

(1942) 01 MAD CK 0034
In the Madras High Court

Perumalla Venkayya

APPELLANT

Vs

Batchu Pullayya

RESPONDENT

Date of Decision : 22-01-1942

Acts Referred:

Citation : AIR 1942 Mad 466 : (1942) ILR (Mad) 654 : (1942) 55 LW 186 :
(1942) 1 MLJ 390

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This petition is preferred against a decision under the rules framed by the Provincial Government u/s 28 of Madras Act IV of 1938 and promulgated in G.O. No. 2634 (Development), dated 27th October, 1939.

2. An objection to the maintainability of the revision petition was raised on the ground that Rule 9 of these rules provides a right of appeal and that when there is a right of appeal there can be no revision. This objection is met by the contention that Rule 9 of the rules is itself ultra vires of the Provincial Government and that, therefore, it must be deemed that there is no valid right of appeal, with the result that the right of revision is the only remedy of an aggrieved person.

3. The question first to be determined is, therefore, whether Rule 9 is beyond the powers of the Provincial Government. We decided yesterday in C.R-P. No. 910 of 1941, since reported in Swayamprabhai Ammal and Others Vs. D. Muthukrishna Padayachi, , that the main procedure laid down in these rules for the determination of the amount of a debt other than a decree debt due by an alleged agriculturist by an application to the Court, was a procedure which could properly be prescribed under the rule-making powers conferred by Section 28 of the Act. In disposing of that matter we refrained from expressing any opinion as to the validity of Rule 9 which prescribes that the order of the Court declaring the amount of the debt under Rule 7, shall be subject to appeal and second appeal as if it were a decree in an original suit. The argument before us is that granting

that the enactment of a cheap and expeditious procedure for determining the amount of the debt affected by the provisions of this Act was a regulation for carrying into effect the purposes of the Act or for removing a difficulty in giving effect to the provisions of the Act, it was not a necessary incident of such a procedure to prescribe a right of appeal and that a right of appeal is a substantive right which cannot properly be conferred by a rule and should be implicit in the provisions of the statute itself. A Full Bench of this Court decided in the case of A.S. Nagappa Chettiar and Another Vs. Annapoorani Achi alias Karuppayi Achi and Another, , that Rule 8 of the rules relating to the procedure for dealing with debts embodied in decrees which are to be modified under Act IV of 1938, was ultra vires on the ground that it adds to the procedure laid down in Section 19 of the Act a power of appeal which the Legislature did not see fit to prescribe. It was observed that in making a rule providing for such appeals the Provincial Government is not making a rule for carrying into effect the purposes of the Act, but it is adding something to the Act. Now the decision of the Full Bench does not, in our opinion, affect the disposal of the case before us. We are concerned not with the addition of a right of appeal to a procedure prescribed by the statute but with the insertion of a right of appeal in a procedure prescribed by rules under the statute. When once it is conceded that the Act provides rights without providing a remedy and that the power of the Provincial Government to make rules for carrying into effect the purposes of the Act and removing any difficulty in giving effect to its provisions, warrants the promulgation of a procedure such as has been laid down in these rules, can it be said that the qualification of the remedy prescribed by the insertion of a right of appeal is something which is beyond the powers of the Provincial Government?

4. Mr. Bhimasankaram for the petitioner has contended that a right of appeal is a substantive right which should be granted only by statute and not by rule, or at any rate, if it is to be conferred by a rule, there must be specific authority in the statute itself for the exercise of the rule-making power so as to confer a right of appeal. No definite authority for this view has been quoted. The nearest case to the position for which Mr. Bhimasankaram has been contending is the case of *The Attorney-General v. Sillem* (1864) 10 H.L.C. 704 : 11 E.R. 1200. But on examination it does not appear that this decision is really an authority for his contention. In that case the House of Lords were dealing with a statute which conferred upon the revenue side of the Court of Exchequer the power to make rules governing its own procedure and their Lordships held that the rule purporting to have been framed under this rule-making power by the Court giving a right of appeal against its orders to the higher Courts was not within the powers conferred, the reason being that the lower Court could not by a rule affect the jurisdiction of the higher Courts and that any right of appeal must necessarily be conferred by an authority which can bind all the Courts affected by that right. There can be no question that with reference to Act IV of 1938, the Legislature has conferred upon the Provincial Government the power to make rules which will bind all the Courts of this Presidency. The contention that a right

of appeal not being a mere matter of procedure but a substantive right it cannot be conferred by a rule, also seems to lack authority. As has been pointed out by the House of Lords in the case of *Blackwood v. London Chartered Bank of Australia* (1874) 5 L.R. 92, the test to apply in considering whether rules are within the powers of the rule-making authority under a statute are (1) whether the rules are reasonable and convenient for carrying the Act into full effect : (2) whether the rules relate to matters arising under the provisions of the Act; (3) whether they relate to matters not in the Act otherwise provided for and (4) whether they are consistent with the provisions of the Act. The validity of a rule is to be determined not so much by ascertaining whether it confers rights or merely regulates procedure, but by determining whether the rule is in conformity with the powers conferred under the statute and whether it is consistent with the statute, reasonable and not contrary to general principles.

5. No doubt Act IV of 1938 nowhere contains any provisions for an appeal against a decision under that Act. But equally it contains no indication that an existing right of appeal should be nullified. Apart from the procedure prescribed for the modification of decrees for debt the cancellation of sales and the reduction of undecreed rents, the Act is singularly lacking in provisions prescribing the procedure for giving effect to its substantive provisions. It lays down no procedure for working out the amount of any debt affected by the Act which has not yet come into Court. It would no doubt be open to the creditor to file a suit for the debt leaving it to the Court to determine how the debt is to be scaled down as an incident to the passing of a decree. But this procedure involves the disadvantages that many parties would be driven to file suits when there is no real question at issue between them except as to the way in which the Act is to be worked and the creditor if he files his suit after the date prescribed in the Act would be mulcted in costs if he claims* more than is due under the Act. We have held that these circumstances made it most desirable to lay down a simple procedure which could be worked cheaply and speedily whereby either party could get the amount of the debt determined without the necessity of filing an expensive and elaborate suit. No doubt it would have been possible to confine such a procedure to a determination by the trial Court without any right of appeal. But had the rules contained no provision for an appeal, they would have been open to the very serious objection that the determination of the amount of the debt by the ordinary procedure of suit would be subject to appeal and in many cases to second appeal and that the rule providing for such a determination only by the Court of first instance would deprive the parties of their ordinary right of appeal which the law gives. It seems therefore that a most eminently reasonable and desirable feature of any procedure for the speedy and inexpensive determination of the amount of a debt affected by this Act would be the normal right of appeal against the decision. Looked at in this way, it appears that the rule for a right of appeal does not really confer any new right, but preserves a right which exists under the ordinary procedure which is being shortened by the procedure prescribed in the rule.

6. It cannot, in our opinion, be contended successfully that no right of appeal can be prescribed by rule unless the statute expressly authorises the rule-making authority to provide for rights of appeal. There are very many instances in which the rule-making authority has exercised the power of prescribing or taking away a right of appeal in matters covered by the rules. There seems to be a very clear difference between giving a right of appeal under a new procedure enacted by a rule and adding a right of appeal to a statutory procedure which contains no such right. An instance in which a very elaborate code of procedure with a complete system of appeals has been enacted under rule-making powers is found in the Agency Rules framed u/s 6 of the Scheduled Districts Act. Section 6 empowers the Local Government ;to regulate the procedure of the officers who are to administer civil and criminal justice and to direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force shall be exercised or performed. It does not specifically empower the Local Government to prescribe what rights of appeal shall be conferred from decisions of these judicial officers. Rules 47 to 49 of the rules framed under this section give a complete series of rights of appeals which, have been exercised for many years and have frequently come up before this Court without, so far as we are aware, their validity being questioned. We are, therefore, unable to accept the contention that a right of appeal is a right which can never be conferred by a rule unless there is an express power in the statute to make rules for that purpose. It seems to us that the rule now in question is one which is a reasonable and convenient qualification of the procedure prescribed, that it does not offend against any principle of law, that it is not inconsistent with anything in the Act itself and that it is properly framed for carrying into effect the purposes of the Act and removing difficulties in giving effect to its provisions. *

7. We therefore allow the preliminary objection and hold that an appeal does lie against a decision under Rule 7 and that, therefore, there can be no revision. The petition is dismissed with costs.