

(1981) 09 MAD CK 0064

In the Madras High Court

Case No : Writ Petition No. 4602 of 1979

Palaniappa Gounder

APPELLANT

Vs

The Additional Collector of Trichy and Others

RESPONDENT

Date of Decision : 23-09-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 367, 369, 423, 424

Income Tax Act, 1922 — Section 33(4)

Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 — Section 18, 3(8), 4(3), 5(3), 6

Citation : (1982) ILR (Mad) 109

Hon'ble Judges : Sathiadev, J

Bench : Single Bench

Advocate : P. Satharivam, for the Appellant; C. Chinnaswami, for Government Pleader, K. Sarvabhauman, for T.R. Mani and S. Gopalarathinam, for the Respondent

Judgement

Sathiadev, J.—The Petitioner owns a small extent of land in Inam Karur village. He claimed that he was personally cultivating the lands and that due to enmity that arose over a money transaction between himself and fourth Respondent, by invoking the provision of Act X of 1969, fourth Respondent filed an application before the third Respondent to register his name as a tenant, in respect of petition lands. Third Respondent passed orders on 17th July 1978 directing the registration of the fourth Respondent, as a tenant. An appeal was preferred to the second Respondent, by the Petitioner, which was posted for hearing on 3rd March 1979. On the same day, as he had to attend the trial of a part-heard suit filed by the father-in-law of the fourth Respondent, (in Original Suit No. 728 of 1978 in District Munsiffs Court, Karur) and as his Advocate had to represent him in the suit, he could not be present when the appeal was taken up for hearing. Second Respondent dismissed the appeal merely on the ground that both the Petitioner and his Counsel were absent by order, dated 3rd March 1979.

Aggrieved with this order of default, he filed a revision to first Respondent who passed an Rule 15 Order 45 on 27th June 1979 dismissing the revision petition, without considering many of the valid points taken by him, and in particular about the illegality of the order of the second Respondent dismissing the appeal for default without deciding the appeal on merits. It is to set aside the three orders passed by Respondents 1, 2 and 3, this writ petition is filed.

2. First point taken by Mr. K. Dorisami, learned Counsel for the Petitioner, is that second Respondent had no jurisdiction to dismiss the appeal for default of appearance without deciding the matter on merits. He pleads that when a right of appeal is available, it should not be lost merely because the Appellant could not be present due to unforeseen circumstances; and if the Court, or the Tribunal or the Statutory Authority, is not inclined to adjourn the matter, it has to pass an order both on facts and law, but cannot put an end to the appeal without the consideration of the points taken in the grounds of appeal. According to him, this is not a case where Petitioner had persisted in absenting himself and merely because he was not present on a particular day, his valuable right of being heard and his points being decided on merits, should not be unjustly taken away. Merely because in exercising powers u/s 7 of the Act, Revisional Authority has a wider jurisdiction, it does not mean that the right of the Petitioner to have the matter dealt with in the appellate jurisdiction, should be deprived.

3. In support of this contention, he refers to Section 6 of Act X of 1969.

6. Appeal:

Any person aggrieved by an order made under Sub-section (8) of Section 3, Sub-section (3) of Section 4 or Sub-section (3) of Section 5 may within such period as may be prescribed appeal to such authority as may be specified by the Government in this behalf (hereinafter referred to as the appellate authority) and the decision of such authority on such appeal shall, subject to the provisions of Section 7 be final.

He then refers to the decision in *Sankatha Singh v. State of Uttar Pradesh* wherein it was held that a criminal appeal cannot be dismissed for the default of the Appellants or their Counsel and that the Court has either to adjourn the hearing of the appeal to enable them to appear; or should consider the appeal on merits and pass the final order, in the context of the provisions made u/s 367 read with Sections 369 and 424 of Code of Criminal Procedure. There being no power for the Court to alter or review the judgment once signed, except for the purpose of correcting a clerical error and there being no inherent powers to be exercised when the Code specifically prohibits the Court from doing so, it has to dispose of the matter on merits.

4. The decision in *Bansi Mirdha v. Brojeswar Dutt* is also to the same effect holding that u/s 423 of Criminal Procedure Code, 1898, appellate Court is bound to go through the record of the trial Court and to dispose of the appeal on the merits, and cannot dismiss the same merely for default in appearance of the

Appellant or his pleader, in view of the provisions contained in Section 423 of the Code.

5. To further strengthen his contention, he relies on Chenniappa v. I.T. Commr. which dealt with the scope of Section 33(4) of income tax Act, 1922. Rule 24 enabled Appellate Tribunal to dismiss an appeal for default of appearance; if on the date fixed for hearing or on the adjourned day, the Appellant does not appear. In spite of such a provision made under the rules, it was held that it being inconsistent with the powers to be exercised u/s 33(4), it was struck down. It was held that when the words used in the section are it may pass such orders thereon as it thinks fit the Tribunal is duty bound to dispose of the appeal on facts and law, if it has no inclination to adjourn the matter, when neither the Appellant nor his Counsel appears.

6. On appeal preferred as against this judgment, it was confirmed by the Supreme Court in I. T. Commr., Madras v. S. Chenniappa upholding that Appellate Tribunal has to dispose of the appeal on merits and cannot short-circuit the same by dismissing it for default of appearance. He then refers to the rules framed under the Act, which do not provide for dismissal for default of appearance nor invest with power to restore such an appeal; and the provisions of the CPC having been made applicable, only in respect of certain limited aspects enumerated in Section 10 of the Act, he submits that the appellate authority ought not to have dismissed the appeal for default; and the order itself being without jurisdiction, the only thing that could have been done by the Revisional Authority was to allow the appeal resulting in the restoration of the matter on the file of the appellate authority. Under such circumstances, there was no need for Revisional Authority to go into the merits of the matter, which could be done by him only after the appellate authority disposes of the appeal, on merits.

7. On behalf of the Respondents, it is contended that when Revisional Authority has gone into the merits of the matter, for which he had the necessary jurisdiction u/s 7 of the Act, there was no need to consider the aspect of either restoration of the appeal or for going into the aspect as to whether the absence of the Petitioner was justifiable or not. The learned Counsel for the Respondents refers to the impugned Rule 16 Order 16 and claims that, as stated in paragraph 8 therein, when the revisional forum had decided the matter on merits, the other arguments of the Petitioner did not deserve any consideration.

8. As for Government Pleader, he would state that in so far as the Revisional Authority is concerned, as held in writ Petition No. 3351 of 1979 V. Seenappan v. The District Revenue Officer, Thanjavur and Ors. fee may not have the powers to dismiss a revision for default, since the words used therein are more or less similar to what is provided u/s 33(4) of income tax Act which had been interpreted in I.T. Commr., Madras v. S. Chenniappa but the same reason would not hold good in respect of the appellate power exercisable u/s 6 of the Act, which neither uses the word thereon nor the words pass such orders as he may think fit. He submits, when there is no prohibition to dismiss an appeal for

default and there being the remedy available u/s 7 to file a revision as against it, the situation that would be faced by an Appellant under this Act is not skin to what would be faced by an Appellant under income tax Act or under the other provisions of Tamil Nadu Act XXV of 1955 or Tamil Nadu Act XXIV of 1956.

9. Section 6 enables filing of an appeal against an order passed u/s 3(8); Section 4(3) or Section 5(3) of the Act within the prescribed period and* the appellate authority is enjoined to render decision on such appeal. The decision so rendered be final, subject to a revision u/s 7. There is no provision made in the Act for dismissal of an appeal for default of appearance and for setting aside such orders for good cause. The Rules framed u/s 18(d) of the Act, which enables the Government to provide for the procedure to be followed by the Authority and Officers having jurisdiction under the Act do not provide for exercise of the power of dismissal for default. In similar enactment made by Tamil Nadu Legislature, intended to benefit agriculturists and tenants of lands in the rules framed in the respective enactments provisions had been made for exercise of such a power. In Tamil Nadu Act XXV of 1955 Rule 8 enables the Court constituted under the Act to have the powers exercised by a Civil Court in the trial of suits, and Rule 8(ii) (g) is to the effect that the proceedings shall be summary and shall, as far as possible, be governed by Code of CPC with regard to the ordering and dismissal for default of appearance and setting aside for good cause. Rule 44(1)(g) of the Rules framed under Tamil Nadu Public Trusts Act (LVII of 1961) provides for a similar power. Rule 4(ii)(g) of the Rules framed under Tamil Nadu Act XXIV of 1956 is equally the same. There fore when such contingencies had been contemplated under the other Rules, and no such provision having been made Under Act X of 1969 or the rules framed therein, this is also a factor which has to be taken into account to find out whether such a dismissal for default was contemplated and if so, as to why no provision is found for restoration on good cause being shown. The Appellate Authority is invested with the power u/s 10 of the Act to receive oral and documentary evidence, if circumstances warrant. When such powers are invested, it is for the purpose of enabling the appellate authority to decide the matter on merits and not for merely bringing the appeal to an end, by passing an abrupt order, whatever be the contingency.

10. In *Chenniappa v. I.T. Commr.* while dealing with the provisions of Section 33(4) of income tax Act, it was pointed out that in ascertaining the meaning of the words used in a Statute, one has to look at the context and the other provisions contained in the Act and thereby ascertain the object sought to be achieved. It was held therein that dismissal for default of appearance has nothing to do with the matter in controversy, and it merely puts an end to the appeal. When section suggests that the Tribunal has to dispose of the appeal on its merit, which would in turn enable the aggrieved party to take up the matter, to other forums there was duty cast on the part of the Tribunal to decide the appeal after giving an opportunity to the party, and if it was not so minded to adjourn the matter, it has to dispose of it, on the basis of the grounds of appeal filed, both on facts and law, and that it had no jurisdiction to dismiss the appeal for

default of appearance. This view has been upheld by the Supreme Court.

11. When Section 6 of Act X of 1969 is looked at from this perspective, what is required is to find out what was expected of an appellate Authority to be done and what would be its consequences. As contended by the Government Pleader, the words thereon or pass such orders as he may think fit are not found, but it shall not be taken that only if those words are used, the decisions above referred to can be availed of. In dealing with the extent of powers of dismissal for default by the Revisional Authority u/s 7 of Act X of 1969, in Writ Petition No. 3351 of 1979, this Court has held that the Revisional Authority has no such jurisdiction to exercise and that either it has to adjourn the matter or else, it has to dispose of the matter on points taken in Memo. of grounds.

12. To find out the intention behind Section 6 of Act X of 1969, the following factors become relevant:

(1) An order passed by the Appellate Authority is final, subject to Section 7 of Act X of 1969.

(2) The Authority specified by Government, has to render a decision on such appeal;

(3) Appellate Authority has jurisdiction to receive oral and documentary evidence u/s 10 and enforce attendance of any persons and examine them on oath ;

(4) There is no express power provided for setting aside an order dismissing the appeal for default of appearance; and

A dismissal for default only puts an end to the appeal.

13. Therefore looked at from this perspective, it stands out that the appellate Authority has to render the decision on such appeals and that it should be both on merits and law. The words the decision of such authority on such appeal be final in Section 6 of the Act would in effect mean the decision of such Authority thereon in the appeal. When finality is attached to the order, and the appellate authority is enjoined to render a decision in the Appeal; without deciding the points involved both on facts and under law, he cannot dismiss for default and if done it would be contrary to Section 6 of the Act X of 1969. In the instant case, the second Respondent merely dismissed the appeal for default of appearance. It cannot be treated as the decision of such authority on such appeal.

14. A decision necessarily connotes an application of mind to the points involved in the matter and reasons given for the findings, arrived at. and on what grounds, the final decision is rendered. When an order passed u/s 6 of the Act assumes such finality, it is incumbent upon the Appellate Authority, in the absence of the Appellant and his advocate, to pronounce orders taking into account points taken and listed in the memorandum of appeal and also consider the objections or the representations made by the opposite party at the time of hearing, and only thereafter, the order has to be pronounced giving reasons for

the conclusions arrived at. A right of appeal is a valuable right, which cannot be made nugatory, particularly when no provision is made for setting aside an order for dismissal for default. It would be rendering injustice to parties, if an appeal is to be dismissed for non-appearance in a matter on a day fixed for hearing. If power is conferred for restoration then for chronic absence, a dismissal would be in order.

15. As pointed out, in respect of other enactments, when power to set aside is conferred on good cause shown, it only goes to show that the right of appeal should not be lost when justifiable circumstances disable the participation of the Appellant in the appeal. If it is understood that the power of appeal to be exercised is similar to the powers exercisable u/s 96 CPC Code, it has to be remembered that, under Order IX Rule 13, CPC Code, the power to restore the appeal is provided for therein. . Unless a specific power is provided for setting aside an order, such a power would not be available to a Statutory Authority. It was held in *Neelaveni v. Narayana Reddi* that in the absence of specific power, a Court has no power, apart from the provisions of Order IX, Rule 13, CPC Code, to set aside an expert decree passed by itself.. In *Mangat Ram Kuthiala v. Commr. of I.T.*, it was held that there can be no power to restore an appeal, once it is disposed of. When such are the consequences, which are highly disastrous to an Appellant, the Appellate Authority being obliged to render the decision of such authority on such appeal, it cannot short-circuit the same by dismissing it for default of appearance.

16. Yet another contention taken is that when a remedy of revision is available, and when the Revisional Authority is also enabled to take oral and documentary evidence, u/s 10 of the Act; no prejudice would be caused by an order of dismissal for default of appearance. When in a beneficial legislation, a hierarchy of authorities are constituted to protect rights of tenants who are invariably illiterates and secure for them their rights of tenancy being recorded, it would be unwise to deprive the parties of availing in fully, all the, remedies contemplated in the Act. No doubt Revisional Authority can go into the merits of the matter without the usual restrictions, which, are imposed on Revisional Authorities. But, even then, it cannot, be a second appellate authority to function as a substitute and hence to a certain extent it is a different power to be exercised. Under such circumstances when the order passed by the appellate authority is without jurisdiction, the proper course to be adopted by the Revisional Authority, is to consider the revision on such an aspect, and, if circumstances warrant, then the, revision on being allowed, results in the appeal being restored to the file of the Appellate Authority.

17. On this aspect, a point was taken to the effect that, there is no power of remand invested under the Act on the Revisional Authority. The decision rendered in *Kuttappa Nair v. Shahul Hameed* under Act XVIII of 1960 is referred to contend that there is no power of remand in the Appellate Authority. A Division Bench judgment in *Rangaswami Naidu v. Second Judge, Small Causes*

Court, Madras is also relied upon wherein it was held that if the Appellant and the Advocate are absent the appellate Authority had no other course, but to dismiss the appeal which nevertheless is a decision on the appeal.

18. An order of remand would arise only when the appellate or revisional Courts or authority has to first decide that the order of the subordinate Court or Authority requires to be set aside, and it must have dealt with the points involved in the matter which warrant a remand on grounds stated in the order, whereas when a suit is dismissed for default of appearance by the Plaintiff and the Defendant alone appearing, Order IX, Rule 8 CPC enables the Court to dismiss the suit. But under Order IX, Rule 9 CPC an application to set aside the order can be filed and on sufficient causes shown, it can be set aside on terms or otherwise. Likewise when the Revisional Authority, on coming across an order passed by the Appellate Authority without jurisdiction, it allows the revision and thereby enables the appeal to be restored to the file of the Appellate Authority. This would not mean that the Revisional Authority is reminding the matter for fresh consideration. Neither the merits of the matter, nor legal points taken are considered by it, but it confines itself to what extent the dismissal for default was without jurisdiction. By allowing the revision petition, it only restores the matter to the file of the Appellate Authority-Hence it cannot be said that in granting such a relief, the Revisional Authority is remanding the matter to the Appellate Authority.

19. Before concluding, it would be useful to refer to the decision in J.M.D. Syndicate v. I.T. Comm., New Delhi wherein the injustice that would be caused by dismissing the appeals for default of appearance has been highlighted. Dealing with the powers of Courts, it was held therein:

The Courts have power, in the absence of any express or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. To hold otherwise would result in quite a number of cases in gross miscarriage of justice. Suppose, for instance, a party proceeds towards the High Court to be present at the time the reference is to be taken up for hearing and on the way meets with an accident. Suppose, further, in such an event the High Court passes an order declining to answer the question referred to it because of the absence of the person who meets with an accident. To hold that in such a case the High Court cannot recall the said order and pass an order for the disposal of the reference on merits, even though full facts are brought to the notice of the High Court, would result in obvious miscarriage of justice. It is to meet such situations that courts can exercise in appropriate cases inherent power. In exercising inherent power, the Courts cannot override the express provisions of law.

20. Therefore the paramount consideration that should prevail, is to prevent injustice being caused, be it a Court or Tribunal Or Statutory Authority or Quasi-judicial body, etc., in disposing of matters in which rights of the citizens are involved.

21. In the light of what has been held above, in so far as the Appellate Authority notified u/s 6 of the Act (Act X of 1969) is concerned, he has no jurisdiction to dismiss an appeal for default of appearance, and is duty bound to dispose of the appeal on facts and law, based on the Memorandum of Grounds taken in the appeal, if he choose to dispose of the appeal in the absence of the Appellant or that of his Counsel. Hence the matter is remitted to the Appellate Authority, who shall dispose of the appeal after giving fair and reasonable opportunities to the parties and in accordance with the provisions of the Act and on what has been held above.

22. Hence rule nisi is made absolute. No costs.