

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

PERUMAL AND ANOTHER (PETITIONERS), APPELLANTS,

v.

RAJAGOPALA (COUNTER-PETITIONER), RESPONDENT.*

Rent Recovery Act (Madras)—Act VIII of 1865, s. 27—order under—Civil Procedure Code, s. 2—Decree.

An order made under Rent Recovery Act (Madras), s. 27, is not a decree within the meaning of Civil Procedure Code, s. 2.

APPEAL under Letters Patent against the order of Wilkinson, J., made on civil revision petition No. 228 of 1889, which was presented under section 622 of the Civil Procedure Code, and prayed the High Court to revise the order of C. Srinivasa Sastri, District Munsif of Trivellore, made on miscellaneous petition No. 13 of 1887.

A landlord having distrained certain crops, &c., as for arrears of rent, the tenants forcibly recovered possession of the property distrained. The landlord accordingly presented miscellaneous petition No. 13 of 1887 in the Court of the District Munsif praying that the distress be restored to him. The District Munsif made an order to the effect sought under Act VIII of 1865, s. 27.

The tenants preferred the above petition.

Sadagopachariar for petitioners.

Srirangachariar for respondent.

The petition having come on for hearing before Wilkinson, J., it was objected for the respondent that the petitioners' remedy was by way of appeal to the District Court. His Lordship delivered judgment as follows:—

WILKINSON, J.—“I am of opinion that the preliminary objection must prevail. It is argued that the order of the Munsif being the formal expression of an adjudication upon a right claimed, is a decree, and that from such decree an appeal lies to the District Court. On the other hand it is contended that the only appeals provided for by section 69 of Act VIII of 1865 are from judgments of a Collector, and that, therefore, no appeal lies from an order passed under section 27 of that Act. It was unnecessary to

* Letters Patent Appeal No. 8 of 1889.

make any special provision in Act VIII of 1865 for an appeal from an order of a Civil Court, because provision for all such cases is made in the Code of Civil Procedure. The order passed under section 27 is, in my opinion, a decree capable of execution, and being a decree of a Civil Court, the appeal is regulated by the provisions of the code.

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“This petition must, therefore, be dismissed with costs.”

The petitioners preferred this appeal against the above order of Wilkinson, J.

The appeal having come on for hearing before Muttusami Ayyar and Parker, JJ., their Lordships, after hearing the pleaders for the parties, delivered judgment as follows:—

JUDGMENT.—We are unable to agree with the learned Judge that an order made under section 27, Act VIII of 1865, is a decree within the meaning of the Civil Procedure Code.

Having regard to the language of section 27, we think it can only be taken to be an order in a summary proceeding, and as such cannot be said to have decided a “suit or appeal” under section 2 of the Code of Civil Procedure. The decision in *Vadamalai Thiruvana Tevar v. Caruppen Servai*(1) would show that the proceeding contemplated by the section is summary. We must, therefore, allow the appeal with costs, and we shall proceed to hear the civil revision petition under section 622.

[Their Lordships, holding that the petitioners had established no grounds on which the Court should interfere in revision, dismissed their petition with costs.]

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

RANGAYYA APPA RAU (PLAINTIFF), APPELLANT,

v.

KADIYALA RATNAM AND OTHERS (DEFENDANTS), RESPONDENTS.*

Rent Recovery Act, Madras—Act VIII of 1865, ss. 9, 10, 11—Improper stipulations in patta—Claim of tenants to hold over land after expiry of lease.

In summary suits brought by a landlord to enforce acceptance by his tenants of pattas tendered by him for the current *fassi*, it was pleaded that the pattas were

1889.
October 29.

(1) 4 M.H.C.R., 401.

* Second Appeals Nos. 1232, &c., of 1888.