

(1941) 08 MAD CK 0020
In the Madras High Court

Panthanam alias Alagianayakathammal and Others	APPELLANT
Vs	
P.R.M.K. Muhammad Abdul Rahiman Marakayar, Trustee and Landlord of Puthur Village	RESPONDENT

Date of Decision : 14-08-1941

Acts Referred:

Madras Estates Land Act, 1908 — Section 74

Citation : AIR 1942 Mad 73 : (1942) ILR (Mad) 236 : (1941) 54 LW 382 :
(1941) 2 MLJ 529

Hon'ble Judges : Abdur Rahman, J

Bench : Division Bench

Judgement

Abdur Rahman, J.—This is a batch of thirty second appeals. A preliminary objection has been raised by Mr. Sitarama Rao. He contends

that in the absence of a provision in the Estates Land Act conferring a right on the appellants to prefer second appeals, these are not competent

and are liable to be dismissed. The question to decide is whether they are.

2. They arise out of objections made by the respondent-landholder for appraisalment of the crop or division of the produce u/s 74 of the Estates

Land Act. On receiving these applications, the Collector deputed an officer, as required by Section 75 of the Act, to make the division or

appraisalment. The Officer appointed by the Collector carried out the orders and made a report. Objections were raised on behalf of the appellants

to this. They were to the effect that the rent was payable in money and not in kind. These objections were disallowed. The appellants went up to

the District Court in appeal but the Collector's decision was affirmed. They have preferred the present appeals against the orders of the District

Court.

3. Sub-clauses (d) and (e) to Section 75 (8) which contain the provisions relevant to the point to be determined read as follows:

(d) The Collector's order for the payment of rent and costs, if any, shall be final unless an objection of the nature described in Clause (6) has been

raised and shall be enforceable as a decree for arrears of rent.

(e) Where an objection of the nature described in Clause (6) has been raised, the Collector's decision thereon shall be subject to an appeal to the

District Court. Such appeal shall be presented within thirty days from the date of the Collector's decision.

4. Clause (b) referred to in these sub-clauses provides that if an objection is raised that the rent is not payable by division or appraisement or that

no rent is payable and the Collector upholds the objection, he shall set aside the award made by the person who was deputed to make the division

or appraisement.

5. According to the first of these sub-clauses, the Collector's order for the payment of rent and costs has been declared to be final. Since, during

the course of argument, learned Counsel for the appellant contended that the order passed by the District Court and the orders passed by the

Collector were decrees in fact, it would be useful to remember that the sub-clause (d) does not declare the Collector's orders to be decrees but

merely orders that are enforceable as decrees for arrears of rent. As to the character of the decision made by the District Court, sub-clause (e)

provides that when the objection that the rent is not payable either at all or at least in kind i.e., by division or appraisement but is payable in cash, is

taken on behalf of a tenant, the Collector's decision (the use of the word "decision" to which reference was made during the course of the

arguments is not important as it obviously refers to the order passed by the Collector and to nothing else) shall be subject to an appeal to the

District Court. If these two sub-clauses are read together, there would be no doubt as to, their meaning. They lay down that the Collector's order

for payment of rent in kind would be final if no objection is taken under sub-clause (b) and would continue to be so even if an objection is taken

under that sub-clause if the District Court on being appealed to does not come to a different decision from that of the Collector. In both these

cases, it is the decision of the Collector that remains final. If the District Court

takes a different view on the other hand, the order of the Collector is to be substituted or replaced by the order of the former. Whether such an order could be appealed against does not arise here for decision. But the point to be borne in mind is that in the absence of a different conclusion by the District Court, the decision of the Collector would continue to hold the field and retain its character of finality.

6. There is no provision in the Act which permits a further appeal to the High Court; but learned Counsel for the appellant contends that in spite of

the absence of a specific provision to that effect, such appeals are competent as u/s 192 of the Estates Land Act, the provisions of the CPC have

been made applicable to all appeals under the Act and in so far as the appeals to the District Court were laid u/s 75 (d), a further appeal to the

High Court would lie u/s 100 of the Code of Civil Procedure. But before the provisions of Section 100 can be held to be attracted, it is incumbent

upon the appellants to satisfy me that the orders passed by the District Court on appeals amounted to decrees. The proceedings, it must be

remembered, arose out of applications made to the Collector for division or appraisal and not out of suits. The decision by the Collector has

been described by clause (d) to be in the nature of an order. The appeals against that order must be regarded to be a continuation of the

proceedings before the Collector. If the decision by the Collector culminated in an order only, how can a decision by the District Court on appeal

be characterised as a decree? There are a large number of orders against which appeals have been provided under Order 43, Rule 1, Civil

Procedure Code. Can it be legitimately contended that the decision of the Court of appeal would amount to a decree although the decision of the

first Court was in the nature of an order? I do not think so. The Code makes a clear distinction between decrees and appealable orders and it is

impossible to forget that distinction in deciding this question. My attention was drawn to the fact that the decisions of the District Court were final

so far as that Court was concerned and that they were embodied in the form of decrees. But I do not feel impressed by these facts. An order does

not become a decree merely because it happens to be an order which is final so far as the Court passing it is concerned. As to the form in which

these orders were embodied, a practice seems to have grown up in this

presidency to embody every order or judgment passed by a Court in the form of a decree. In cases of orders, these formal expressions have come to be known by the style of decretal orders. This practice owed its growth probably to the difficulty experienced by the lower Courts in discriminating between judgments and orders and since no appeal is competent in case of judgments unless they are formally drawn up and embodied in decrees, it was probably considered safer to embody both judgments and orders in that manner. This would not, however, confer a right of appeal where none exists or convert what was really an order into a decree.

7. Reliance was placed on behalf of the appellant on several decisions of this Court and of the Privy Council; but it is unnecessary to examine them

in detail as the decisions in AIR 1914 87 (Privy Council) Venkatramier v. Vythilinga Thambiran (1913) 1 L.W. 89 : ILR Mad. 655 and Ganne

Kotappa Vs. Venkataramiah, , were decisions in suits instituted under the Rent Recovery Act or the Estates Land Act and must therefore have ended in decrees.

8. The decision in Kamaraju v. The Secretary of State for India I.L.R.(1888) Mad. 309 (F.B.) on which very great emphasis was laid by learned

Counsel for the appellant has no application also, in my opinion, as the Forest Officer in that case was found by the Full Bench to have been

constituted a Court with special jurisdiction which a Collector in deciding the question of appraisement u/s 75 is not. The last decision to which

reference was made during the course of the arguments was that of Rajah of Mandasa v. Jagannayakulu (1931)63 M.L.J. 450 (F.B.) but the real

point to be determined in that case was whether the Civil Court was a competent revising authority in regard to the directions given by the Board

of Revenue to revise the proceedings of a Revenue Officer who had made a settlement of rents under Chapter XI of the Estates Land Act. That is

not the question which has to be determined now. In the course of the judgment, however, one of the learned Judges, Anantakrishna Aiyar, J.,

referred to the position whether second appeals would be competent in certain cases but there is nothing in those observations which may lead me

to infer that the learned Judge was referring to the maintainability of such appeals from anything else other than decrees.

9. In my opinion, this case is governed by the principle enunciated in the Full Bench decision in *Rajagopala Chettiar v. Hindu Religious*

Endowments Board, Madras (1933) 66 M.L.J. 43 : ILR Mad. 271 and in *Rangoon Botatoung Co. Ltd., v. The Collector of Rangoon* (1912) 23

M.L.J. 276 : 1912 L.R. 39 IndAp 197 : ILR 40 Cal. 21 (P.C.). A right of appeal is a statutory right and cannot be inferred by implication. For the

above reasons I must hold that the appeals, are not competent.

10. A request is made to me on behalf of the appellants that they may be permitted to convert these appeals into revisions. As I am assured that

there are points of law which may have to be considered by the Court and in the ends of justice, I have no objection to grant that permission

provided that the appellants make up the deficiency in the court-fee and pay a consolidated sum of Rs. 50 to the learned Counsel on the other side

both because these appeals have not been held to be competent and because of the adjournment which has been asked to make up the deficiency.

These costs would be irrespective of any final orders as to costs that may be ordered to one party or to the other on the decision of appeals which

are now being converted into revisions or what would be converted into revisions if the necessary deficiency in court-fee is made up.

11. The necessary deficiency may be made up and the costs paid to the other side within a month.