
(1927) 10 MAD CK 0008
In the Madras High Court

T.R. Sundaraswamiar and Others

APPELLANT

Vs

K.R. Narayanaswamiar and Others

RESPONDENT

Date of Decision : 31-10-1927

Acts Referred:

Madras Estates Land Act, 1908 — Section 192

Citation : AIR 1928 Mad 1107

Hon'ble Judges : Devadoss, J;Devadoos, J

Bench : Division Bench

Judgement

Devadoss, J.—Those are three connected applications to revise the order of the District Judge of Tanjore remanding for trial and disposal

certain petitions. The appeals to the lower appellate Court were against orders in execution of rent decrees pending before the Court of the Sub-

Collector of Kumbakonam Division. The District Judge found that there was no proper enquiry and set aside the order of the lower Court and

remanded the petitions for fresh disposal. Against the order of the District Judge these revision petitions have been filed.

2. The contention of Mr. Vinayaka Rao for the petitioner is that the appeal to the lower appellate Court was incompetent as under the Estates

Land Act the right of appeal against orders under Order 21, Rule 92 has been taken away by Section 192, Estates Land Act, and therefore the

order of the lower appellate Court was without jurisdiction. This contention is no doubt correct. Under Clause (a), Section 192, Estates Land Act,

the right "of appeal against an order under Rule 92. Civil P.C., has been taken away, inasmuch ""as it is explicitly stated that the order relating to

appealable orders, Order 43, would not apply to any rent suit, appeal or other proceedings. To the contention that an order in the course of

execution proceedings may amount to a decree and therefore may come u/s 47, it is urged by Mr. Vinayaka Rao that the definition of the term

decree"" is against that contention and he relies upon Visvanatha Mudaliar v. Mannar Naidu [1914] 1 M.L.W. 667 and Rama Naidu v. Rama

Krishna. Naidu AIR 1924 Mad. 527. No doubt if the order was made under Rule 92 or if it was an appealable order, the right of appeal having

been taken away, the definition of the term decree"" cannot be invoked in order to give a right of appeal; but there are cases which would not come

within Rule 92 or under any other rule under which an appealable order could be passed but which, notwithstanding that, would be an order in

execution proceedings, and if it is such an order then Section 47 would apply and an appeal would lie. This was held by a Bench of this Court in

Neelu Neithiar v. Subramania Moothan [1919] 11 M.L.W. 59. One typical instance of such a case was the one under consideration in V.G.

Anantharama Iyer Vs. Vettath Kuttimalu Kovilamma alias Nangachi Kovilamma and Another, .

3. In these cases the affidavits contained certain averments which, if substantiated, would bring the case within the principles of the decision in

Neelu Neithiar v. Subramania Moothan [1919] 11 M.L.W. 59 so as to give a right of appeal to the unsuccessful party. As these questions have

not been tried, it is premature to say whether an appeal to the lower appellate Court was competent or not. If these questions had been tried by

the first Court and if the objections had been only under Rule 90 then the appeal to the lower appellate Court against such an order would have

been incompetent; but if, on the taking of evidence, those objections de hors Rule 90 are substantiated, different considerations would arise. As the

District Judge has clearly stated that evidence was not taken and the judgment of the first Court was written in a hurry owing to the officer who

wrote the judgment being under orders of transfer, I am constrained to dismiss these petitions but in the circumstances without costs.