
(1942) 12 MAD CK 0022
In the Madras High Court

Peran Ambalagaran

APPELLANT

Vs

Venkatarama Naicker and Others

RESPONDENT

Date of Decision : 11-12-1942

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : AIR 1943 Mad 656 : (1943) 56 LW 418 : (1943) 2 MLJ 193

Hon'ble Judges : Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Aiyar, J.—These are petitions to revise the order of the learned District Judge of West Tanjore in C:M.A. Nos. 37, 42, 43 and 44 of 1940 on his file dismissing them on the ground that no appeal lay. The order appealed against was an order on a petition filed under Order 9, Rule 13 of the Code of Civil Procedure.

2. The learned District Judge relies upon three rulings of this Court reported in Jagannatha Pillai and Others Vs. Kathaperumal Pillai and Others, , Pyda Ramakrishnayya Garu and Another Vs. Kuchipudi Naganna and Others, and Adusumilli Gopalakrishnayya Vs. Julury Narasimha Rao by guardian Durgamma, , as authority for the position that no appeal lies against a decree or an order, not provided for in Section 189(2) of the Madras Estates Land Act. In Pyda Ramakrishnayya Garu and Another Vs. Kuchipudi Naganna and Others, all that was held was, that if in execution of a decree passed by the Revenue Court in a summary suit the decree-holder attached certain lands and another person claiming as purchaser from him put in a petition objecting to the attachment under Order 21, Rule 58 of the CPC and the objection was upheld, the suit by the decree-holder under Order 21, Rule 63 should be filed in the Civil Court and not in the Revenue Court. When reliance was placed on Section 192 of the Madras Estates Land Act, it was pointed out that it could not enlarge the scope of the jurisdiction conferred on the revenue Court u/s 189 of the Act. That decision therefore does not deal with the question as to right of appeal. In Jagannatha

Pillai and Others Vs. Kathaperumal Pillai and Others, , it was held that a suit to set aside a sale in execution of a rent decree under the Madras Estates Land Act on the ground of fraud and material irregularity in publishing and conducting the sale was not barred either expressly or impliedly by the Madras Estates Land Act. There also there was no occasion to deal with the question as to the right of appeal. In Adusumilli Gopalakrishnayya Vs. Julury Narasimha Rao by guardian Durgamma, , it was held that the procedure prescribed under Order 21, Rule 90 of the CPC by which execution sales affected by material irregularity are allowed to be set aside was not available in the case of a sale of a holding in execution of a revenue decree under the Estates Land Act. But this decision was based on the provision of this Act as it stood prior to the amendment of Section 192.

3. u/s 192 of that Act as it stood then, it was only certain provisions of the CPC that were applicable to proceedings under the Act. The Act has been subsequently amended and the provisions of Order 43, Civil Procedure Code, are applicable to proceedings under the Act before a Revenue Court unless there is a notification by the local Government that they are not to apply. Order 21, Rule 90 was not one of the provisions of the CPC stated to apply to proceedings under the Act before the amendment. That was why in Adusumilli Gopalakrishnayya Vs. Julury Narasimha Rao by guardian Durgamma, , it was held that a petition under Order 21, Rule 90 was not maintainable in respect of a sale held under the provisions of that Act. Since under the amended Act the provisions of Order 43 of the CPC apply to proceedings under the Estates Land Act before Revenue Courts, it will have to be held that the appellant has got a right of appeal. My learned brother Patanjali Sastri, J., had occasion to hold recently in C.M.S.A. No. 298 of 1940 that the objection as regards the maintainability of an appeal from an order of remand in proceedings under the Madras Estates Land Act was not sustainable after the amendment of Section 192 of the Act.

4. It is stated for the respondents that the Estates Land Act itself has by Section 189(2) restricted the right of appeal only to certain proceedings. But then it must be remembered that it is only in respect of decrees and orders passed in suits and applications referred to in Sub-section (1) that there is the provision about the appeal. This order appealed against is not a decree or order passed in a suit or original application. It is an order passed in an interlocutory application. That interlocutory application was filed not under the provisions of the Act but by reason of the fact that the provisions of Order 9, CPC apply to proceedings before the Revenue Courts. If such provisions of the Code can be availed of in proceedings before the Revenue Court by reason of Section 192 of the Estates Land Act, the provisions of Order 43, Civil Procedure Code, also will have to be held to apply to such proceedings.

5. I therefore find that the finding of the learned District Judge that no appeal lay is incorrect. All these petitions are allowed and the order of the learned District Judge set aside and the appeals remanded to the District Judge of West Tanjore for being dealt with according to law in the light of the observations made above.

The respondents will pay the appellant the costs of the appeals. Advocate's fee one set.