Madras High Court
Ganne Kotappa vs Venkataramiah on 31 October, 1900
Equivalent citations: (1900) 10 MLJ 398
ORDER

1. Notwithstanding the fact that for more than thirty years sperial or second appeals against judgment in cases originally tried before the Collector under Act VIII of 1865 have been frequently heard without any question being raised, Mr. Kuppuswami Aiyar had the courage to argue that no second appeal is maintainable in Such cases and he based his arguments on the language of sections 4 and 584 of the Code of Civil Procedure.

2. Section 4 is a new section in so far as it relates to suits between landholders and their tenants. In the» Code of 1859 there was no similar provision and, therefore, it may fairly be said that the cases decided while it. was in force, including the case in which it is held generally that the provisions of the Code are to be applied to suits which originate in a Collector's Court, are not conclusive to show that a second appeal lies. Nevertheless the known state of the law as it existed before the present Code was enacted is a fact to be taken into account when we come to consider what was meant by the saving provision contained in Section 4 of the Code. The section so far as is material is as follows:Save as provided in the second paragraph of Section 3, nothing herein contained shall be deemed to affect any local law prescribing a special procedure for suits "between landlord and tenant."

3. Paraphrasing this section, one may say that it means that any law prescribing a special procedure for the suits specified shall remain unaffected by the provisions of the Code. That is a very different thing from, saying that the provisions of the Code are not to apply to such suits, and yet that is the meaning that the exigencies of the respondent's argument require to have put on the words. In our opinion the sectios of the Code relating to » second appeal inasmuch as they relate to matters which are not touched by Act VIII of 1861) may be applied to suits under that Act without affecting the enactment, that is to say, without altering or modifying the processual law therein enacted. If the Legislature meant to say that those sections and other sections of the Code were not to apply at all, surely it is reasonable to suppose, particularly when regard is had to the law as understood at that time, that express language to that effect would have been used. In our judgment Section 4 cannot be used in support of the respondent's argument.

4. The second point is that neither the judgment of a Callector acting under the Rent Recovery Act nor the judgment of a District Court on appeal, is a decree of a Civil Court within the meaning of the Code and that therefore Section 584 of the Code cannot apply. It is true that the District Judge is, under the Pagoda Act XX of 1863, authorised to appoint members of the Committee and that it has been held that when he has exer-cised his discretion in that way, no appeal lies Minakshi Naidu v. Subramanya Sastri. I.L.R. 11 M. 26. But that is a totally different case Under Act VIII of 1865 the questions which the Collector has to try are not matters of discretion, they are purely questions of civil right. There is a cause of action, a plaint, a suit, a Judgment and an appeal to a Civil Judge. It is impossible in our opinion to say there is no such adjudication as to constitute a decree within the meaning of the Code.

5. Accordingly we overrule the objection taken to the competency of the appeal."

6. We do not think the appeal is out of time since in our opinion the appellant had time to file his appeal up to the 18th of December. The word "from" in Section 69 of Act VIII of 1865 has the same meaning as "after" and the day on which judgment was delivered has to be excluded.

7. The point taken regarding Darbar charges is one on which both Courts agree and we cannot say they are wrong.

8. Then there is the question arising from the fact that during the fasli the Zemindar accepted part of the rent in money paid by the tenant and nevertheless at the end of the fasli tendered a waram patta. We cannot say he was precluded from doing his, but we think it ought to be made clear in the patta that the Zemindar has to give credit for the money paid.

9. The most important question is as to clause 8 relating to water-tax. The Head Assistant Collector decided that there should be an entry in the patta about the repayment of the tax by the Zemindar. We presume that he intended to strike out clause, 8, but he does not say so. The District Judge holds that the Head Assistant Collector was wrong, but whether he restores clause 8 or not he does not say. The District Judge considers that there is no evidence showing that the Zemindar undertook to repay the water tax when-paid by the tenants. At the same time he says that there is evidence that the Zemindar used to bear the tax himself and did not collect it from the ryots.

10. If the lands were formerly wet lands and the means of irrigation was provided and paid for by the Zemindar, we do not see why the fact that the Legislature has thrown the liability on the tenant should affect the incidence of the expense as between the Zemindar and the tenant.

11. On the other hand if the lands being dry lands were converted into wet lands by the tenant on his taking the water supplied by the Government, then the tenant ought to pay for it himself and not ask the Zemindar to contribute.

12. In the present case there are no facts on which we can find whether the charge ought to be borne by the one party or the other or shared between them.

13. We must therefore ask the District Judge to find whether having regard to the above obsarvatios the 8th clause can be justified in its present form or how, if at all, it should be altered. The case of each ryot must be separately dealt with.

14. The finding should be returned within one month from the date of this order. Ten days will be allowed for filing objections after the finding has been posted up in this Court.

15. Fresh evidence may be taken.