
(1978) 03 MAD CK 0042

In the Madras High Court

Case No : C.R.P. No's. 168 and 169 of 1975

Pandia Naicker and others

APPELLANT

Vs

Sattiappan Chettiar and others

RESPONDENT

Date of Decision : 07-03-1978

Acts Referred:

Tamil Nadu Village Courts Act, 1888 — Section 46, 7, 73

Citation : (1978) 03 MAD CK 0042

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : T.R. Mani, for the Appellant; S. Kasinathan, for the Respondent

Judgement

Nainar Sundaram, J.—These two revisions are directed against the orders passed by the District Munsif Tenkasi, on petitions presented before him under S. 73 of the Tamil Nadu Village Courts Act (I of 1889), hereinafter referred to as the Act. The respondent in these revisions is the plaintiff in the suits instituted by him before the Village munsif's court, Puliyanakudi. O.S. No. 49 of 1973 was filed by him against the petitioner in C.R.P. No. 168 of 1975 for recovery of a sum of Rs. 199-70, alleging that the petitioner owed the said amount in connection with rice business. The suit on the file of the Village Munsif's court, Puliyanakudi, was posted for hearing on 12th November 1973 and again on 26th November, 1973 and was once again posted to 17th December 1973, On that date, the petitioner herein, who is the defendant in that suit, did not appear before the Village Munsif's Court. Hence the Village Munsif's Court set him ex parte and passed the decree in favour of the respondent herein, who is the plaintiff in that suit. The petitioner herein, filed O.P. 6 of 1974 before the District Munsif, Tenkasi, under S. 73 of the Act praying to set aside the decree, dated 17th December 1973 in O.S.49 of 1973 on the file of the Village Munsif's Court, Puliyanakudi. The respondent herein filed O.S. No.5 of 1973 on the file of the Village Munsif Court, Puliyanakudi, for the recovery of a sum of Rs. 127, against the petitioner in C.R.P. 169 of 1975. It is seen from the records that the suit was posted to 3rd

September 1973, and on that date, the petitioner in C.R.P. 169 of 1975, the defendant in that suit was absent. The records would go to show that on 3rd September 1973, the father of the defendant (petitioner herein) appeared in court on behalf of the defendant and prayed for time. Then the suit was posted to 10th September 1973, and on that date no one appeared on behalf of the defendant, and the defendant himself was absent. The Village Munsif Court set the defendant ex parte and passed an ex parte decree on 10th September 1973, The defendant filed O.P. 28 of 1973 on the file of the District Munsif court, Tenkasi, under S. 73 of the Act praying to set aside the ex parte decree dated 10th September 1973, in O.S. 5 of 1973 on the file of the Village Munsif Court, Puliankudi.

2. There were two more petitions under S. 73 of the Act, preferred by other parties to set aside the decrees passed in other suits. All these petitions under S. 73 of the Act were considered by the District Munsif, Tenkasi, and he has disposed them of by a common judgment, dated 3rd July 1973, and the District Munsif, Tenkasi, has dismissed the petitions with costs. C.R.P. 168 of 1975 is directed against the orders of the District Munsif, Tenkasi in O.P. 6 of 1974 and C.R.P. 169 of 1975 is directed against the orders of the District Munsif Court, Tenkasi, in O.P. 28 of 1973.

3. Mr. T. R. Mani, learned counsel for the petitioner, put forth two contentions, seeking interference in revision by this court. The first contention of the learned counsel touches the jurisdiction of the Village Munsif's court, Puliyankudi. The submissions of the learned counsel on this aspect are: (1) that the Village Munsif, Puliyankudi, has not been appointed to function as a village court under S. 7 of the Act by the Collector; (ii) that the village Court has got pecuniary jurisdiction to entertain the suits of the value not exceeding Rs. 50 only, and the increase in pecuniary jurisdiction to Rs. 200 introduced by the Tamil Nadu Village Courts (Amendment) Act (XXII of 1961) has not come into effect for the reason the Amendment Act XXII of 1961 has not been published in the Gazette, and the date of coming into force of the Act has also not been gazetted; (iii) that the Village Courts we're abolished by virtue of the provisions of the Madras Village Panchayats Act (X of 1950), and in spite of the revival of the village Courts by the provisions of the Tamil Nadu Panchayats Act (XXXV of 1958), the Village Munsif, Puliyankudi, has not been appointed afresh by the Collector to function as a village court within the meaning of the provisions of the Act.

4. The second contention put forth by the learned counsel is that the decrees passed in the suit concerned by the Village Munsif court, Puliyankudi, do not conform to the requirements of S. 46 of the Act, in that the reasons for the decisions have not been given in them. According to the learned counsel for the petitioner, these questions have not been properly appreciated and considered by the District Munsif, Tenkasi.

5. In my opinion, these revisions have got to be allowed on a short ground on the second contention raised by the learned counsel for the petitioner, without

going into the question of jurisdiction which would require investigation of certain factual materials. S.46 of the Act lays down as to what should be the contents of a decree passed by a Village court. It would be useful to extract the section, which is as follows-- The decree shall contain the number of the suits the names of the parties, the particulars of the claim, the names of the witnesses examined, the titles of the exhibits read, the decision thereon, and the reasons for such decision. It shall specify the sum of money adjudged, the movable property to be delivered, the sum to be paid in default of delivery, and the amount of costs and by what parties and in what proportions such costs shall be paid.

The decree shall be dated on the day on which it is passed, and signed by the village munsif. When the suit has been heard by a Panchayat court, the decree shall be signed by the members of such Panchayat court concurring therewith. A copy of the decree shall then be delivered to each party in the prescribed manner.

I have perused the decrees about which we are concerned in the present revisions, and I find that they do not satisfy the requirements of S. 46 of the Act. No reason for the decision in either of the cases has been given by the Village Munsif court, Puliyankudi. The requirements of S. 46 of the Act will be satisfied only if the reasons for the decision by the village court are set out in the decree and it would not be due compliance with S. 46 of the Act if merely a decree is passed, in the sense the decision adumbrates only the reliefs granted. As to why the reasons for a decision must be given by the Village Munsif Court is evident if we remember that such decrees of the Village Courts are liable to be revised by the District Munsif court under S. 73 of the Act and the District Munsif, exercising revision, will have to assess the materials to find out whether such decrees would be revised for any one or all of the grounds mentioned in S. 73 of the Act. Unless the reasons for the decision are set out, it is not possible for the court exercising powers under S. 73 of the Act, to assess the case under that provision. S. 46 of the Act, does not draw a distinction between decree passed ex parte and decrees passed on contest. Raghavan, J. in *Rajamanicka Mudaliar v. Vadivelu Mudaliar* 1973-1-M.L.J. 380=86 L.W. 235 had occasion to consider the scope of S. 46 of the Act and observed as follows (page 382)--

It is no doubt true that the members of the Panchayat need not give elaborate reasons in support of their conclusion, but there must be some indication that they applied their minds to the contentions of the parties. The statement in the decree that the parties were examined, cannot be said to comply with the requirements of S. 46.....If S. 46 had omitted to state the words and the reason for such decision", there will be no scope for any argument. But by the insertion of those words in S. 46, the requirements of a judgment are incorporated in S. 46, as it were, and some material indicating the reasons for the decision should also be stated as forming part of the decree of the village court as required by S. 46.

I am in respectful agreement with the view expressed by the learned Judge and adopting the same I find that these revisions have got to be allowed on the

ground that the decree passed by the Village Munsif Court, Puliyanakudi, do not conform to the requirements of S. 46 of the Act. There is substance in the contention put forth by the learned counsel for the petitioner that this question has not been appreciated by the court below in the proper light and the correct principles have not been applied. Hence, these revisions are allowed and the respective suits are remitted back to the Village munsif court, Puliyanakudi, for fresh disposal in accordance with law. The petitioners herein, the defendants in the suits, will be given an opportunity to put forth their defence including that relating to the aspect of jurisdiction. The Village munsif Court, Puliyanakudi will consider the objections put forth by the defendants in the suits concerned and decide the cases on merits There will be no order as to costs in these revisions.