

**(1942) 11 MAD CK 0017**  
**In the Madras High Court**

Oruganti Venkatramiah Chetti

APPELLANT

Vs

Venkataswami Chetti and Others

RESPONDENT

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**Date of Decision :** 03-11-1942

**Acts Referred:**

**Citation :** AIR 1943 Mad 387 : (1943) ILR (Mad) 732 : (1943) 56 LW 89 :  
(1943) 1 MLJ 80

**Hon'ble Judges :** Horwill, J

**Bench :** Division Bench

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### Judgement

Horwill, J.—The plaintiff in a batch of rent suits was called upon to pay process for the service of a copy of his amended plaint on the

defendants. He was given time to do so; and on the day to which the matter was adjourned, which was also, the day to which the suits were

adjourned, neither the plaintiff nor his pleader was"" present. The suits were thereupon dismissed both on the ground that the plaintiff had not taken

out process to the defendants and also on the ground that neither the plaintiff nor his pleader was present. An application was put in to set aside

that order and it was dismissed. The plaintiff then approached the District Court in appeal; and the learned District Judge dismissed the appeals on

the preliminary ground that no appeal lay. Hence these revision petitions.

2. The learned District Judge referred to the provisions of Sections 189 and 199 of the Madras Estates Land Act and pointed out that before the

recent amendment, Order 43 of the CPC did not apply to suits u/s 189 of the Estates Land Act. He thought that despite the extensive amendment

made to Section 192 there was no change in the general principle. Section 189 sets out by reference to the schedule the class of suits and

applications which may be heard by a Revenue Court; and the same schedule provides the remedy to persons aggrieved by the decisions thereon.

In some cases no appeal is provided at all in most cases appeals are permitted to some specified authority. So it is true to say that no appeal lies

except u/s 189 (2)--read with the Schedule--against any decree passed in any suit or any order passed on an application referred to in Section

189 (1); but the Schedule does not purport to deal with the remedy of parties aggrieved by any orders on applications not specified in Section 189

(1). To argue consistently from the limitations of the Schedule one would have to say, as indeed Mr. Venkatasubba Rao does say, that not merely

does an appeal not lie under Order 43 of the Code but also that no application lies under Order 9, Rule 9; because an application under Order 9,

Rule 9 is not mentioned in Section 189 (1). If such an application is permissible then there would seem to be no reason why an appeal against an

order made on it, which is permitted by Order 43, should not lie.

3. In support of the learned Judge's finding, the learned advocate for the respondent relies on some dicta of Madhavan Nair, J., in *Pyda*

*Ramakrishnayya Garu and Another Vs. Kuchipudi Naganna and Others*, who was considering whether a claim suit was permissible in revenue

matters. He points out that a claim suit finds no mention in Section 189 (1) and that Section 192 cannot enlarge the scope of Section 189, which

lays down what suits may be tried by a Revenue Court. I respectfully agree that Section 192 could not have been intended to enlarge the scope of

the jurisdiction of Revenue Courts and to permit them to try suits not mentioned in Section 189, merely because in similar circumstances in an

ordinary civil litigation a claim suit would be permitted. It however seems to me that if a Court has jurisdiction to try a suit, it has jurisdiction to pass

orders on all matters incidental to the hearing of that suit, the only limitation to the application of the general principles of the CPC being that the

Court should not act in any way inconsistent with any of the provisions of the Schedule. For example, the Estates Land Act contains a body of

procedure with regard to execution; and so a Revenue Court cannot apply the procedure laid down in the Code of Civil Procedure, which must

almost necessarily conflict with the procedure laid down in the Estates Land Act. So *Krishnaswami Ayyangar, J., in Adusumilli Gopalakrishnayya*

Vs. Julury Narasimha Rao by guardian Durgamma, has held that an application to set aside a sale under Order 21, Rule 90, Civil Procedure Code,

could not be filed. For the same reason, Patanjali Sastri, J., in Suryanarayana v. Sree Rajah Sobhanadri Apparao Bahadur (1940)2 M.L.J. 585

has held that an application under Order 21, Rule 92 of the Code could not be made. If, however, no applications can be made to a Revenue

Court except those referred to in the Schedule it would mean that a Revenue Court has no authority to hear any interlocutory applications. If it has

such a power, as indeed we must presume it has, then it is only by reference to the CPC that we can decide what interlocutory or incidental

applications the Court can hear. It is true that there are certain dicta in the cases quoted above which suggest that Section 192 merely lays down

the procedure to be adopted; but the wording of Section 192 does not suggest that the provisions of the CPC can be applied only with regard to

purely procedural matters. We know that where somewhat similar wording is found in other Acts applications under Order 9 have been held to be

permissible; and I do not find anything in Section 192, even when read with Section 189, which suggests that an application under Order 9 would

be precluded. If it is not, it would seem to follow that an appeal would lie also. The Schedule restricting appeals deals merely with applications also

to be found in the Schedule. I am therefore of the opinion that an appeal did lie to the District Judge.

4. It is contended that it is unnecessary to give a definite finding on this point; because if the suit was dismissed not only under Order 9, Rule 8 but

also because the plaintiff had not taken out process to the defendants, then the order passed being one under Order 9, Rules 2 and 3 also is not

appealable and therefore the first appellate Court could not interfere with the order of dismissal. It however seems that the process was ordered

for the service of an amendment of the plaint after remand--or at any rate the order was made long after the defendants had put in appearance. It is

therefore very doubtful whether the suit was really dismissed under Order 9, Rules 2 and 3. However, as the actual facts are not very clear from

the records that have been pointed out to me, it is left open for the District Judge upon remand to dismiss the appeals on some ground other than

the preliminary one that he has no jurisdiction under Order 43. I do not think it necessarily follows that because the suits were dismissed not only

for want of personal appearance but also because of an order which was not appealable, the dismissal would have to stand. If the appellate Court

is of opinion that the plaintiff had sufficiently accounted for his inability to be present on the date of hearing, it might follow that the plaintiff would be

entitled to be heard by the trial Judge on the other question whether his suits should be dismissed on the ground of his having failed to take out

process. On these points, I however prefer to express no opinion.

5. The revision petitions are allowed and the first appeals remanded for disposal. The costs of these petitions will be provided for in the order of

the District Judge. A consolidated Advocate's fee of Rs. 100 is allowed. A certificate will issue for the refund of the court-fees paid on these

petitions.