

APPELLATE CIVIL.

*Before Mr. Justice Abdur Rahim and Mr. Justice
Kumaraswami Sastriyar.*

LAGADAPATI VENKATA NAGABUSHANAM (FIRST
DEFENDANT), PETITIONER,

1917.
August 1.

v.

GARLAPATI MAHALAKSHMI AND TWO OTHERS (APPELLANTS,
AND RESPONDENTS NOS. 2 AND 3), RESPONDENTS.*

Agency Rules of Godavari district, rules 8 and 16†—Dismissal of suit, for default, by Assistant Agent—Order of Agent restoring suit—Revision petition to High Court, maintainability of—Decree under rule 8, construction of—Order setting aside dismissal without notice to defendant, validity of—Petition to Government, necessity for.

An order, passed by a Government Agent, directing that a suit dismissed by an Assistant Agent for default of appearance of the plaintiff be restored to file, is not a decree within the meaning of rule 8 of the Agency Rules for the Godavari district, and is not revisable by the High Court by a petition filed directly in the High Court.

Sri Pedda Vithrama Deo Garu v. The Maharaja of Jeypore (1916) 4 L.W., 499, followed.

PETITION under rule 8 of the Agency Rules for the Godavari district praying the High Court to direct Mr. COUCHMAN, the Government Agent in Godavari, to revise his order in D. Dis. No. 52/Ag., dated 4th February 1916, reversing in appeal the order of CHARLES HENDERSON, the Assistant Agent of Bhadrachalam Division, dated 19th July 1916, refusing to restore Original Suit No. 25 of 1913 on the file of this Court.

* Civil Miscellaneous Petition No. 349 of 1917.

† Rules framed by Government for the guidance of the Government Agent in Godavari under section 6 of the Scheduled Districts Act (XIV of 1874).

Rule VIII.—“ All decrees passed by the Government Agent on appeal from decrees of his subordinates shall be final the High Court having the power on special grounds to require him to review his judgment as may be directed by them.”

Rule XVI.—“ All petitions against the proceedings of the Government Agent must, in the first instance, be submitted to the Government, and will be referred, when necessary, either to the High Court or the Board of Revenue, as the case may be.”

VENKATA
NAGA -
BUSHANAM
v.
MAHA-
LAKSHMI.

ABDUR
RAHIM
AND KUMARA-
SWAMI
SASTRIYAR,
JJ.

The facts of the case appear from the judgment.

P. Narayanamurti for the petitioner.

P. Somasundaram for the respondent.

The judgment of the Court was delivered by

ABDUR RAHIM, J.—The first respondent brought a suit against the petitioner in the Court of the Assistant Agent in the Godavari district for dissolution of partnership and other reliefs. The suit was dismissed for default. Then the plaintiff appealed to the Agent who, without hearing the defendant in the suit, set aside the order dismissing the suit for default and directed that the suit be restored to the file of the Assistant Agent to be heard and disposed of according to law. Against the order of the Agent the present civil miscellaneous petition has been preferred asking us to direct the Agent to review his order according to rule 8 of the Agency Rules. But that rule applies only to decrees passed by the Government Agent and to judgments leading to decrees.

A preliminary objection is taken that the order of the Agent directing that the suit be restored to file is not a decree within the meaning of the Agency Rules. We think that this contention is sound. The point has been decided in *Sri Pedda Vikrama Deo Garu v. The Maharaja of Jeypore*(1) following a number of other decisions of this Court. There a decree is understood as meaning the same thing as a decree under the Civil Procedure Code, for the Agency Rules themselves do not contain any definition of 'decree.' We see no reason for differing from that interpretation. What, however, was argued by the learned vakil for the petitioner was that though the order of the Assistant Agent dismissing the suit for default is not a decree yet the order of the Agent setting aside that order and directing the restoration of the suit is an adjudication of the rights of the parties within the meaning of the definition of 'decree' as given in the old Civil Procedure Code. But it is difficult to accept this contention. The right contemplated by that definition is not a right to the benefit of certain rules of procedure, that is to have an order of Court set aside by which the plaintiff's suit has been disposed of without trial. We may observe that rule 16 of the Agency Rules provides that all petitions against the

(1) (1916) 4 L.W., 409.

proceedings of the Government Agent must, in the first instance, be submitted to the Government and then it is open to the Government to refer the matter to the High Court or to the Board of Revenue, as the case may be. There can be no doubt that the Government Agent in this case was not justified in setting aside the order dismissing the suit for default without giving an opportunity to the defendant to be heard.

The proper remedy of the petitioner is to submit a petition to the Government and it is for the Government if it so chooses to refer the petition to the High Court for disposal. The present petition must be dismissed with costs.

K.B.

VENKATA
NAGA-
BUSHANAM
v.
MAHA-
LAKSHMI.
—
ABDUL
RAHIM
AND
KUMARA-
SWAMI
SASTRIYAR,
JJ.

APPELLATE CIVIL.

*Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice
Kumaraswami Sastriyar.*

M. R. M. A. SUBRAMANIAN CHETTIAR (JUDGMENT-DEBTOR),
APPELLANT,

v.

HON. P. RAJARAJESWARA SETHUPATHI *alias* MUTHU-
RAMALINGA SETHUPATHI AVARGAL, RAJA
OF RAMNAD (DECREE-HOLDER), RESPONDENT.*

1917.
August
9 and 10.

Civil Procedure Code (Act V of 1908), O. XLI, r. 5 (3)—Order under—Immoveable property given as security for decree by judgment-debtor, whether realizable in execution—Judgment-debtor taking advantage of a favourable order in execution—Estoppel.

Immoveable property given by a judgment-debtor as security for the due performance of a decree, pursuant to an order made under Order XLI, rule 5 (3), Civil Procedure Code, can be realized in execution without attachment, the matter being one relating to execution within section 47, Civil Procedure Code, and a separate suit does not lie.

Sadasiva Pillai v. Ramalinga Pillai (1875) 2 I.A., 219, applied.

Shyam Sundar Lal v. Bajpai Jainarayan (1903) I.L.R., 30 Cal., 1060, followed.

* Appeal Against Order No. 195 of 1917.