APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Kumaraswami Sastriyar.

1917, December, 19.

RAJAH VENKATA RAMAYYA AND ANOTHER (PLAINTIFFS) PETITIONERS,

v.

VEERASWAMI AND EIGHT OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), O. XLIII, and sec. 115—Suit for rent in a Revenue Court—Service inam—Discontinuance of service—Ryoti land—Decree in Revenue Court—Appeal—Jurisdiction of Revenue Court—Plaint ordered by District Judge to be returned for presentation to Civil Court—Appeal to the High Court against order of District Judge, if competent—Order whether a decree—Estates Land Act (Madras Act I of 1908), sec. 192, cl. (a)—Prohibition of appeals—Conversion of appeal into civil revision petition.

A landholder sued for arrears of rent in a Revenue Court from the defendants who originally held the lands on service tenure but had ceased to perform the services prior to the suit. The Revenue Court passed a decree in favour of the plaintiff. On appeal, the District Judge set aside the decree holding that the Revenue Court had no jurisdiction to entertain the suit and ordered that the plaint should be returned to the plaintiff for presentation to a proper Court. On plaintiff preferring an appeal to the High Court, the respondent raised a preliminary objection that the appeal did not lie.

Held, that no appeal lay against the order of the District Judge, because section 192, clause (*a*), of the Estates Land Act prohibited the applicability of Order XLIII of the Civil Procedure Code to proceedings under the Act, and the order was not a decree under the Civil Procedure Code.

Held also, that the appeal should be converted into a civil revision petition under section 115 of the Civil Procedure Code, as the latter section was not excluded by section 192 of the Act; and that the Revenue Court had jurisdiction to entertain the suit, as the lands were ryoti lands and did not fall within the exception to ryoti land in section 3 of the Act, inasmuch as the services were not performed at the date of the suit.

The Secretary of State for India v. *Chelekani Rama Rao* (1916) I.L.R., 39 Mad., 617 (P.C.), distinguished.

PETITION under section 115 of the Code of Civil Procedure praying the High Court to revise the order of E. PAKENHAM-WALSH, Acting District Judge of Kistna at Masulipatam, in appeals Nos. 110 and 173 of 1914, preferred against the decree of B. SURYANARAYANA RAO PANTULU Garu, Suits Deputy

* Civil Revision Petition No. 1312 of 1917.

Collector, Ellore, in Summary Suit No. 1089 of 1913 (Summary Suit No. 724 of 1913, Narasapur Division).

The suit was instituted by the Receiver of Nidadavole and Medur Estates to recover arrears of rent from the defendants. It was alleged in the plaint that defendants Nos. 1 to 8 were originally granted the suit land as service inam for performing washerman services, that they ceased to do services and conveyed a portion of the land to the ninth defendant and that plaintiff was consequently entitled to recover the full rent claimed. The plaintiff admitted that the land was ryoti land but claimed that he could recover full assessment as the defendants had ceased to perform services, for which the land was granted by a former Zamindar. The defendants claimed the land as ryoti lands in which they had occupancy rights and for which they had been paying uniform rent for a long time and contended that consequently the rent could not be raised. The Revenue Court decreed the suit in favour of the plaintiff. The ninth defendant appealed to the District Court. The District Judge held that the suit was not maintainable in the Revenue Court and ordered the return of the plaint to the plaintiff for presentation to the proper Court. Against the order of the District Judge, the plaintiff preferred a civil miscellaneous appeal to the High Court. The respondent raised a preliminary objection that no appeal lay against the order of the District Judge. The High Court allowed the preliminary objection of the respondent but permitted the appellant to convert the civil miscellaneous appeal into a civil revision petition, as the question raised was one of jurisdiction of the Court to entertain the suit.

P. Nagabushonam for appellant.

K. V. Venkatasubramani Ayyar and *B. Narashimha Rao* for respondent.

The judgment of the Court was delivered by

KUMARASWAMI SASTRIYAR, J.—The Receiver of the Nidadavole and Medur Estates who is the appellant sued the respondent in the Revenue Court to recover Rs. 323-11-7, arrears of rent for faslis 1320 to 1322. The case for the plaintiff was that the lands were granted by the former Zamindar at low rent to defendants Nos. 1 to 8 who were performing washerman services, that they ceased to do so and conveyed a portion of the land to the ninth defendant and that plaintiff was consequently entitled to recover

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the full rent claimed. Defendants Nos. 1 to 8 were *ex parte*. The ninth defendant pleaded inter alia that the lands were ryoti lands, that he has been paying the rent reserved ever since his purchase, that plaintiff has no power under the Estates Land Act to enhance the rent and that the suit was bad for misjoinder of parties. No question was raised as to the jurisdiction of the Court and at the trial plaintiff conceded that the lands were ryoti lands and that the defendants had occupancy rights. The Suits Deputy Collector decreed Rs. 51-13-9 as the proper rent payable. The ninth respondent appealed, but not on the ground that the Revenue Court had no jurisdiction. The grounds of appeal on the contrary proceed on the footing that the Estates Land Act applied. When the appeal was argued before the District Judge however a preliminary objection was taken by the appellant in the District Court to the effect that the lands were service inams and that plaintiff ought to have sued in a Civil Court, the Revenue Courts having no jurisdiction.

The District Court upheld the contention and directed the plaint to be presented to the proper Court. The appeal before us is against the order of the District Judge.

A preliminary objection has been taken by the respondent that no appeal lies against the order of the District Judge as the order was passed under Order VII, rule 10, Civil Procedure Code, 1908 (corresponding to section 57 of the old Code) and Order XLIII, rule 1, clause (*a*), which gives the right of appeal against the order passed under Order VII, rule 10, is made inapplicable to suits in Revenue Courts by virtue of section 192 of the Estates Land Act which specifies the provisions of the Civil Procedure Code applicable to suits, appeals and other proceedings under the Act and excludes Chapter XLIII of the old Code which corresponds to Order XLIII of the present Code. For the appellant it is contended that an appeal from the District Court to the High Court is not a proceeding under the Act, but from one Civil Court to another and that Order XLIII applies to such appeals.

There can be little doubt that if the Suits Deputy Collector had returned the plaint presented to him under section 77, clause (1), of the Estates Land Act, no appeal would lie to the District Court

The question however is whether a second appeal lies to the High Court where the order directing the return of the plaint is passed for the first time by the District Court which is not a Revenue Court.

Section 189 provides that decrees and orders passed by the Revenue Courts shall be subject to appeal as provided in the schedule. No further appeals are specially given by the Act except to the Board of Revenue under section 190. The schedule to the Madras Estates Land Act gives the description of the suit and the Court to which an appeal lies. In respect of suits for rent under section 77 of the Act an appeal lies to the District Court. Section 190 gives a right of second appeal to the Board of Revenue against certain orders passed on appeal by the Collector. So far as appeals from decrees of the District Court are concerned a second appeal has, though not expressly given by the Estates Land Act, been held to lie by virtue of section 100 of the new Civil Procedure Code of 1908 and Chapter XLIII of the old Code which are not excepted by section 192—vide *Ravi Veeraraghavulu* v. *Venkata Narasimha Naidu Bahadur*(1) and *Venkataramaier* v. *Vythilinga Thambiran*(2). As regards orders not coming within the definition of 'decree' in the Civil Procedure Code, section 192, clause (*a*) of the Estates Land Act enacts that Chapter XLIII which corresponds to Order XLIII and relates to appeals from orders shall not apply to appeals or other proceedings under the Estates Land Act. It is argued that this section can only apply to appeals from the Revenue Court to the District Court, because it is only such appeals as are appeals under the Act and that for appeals from the District Court to the High Court we have to fall back upon the provisions of the Civil Procedure Code as appeals from orders of the District Court to the High Court are not appeals or proceedings under the Estates Land Act. Reference has been made to *The Secretary of State for India* v. *Chelekani Rama Rao*(3) and it is argued that the observations of their Lordships of the Privy Council at page 624 to the effect that when proceedings reach the District Court, that Court is appealed to as one of the ordinary Courts of the country, with regard to whose procedure, orders and decrees the ordinary rules of the Civil Procedure Code apply would cover

(1) (1914) I.L.R., 37 Mad., 443. (2) L.W., 89.
(3) (1916) I.L.R., 39 Mad., 617 at p. 624 (P.C.).

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equally cases of appeals under the Estates Land Act. The Forest Act does not contain any provision analogous to section 192 of the Estates Land Act excluding the operation of certain sections and chapters of the Civil Procedure Code and *The Secretary of State for India v. Chelekani Rama Rao*(1) can be distinguished on that ground. There is a great deal to be said for the contention of the appellant, but the matter is not *res integra*. The point is covered by authority and we think we are bound by the decision of this Court to the contrary when the question directly arose for determination.

In *Madura Minakshi Sundareswarar Devastanam* v. *Periya Karuppan*(2) and *Vilvanatha Mudaliar* v. *Mannar Naidu*(3) where it was held by AYLING and SESHAGIRI AYYAR, JJ., and by AYLING and NAPIER, JJ., that no second appeal lies against an order of remand under Order XLI, rule 23, of the Civil Procedure Code; and in *Subba Ayyar* v. *Kamalammal*(4), AYLING and PHILLIPS, JJ., held that no second appeal lies against an order dismissing a suit for default. The contention now raised by the appellant before us that appeals from the District Court to the High Court are not appeals contemplated by the Estates Land Act and the question of the effect of the observations of the Privy Council in *The Secretary of State for India* v. *Chelekani Rama Rao*(1) were not raised in the above cases but as already pointed out, there is nothing in section 10 of the Forest Act which excludes any of the provisions of the Civil Procedure Code from its operation and second appeals have not been expressly excluded. It has been argued that section 190 of the Estates Land Act would render the decision of the District Judge, who returns a plaint to be presented to the Civil Court on the ground that the suit does not relate to an estate within the definition of the Act, *res judicata* in all subsequent proceedings and can only be set right by the High Court in second appeal from the decision of the Civil Court to which the plaint is presented under orders of the District Judge, that proceedings will then have to be begun *de novo* in the Revenue Courts and that it could hardly have been the intention of the legislature that this circuitous course should be followed when an appeal from the order of the District Court to the

(1) (1916) I L.R., 39 Mad., 617 (P.C.).
(2) Appeals against orders Nos. 349 to 353 of 1915.
(3) 1 L.W., 667.
(4) Second Appeal No. 235 of 1917.

High Court would be a quick and adequate remedy. We have to construe the plain meaning of section 192, however desirable it may be, that the legislature should amend section 192 by giving a right of appeal against orders of remand.

It is argued by the appellant's vakil that if Order XLIII of the Code is not to apply to suits under the Estates Land Act then the order directing the return of the plaint would be a decree within the meaning of the Civil Procedure Code as it would be an adjudication as to which no appeal would lie under Order XLIII by virtue of section 192 of the Estates Land Act. It is difficult to see how the definition of 'decree' in the Civil Procedure Code can be controlled by anything in the Estates Land Act.

The preliminary objection must therefore prevail.

We have been asked to treat the appeal as a revision petition under section 115 of the Civil Procedure Code. This section is not excluded by section 192 of the Estates Land Act and we have power to deal with the appeal as a revision petition as the question in issue is one of jurisdiction.

The case for the plaintiff is that the land is ryoti land and that the defendants Nos. 1 to 8, who are pattadars, are liable to pay the rent claimed. The ninth defendant is treated as a sub-tenant. It is open to the plaintiff under section 145 of the Estates Land Act to assent to the transfer of 5 acres and odd out of the 13 acres and odd held by defendants Nos. 1 to 8 in favour of the ninth defendant and we take it that the suit against the ninth defendant amounts to an assent. All that the ninth defendant pleaded was that the lands are jiroyati lands and that the rent was being paid for a long time. He also claimed occupancy rights. Defendants Nos. 1 to 8 raised no defence. At the trial plaintiff's vakil admitted that the lands were ryoti lands and that the defendants had occupancy rights. The only question that remained for consideration was whether the rent due was at the rate claimed by plaintiff or the rate admitted by the ninth defendant. Section 3 no doubt excludes lands granted on service tenure at favourable rent so long as the service tenure subsists but in the present case it is not alleged by the defendants in the written statement that the lands are now held on service tenure and on the evidence the Deputy Collector finds that the service is no longer rendered. There is no particular formality or

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procedure prescribed by the Act for putting an end to service tenures or anything which the landlord has to do in case services are discontinued in order to make the lands ryoti lands in cases where lands which were once ryoti lands are given to the occupancy ryot on a favourable rent in consideration of services to be rendered. Under the circumstances of this case it cannot be said that the lands must be deemed to be held under service tenure on the date of the suit. When the allegations in the plaint bring the case within section 77 of the Act the suit must be filed in the Revenue Court and the jurisdiction of the Court will not depend upon any pleas the defendant might raise. The fact that the Court may have to go into complicated questions as the right of resumption by the landlord of the continuance of the service on which lands were granted on favourable tenure will not affect the jurisdiction of the Revenue Court [vide *Polemera Thammu Naidu* v. *Sri Maharani Lady Janakiyamma*(1)].

We are of opinion that on the admission of the plaintiff and ninth defendant that the lands were at the date of suit ryoti lands it must be taken that the lands in the possession of the ninth defendant were not held on service tenure on the date of the suit so as to bring the case within the exception to the definition of ryoti land in section 3. Whether lands continue to be held on service tenure is a question of fact which must be raised on the pleadings.

We set aside the decision of the District Judge and remand the appeal for disposal on the merits. Costs will abide and follow the result.

K.R.

(1) (1910) M.W.N., 431.