
(1940) 02 MAD CK 0047
In the Madras High Court

Pakkiri Muhammad Tharaganar

APPELLANT

Vs

U.T. Syed Sahib

RESPONDENT

Date of Decision : 07-02-1940

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1940 Mad 418 : (1940) 51 LW 756 : (1940) 1 MLJ 422

Judgement

1. Mr. S. Ramaswami Aiyar for the respondent raises a preliminary objection that no appeal lies in this case. It is true that in the Madras Agriculturists Relief Act no appeal has been provided from orders passed u/s 19. Subsequently (in October, 1939) the Government have issued Rules providing for appeals in such cases, but those Rules have no retrospective effect *Chidambaram Chettiar Vs. Muthukumaraswami Chettiar*, and therefore those rules do not help the appellant. It has been held vide *Subbaraidu In Re: Balusu Subbaraidu and Others*, that no appeal lies from an order u/s 19 dismissing the application of a judgment-debtor when no execution petition is pending in any Court. We are asked to say that it follows from this decision that if an execution petition is pending an appeal will lie, but the fallacy involved in that contention is obvious. We have been referred to the decision in C.R.P. No. 224 etc. of 1939 reported in *In Re: Balusu Subbaraidu and Others*, , where it has been observed (at page 856) that all the petitions in that case:

Must be deemed to be petitions which raise questions relating to execution, discharge or satisfaction of the decree and therefore come within the matters covered by Section 47 of the Code of Civil Procedure.

2. That observation is however merely an obiter dictum since the learned Judges in that case were dealing with revision petitions which were in the end allowed. If the orders were passed on n alters arising u/s 47, Civil Procedure Code, appeals would lie and revision would be inadmissible.

3. We think Mr. Ramaswami Aiyar is right in contending that orders u/s 19 of the Act cannot be deemed to be orders u/s 47, Civil Procedure Code. The application

u/s 19 of the Act is to be made to the Court which passed the decree, not to the Court which is executing the decree. In this view the fact that an execution petition is pending makes no difference, not does it make any difference that the executing Court happens to be the Court which passed the decree. The application u/s 19 has to be made to the Court which passed the decree and it is not a matter relating to the execution of the decree in any sense. If the decree is scaled down, an appeal will lie from the new decree, but if the application is dismissed, no appeal can lie. This appeal is accordingly dismissed with costs.

4. We have been asked to allow this appeal to be converted into a Civil Revision Petition but we think there is no question of jurisdiction here. The learned sub-Judge has exercised his jurisdiction and has decided that this debt is not one in respect of which relief can be granted. We decline to allow conversion.