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In the Madras High Court

Oor Nayakkan alias Krishnaswami Naidu and Others — APPELLANT

Vs

Ps.Ar.Ar. Arunachala Chettiar — RESPONDENT

Date of Decision : 09-09-1947

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 46 Rule 7
Provincial Small Cause Courts Act, 1887 — Section 23

Citation : AIR 1948 Mad 245 : (1947) 60 LW 774 : (1947) 2 MLJ 496

Hon'ble Judges : Satyanarayana Rao, J

Bench : Division Bench

Judgement

Satyanarayana Rao, J.—This is a reference by the learned District Judge of Salem under Order 46, Rule 7 of the Code of Civil Procedure.

Two suits for recovery of damages for wrongfully cutting trees in certain poromboke land were instituted by the same plaintiff against different

defendants on the original side of the District Munsiff of Namakkal. He paid Court-fee on the footing that they were original suits and the plaints in

the two suits raised also the question of title to the land in which the trees were standing. Without objection by the defendants the suits were tried

as original suits presumably because they raised a question of title and were decreed by the learned District Munsiff. The defendants preferred

appeals to the District Court and even in their memorandum of grounds of appeal the defendants did not raise any objection as to the jurisdiction of

the learned District Munsiff to try the suits as original suits. When the appeals came on for hearing the point was raised whether the appeal to the

District Court was competent as the suits according to the defendants were suits of a small cause nature. On this contention the learned District

Judge made the reference under Rule 7 of Order 46 of the Code.

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2. Strictly speaking under that rule the reference does not arise as no question of jurisdiction was raised and decided by the Subordinate Court.

The parties proceeded on the footing that the suits were rightly instituted on the original side of the District Munsiff''s Court. If the suits had been

instituted on the small cause side of the District Munsiff''s Court, they would have been certainly transferred to the original side u/s 23 of the

Provincial Small Cause, Courts Act as the plaints distinctly raised the question of title to the land in which the trees were standing. Apparently for

this reason none of the parties raised objection as to the jurisdiction of the Court to try the suits as original suits. It was understood by the plaintiff

and ''also by the defendants that the District Munsiff had jurisdiction to try the suit on the original side. This is also clear from the fact that the

defendants did not raise any ground in their memorandum of grounds of appeal filed by them before the District Court. In these circumstances, u/s

96 of the Code, as the decree is one which was passed in the exercise of original jurisdiction of the learned District Munsiff the appeals would lie.

There is a considerable line of authority in this Court to the effect that where a Court wrongly acts under an appeal-able provision of law and

passes an order a party is not deprived of the right of appeal, though on the facts the order should not have been passed under that provision.

P.M.A.R.M. Muthiah Chettiar Vs. Lodd Govinda Doss Krishna Doss Varu and Another, . Kammela Somasundaramma Vs. Kammela Seshagiri

Rao alias Professor Giri Rao and Others, .

3. Our attention has been drawn to some of the decisions of this Court in which suits were originally instituted on the small cause side of the District

Munsiff''s Court and subsequently that Munsiff was transferred and another Munsiff succeeded who had no jurisdiction to try the suits as small

cause suits but could only try them as original suits; and tried them accordingly. Appeals were preferred against the decree of the District Munsiff

and it was held that the appeals were incompetent. It is not necessary in this reference to decide the correctness of those decisions. Reference was

made before us to the decision of Chandarasekhara Aiyar J. in the The District Board Vs. P. Kuppuswami Konar alias Kuppuswami Pillai and

Others, , where the learned Judge held that the appeal against a decree of a District Munsiff''s Court in a suit of a small cause nature, but tried as

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an original suit was incompetent. We are unable to agree with this view of the learned Judge. The appellate Court no doubt has no jurisdiction to

reverse the decree on merits but could entertain the appeal and send the case to be tried by a proper Court. If the decree of the lower Court is

affirmed by the appellate Court it has been held in Bhuvanapalli Subbayya v. Rajah of Ventagiri (1921) 41 M.L.J. 118 that there is no ground for

interference in revision by the High Court and the decision of the Full Bench in Kollipara Seetapathi v. Kantipathi Subbayya (1909) 20 M.L.J. 718

: ILR Mad. 323 was distinguished on that ground.

4. In these circumstances, we discharge the reference and remit the appeals to the District Court for disposal according to law. The costs of this

reference will abide the result. Nothing we have said in our judgment will preclude the lower appellate Court from considering any question that

might be raised in the appeal before him.

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