

(1922) 02 BOM CK 0026
In the Bombay High Court

The Rani Of Tuni	Vs	APPELLANT
Korra Latchundhora and Others		RESPONDENT

Date of Decision : 03-02-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : (1923) ILR (Bom) 35

Hon'ble Judges : Venkatasubba Rao, J;Oldfield, J

Bench : Division Bench

Judgement

1. The Court delivered the following JUDGMENT:
2. This is a petition asking us to direct the Agent to the Governor, Vizagapatam, to review his proceedings dismissing, as inadmissible, an appeal from a decision of the Assistant Agent.
3. A preliminary objection has been taken to our hearing the petition, that it does not lie, because the Agent's disposal is not a decree, to which Rule 20, Vizagapatam Agency Rules, applies. The question whether the Agent's disposal is a decree is indistinguishable from the question, whether the decision under appeal before him was likewise a decree. The Assistant Agent was dealing with what undoubtedly was described before him as a petition and was headed as presented under Order XXI, Rule 58, Civil Procedure Code. The circumstances were that the present first respondent was claiming the property attached by the present petitioner in execution of her decree against the second and other respondents. The Assistant Agent in dealing with the case appears to have eventually declined to decide the two issues originally framed, which related to the claimant's title, and to have restricted his enquiry to possession with reference to the terms of Order XXI, Rule 59. That was all in accordance with the character of the proceedings as resembling what in non-agency tracts are known as claim proceedings. In fact, however, the petitioner who was then in the position of first counter-petitioner, had expressly pleaded that the claim procedure under Order XXI, Rule 58, was not in force in the Agency tracts at all,

and had relied on a plea of title. The petitioner, therefore, cannot be held in any degree responsible if the Assistant Agent erred in treating the proceedings before him as claim proceedings or in limiting the scope of the inquiry consistently with their being of that nature.

4. The law applicable is contained exclusively in the Agency Rules already referred to. The only provision for appeal is Rule 16, allowing an appeal from the Assistant Agent to the Agent, and there is, of course, the provision in Rule 20 for the powers and control exercisable by this Court. Those provisions apply only to decrees; and we have been able to find no provision for appeals against either orders passed in execution or other orders of a miscellaneous character. If then we are constrained to regard the Assistant Agent's order as passed on a petition and as not constituting a decree, we shall have to hold that the appeal to the Agent was rightly rejected by him and to dismiss the present petition. To support the position that orders in execution are not appealable there is a decision in *Sri Sri Vikramadeo Maharajulum Garu v. Sri Neladevi Pattamadhadevi Garu* ILR (1903) Mad. 266. and there is clearer authority in *Venkatanagabhushanam v. Mahalakshmi* ILR (1918) Mad. 325. to show that miscellaneous orders by an Agent or Assistant Agent can be displaced only by an application to the Governor in Council.

5. The result, however, is not, in our opinion, to limit a person in the first respondent's position to a petition, as the means by which he can make his claim. The consequence is that, if he approaches the Court in order to do so, he should be regarded rather as availing himself of the only remedy, which the law in the Agency tracts provides; that is, the institution of a suit. The fact that he himself described his action as a petition and referred to a provision of the Civil Procedure Code, which was wholly irrelevant, cannot prevent us from ascertaining what was the real character of the proceedings or from treating them as what they really were, especially when we have not been shown how any unfair prejudice to any of the parties to them is to be apprehended. The necessary averments for a suit by a claimant were contained in the first respondent's petition and the proper defences were put forward in the petitioner's counter-petition. If the proper issues were not joined, that was, as already pointed out, through no fault of his. It may be observed that there is no reason why the existence in the Agency Courts of a remedy by way of claim petition should be assumed. For, the claim procedure is not a part of English Law and there is no reason for regarding it as anything but a special provision of the Code or importing it into a legal system which has always stood on an independent foundation. In these circumstances, we feel at liberty to treat the proceedings as taken in the only manner available to the first respondent, by suit and therefore to regard the orders of the Assistant Agent and the Agent as decrees, the former being appealable and the latter being subject to the interference of this Court with reference to Rule 20.

6. Taking this view, we must direct the Agency Commissioner to review his order

after hearing the appeal on the merits in the light of the foregoing. In doing so, we take the opportunity to refer to a statement made by Mr. Appa Rao on behalf of the petitioner before us, which is entirely consistent with the record, that his client was not heard before the order was passed. We are constrained to call the attention of the Agency Commissioner to this irregularity in his predecessor's procedure. Secondly, we observe that the Agency Commissioner should, in dealing with the merits of the case, consider before deciding against the petitioner whether the scope of the trial was not unduly limited by an unnecessary regard for the provisions of the inapplicable Order XXI, Rule 59. We direct that costs of the proceedings in the Court here and in the lower Courts to date be costs in the cause and follow the result.