituted under particular statutes were held to be not courts, but decisions relating to statutory bodies created under other enactments cannot be of much use in deciding whether on the provisions of the Madras Cooperative Societies Act and the rules framed thereunder the authorities constituted thereby are courts.

11. In -- "Manavala Goundan v. Kumarappa Reddi", 30 Mad 326 (N), it was held that a District Registrar" under the Indian Registration Act Was not a court, though he might be discharging judicial functions. In -- "Mahomed Ahmad v. G. G. in Council", AIR 1945 Lah 313 (O) the question that came up for consideration by a Pull Bench was whether a tribunal established under the United Provinces Town Improvement Act was a court. It was held by a majority that it was not a court; while Abdur Rahman J. came to a different conclusion. After discussing the meaning of the word "court" Harries C. J. observed:

"It appears to me that before a person or persons can be said to constitute a court, it must be held that they derive their powers from the State and are exercising the judicial powers of the state. If the tribunal is the result of any private arrangement for the settlement of disputes it cannot in my view constitute a court."

These observations follow the statement of law in Halsbury's Laws of England, Vol. VIII page 525 already cited. Judged by the tests laid down herein it must be held that the authorities under the Madras Co-operative Societies Act are courts because they derive their authority to decide a dispute only under the provisions of the statute and not by any agreement of parties and they are exercising the judicial powers of the State. The weight of authority is undoubtedly, in favour of the view that the Registrar and the Arbitrators functioning under the statute act as courts.

12. It was finally contended that even If the authorities under the Madras Co-operative Societies Act could be regarded as courts they could not be considered to be civil courts and that, therefore, Section 25 of the Debt Conciliation Act which prohibits only proceedings in a civil court did not apply; and support for this distinction was sought in some observations of Somayya J. in -- Narayana Venkatachalamiah Vs. Putika Venkatiah and Others, ", while holding that the Registrar and the Arbitrators were courts within the meaning of Section 52 Of the Transfer of Property Act the learned Judge observed as follows "We are not now concerned with the question whether the Registrar is a civil court but whether he is a court u/s 52, Transfer of Property Act." This, of course, does not amount to a decision that the Registrar and the Arbitrators are not civil courts. Mr. Ch.

Ramakrishna Rao argued that it is only courts constituted under the Madras Civil Courts Act, 3 of 1873, that could be called civil courts. Putting it in another way he contended that it is only the courts governed by the CPC that could be called civil courts. No authority was cited for placing such a construction on the words "civil courts". In their ordinary acceptation, those words mean courts which adjudicate on civil rights. A civil proceeding is defined in Stroud's Judicial Dictionary as a

"process for the recovery of individual right or redress of individual wrong; inclusive in its proper legal sense of suits by the crown." (*Bradlaugh v. Clarke*", (1883) 52 LJ QB 505 (P))."

Therefore courts which decide disputed rights between subjects or between a subject and the State would be civil courts as opposed to criminal courts where the state vindicates wrongs committed against the public. It is in this sense that the words "civil courts" have been interpreted by the Privy Council in -- "*Nilmoni Singh, Deo v. Taranath Mukerjee*", 9 Cal 295 (Q). That case arose under the Bengal Rent Act 10 of 1359 under which certain classes of rent suits were made exclusively triable by Revenue Officers in accordance with the procedure laid down therein. The question was whether the Revenue officials exercising the powers under the Act were acting as civil courts. The Act contained several provisions making a distinction between the revenue courts and the civil courts. On the strength of these provisions it was contended that the rent courts were not civil courts. In repelling this contention, Lord Hobhouse observed:

"It must be allowed that in those sections there is a certain distinction between the civil courts there spoken of and the rent courts established by the Act, and that the civil courts referred in Section 77 and the kindred sections, means civil courts exercising all the powers of civil courts as distinguished from the rent courts which only exercised powers over suits of a limited class. In that sense there is a distinction between the terms; but it is entirely another question whether the rent court does not remain a civil court in the sense that it is deciding on purely civil questions between persons seeking their civil rights, and whether being a civil court in that sense, it does not fall within the provisions of Act 8 of 1859."

13. These observations show that courts constituted for "deciding on purely civil questions between persons seeking their civil rights" must be considered to be civil courts, notwithstanding that they are created by a special statute and are mentioned in that statute as distinct from civil courts. The true import of such a distinction is that while special courts have Jurisdiction over a limited class of suits specified in the statute the jurisdiction of the civil courts is not limited to any class of suits. To this extent there is a distinction between the two classes of courts but in respect of the class of suits actually entrusted to the Jurisdiction of special courts they perform in relation to them functions which but for the special Act would have been performed by civil courts and to that extent the special courts can be said to be civil courts in a different attire.

14. In -- "Pratap Udainath Shah Deo v. Madan Mohan", 38 Cal 288 (E), it was held by the Calcutta High Court following the decision in -- "9 Cal 295 (PC) (Q)", that the phrase "civil court" in the Encumbered Estates Act was comprehensive enough to include revenue courts. These decisions furnish the answer to the contention of the appellant that as the provisions of the Cooperative Societies Act maintain, throughout a distinction between civil courts on the one hand and the Registrar and the Arbitrators on the other that implies that the latter are not civil courts.

15. It was further argued for the appellant that Section 57-B enacts that the Registrar should be deemed to be a civil court for the purpose of the application, of Article 182 of the Limitation Act and that the word "deemed" is a clear indication that in fact it was not a civil court and reliance was placed on the following observations of Viscount Dunedin in -- AIR 1930 54 (Privy Council) .

"Now when a person is "deemed to be" something the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were".

But this argument ignores the history of the enactment of Section 57-B. In -- Abdul Razack Sahib Vs. Kilpatti Co-operative Society and Another, , the facts were that a society having obtained a decision before the Assistant Registrar of Co-operative Societies applied to the Tahsildar for execution of the same. Thereafter an application was filed in the civil court for execution. At the time Of this application more than three years had elapsed from the date of the decision but if the application to the Tahsildar could be regarded as application "to the proper court for execution" limitation would be saved under Article 182-5(b). The question was whether the Tahsildar acting under the Act was a court. Cornish J. held that he was not and that the application In the civil court was barred by limitation. To nullify the effect of this decision Section 57-B was introduced by an amendment. It gave effect to the view that the authorities functioning under the Madras Co-operative societies Act were acting as courts. The legislature had not in mind the distinction between a court and a civil court. On the other hand while the decision in -- Abdul Razack Sahib Vs. Kilpatti Co-operative Society and Another, ", held that the authorities under the Madras Co-operative societies Act were not courts, the amendment declared that they were civil courts showing thereby that there was no distinction between the two.

16. On behalf of the respondent reliance was placed on the decision of this court in --"Subramania Iyer v. Official Liquidator, Mocheri's Co-operative Society", AIR 1949 Mad 595 (U). In that case the petitioner had preferred a claim to certain moveables which had been attached in execution proceedings before the Deputy Registrar of Co-operative societies. That having been dismissed, he filed a claim suit. A dispute arose as to the court-fee payable on the plaint. If the Deputy Registrar was a civil court within the meaning of Article 17-1 of Schedule II, Court-Fees Act, a fixed. court-fee of Rs. 15 would toe sufficient. If not, "ad valorem" court-fee would be payable on the value of the moveables which was

Rs. 750. It was held by Mack J. that the Deputy Registrar was a civil court and the court-fee of Rs. 16 was sufficient. He observed:

"There are only three categories of courts so far as I am aware; (1) criminal, (2) civil and (3) Revenue. I have no hesitation in finding that a Registrar acting u/s 57-A and in accordance with the rules framed by the Government must be deemed to be a civil court for purposes of Article 17-1 of Schedule II, Court-Fees Act."

I agree with this decision though the soundness of the distinction between the civil and revenue courts might in the context be open to argument.

17. As against this the appellant cited the decision in -- R.S. Venkataswami Naicker Vs. Chinnayapuram Co-operative Stores and Another, , where Basheer Ahmed Sayeed J. held that an award of the Deputy Registrar of Co-operative Societies could not be equated to a decree of a civil or revenue court for purposes of Section 7-1V-A, Court-Fees Act. In coming to this conclusion he followed the decision in -- Kuppu Govinda Chettiar Vs. Uttukottai Co-operative Society, , in which Venkataramana Rao J. had held that an order of a liquidator determining u/s 42 the amount of contribution payable was not a decree and the decision in -- "Kalla Suryya & Sons v. Province of Madras", AIR 1949 Mad 778 (X), where Satyanarayana Rao and Govinda Menon JJ. held that an order of the Deputy Commercial Tax Officer levying tax under the Madras General Sales-tax Act was not a decree. But the point for decision in this appeal is not whether a decision or order passed by the authorities acting under the Co-operative Societies Act is a decree but whether the proceedings before them are proceedings in a civil court. Indeed it may be a question whether the decision in -- Kuppu Govinda Chettiar Vs. Uttukottai Co-operative Society, , which relates as already mentioned to an order made u/s 42 of the Act would apply to an award passed on a reference u/s 51. In -- Govada Balabharathi Co-operative Credit Society Vs. Alapati Venkatakrishnayya and Another, , Somayya J. was inclined to take the view that such a decision would amount to a decree and that appears to have been the view of Walsh J. in Velayuda Mudali and Another Vs. Co-operative Rural Credit Society and Others, . Whatever that be, these authorities do not bear directly on the question that falls to be decided in this appeal.

18. Considerable reliance was placed for the appellant on the decision in --- Muhammad Amin Sahib (died) Vs. Tiruvannamalai Co-operative Society and Others, . That was a decision on. Sec. 57-A of the Madras Co-operative Societies Act. A society which had obtained a mortgage decree in the District Munsif's Court of Thiru-yannamalai applied to the Registrar to execute it u/s 57-A and under this execution properties were sold. The validity of the proceedings was challenged on the ground that the decree^ holder had not obtained an order u/s 39, Civil P. C. transferring the decree for execution to the Registrar and that, therefore, the latter obtained no Jurisdiction to execute the same. This objection was overruled by Rajamanoar C. J. and Krishnaswami Nayudu J. on the ground that the CPC did not apply to the proceedings taken before the Registrar. The

following observations of the learned Chief Justice might be quoted:

"The short answer to this argument is that the execution to which Section 38 refers is an execution under the Civil Procedure Code. The proceedings taken by the Registrar u/s 57-A of the Act may be of the same nature and may have the same result but they are not execution proceedings in a civil court governed by the Civil Procedure Code. Section 39 says that the court which passed the decree may on the application of the decree-holder send for execution to another court for any of the reasons mentioned in clauses (a) to (d). Clearly Clauses (a), (b) and (c) do not apply. Clause (d) is in the following terms:

"If the court which passed the decree considers for any other reason which it shall record in writing that the decree should be executed by such other court".

We think that such a "court must be a court governed by the CPC and not a body which might have functions almost exactly similar to those of a civil court but is not governed by the Civil Procedure Code. It may be that the Registrar acting u/s 57-A could be deemed to be a civil court for some purposes, Section 57-B expressly says that the Registrar will be a civil court for purposes of Article 182 of the Limitation Act. For purposes of court-fee a learned Judge of this court has held that the Registrar may be deemed to be a civil court. Vide -- "AIR 1949 Mad 595 (U)". But there is no authority for the position that the Registrar can be treated as a court within the meaning of Section 39, C. P. C."

What was laid In this decision is that the provisions of the CPC apply only to courts governed by it, which is what had been held by the Privy Council in -- "Ramabhadra Raju Bahadur v. Maharajah of Jeypore", AIR 1919 PC 150 (Z1). There is nothing either in the observations or in the decision in Muhammad Amin Sahib (died) Vs. Tiruvannamalai Co-operative Society and Others, , to support the contentions of the appellant.

19. It has also to be noted that a decision or an award under-the Madras Co-operative Societies Act can be executed either before the Registrar or a civil court and likewise as happened in Muhammad Amin Sahib (died) Vs. Tiruvannamalai Co-operative Society and Others, , a decree obtained by a Co-operative society in a civil court could be executed either by the civil court or by the Registrar and there seems to be no sufficient reason for holding that the proceedings taken in execution of the same decree or award should be held to be civil proceeding if it is taken in one jurisdiction and not if in another.

20. Turning now to the provisions of the Debt Conciliation Act it will be seen from the definition of debt under that Act that it is comprehensive enough to include a debt payable to a Cooperative Society. A Co-operative Society is expressly Included in the definition of creditor and the policy of the Act was clearly to provide for settlement of debts due to Co-operative Societies, subject only to the proviso in Sec. 14 under which the consent of the Registrar has to be obtained for such settlement. Section 25 of the Debt Conciliation Act is as follows: "When an application has been made to a Board u/s 4 any suit or other proceedings

then pending before a civil court in respect of any debt for the settlement of which application has been made shall not be proceeded with until the board has dismissed the application". On the language of this section the intention of the Legislature would appear to be to prohibit all proceedings whether by way of suits or otherwise in respect of debts which are the subject matter of the application for settlement and civil proceedings in the section must accordingly be Interpreted as comprehending all proceedings for the recovery of debts mentioned in the petition wherever they might be taken. On this construction the proceedings before the Registrar would be within the prohibition enacted by this section.

21. I am accordingly of opinion that the proceedings taken by the Society in E. P. No, 503 of 1940-41 were proceedings in a civil court within the contemplation of Section 25 of the Madras Debt Conciliation Act and that the sale held on 29-4-1942 is accordingly void. The decisions of the Courts below are affirmed and this appeal is dismissed with costs. No leave.