

## APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Krishnan.

1918  
August 14,  
15 and 23.

PARAMASWAMY AIYANGAR (PETITIONER), PETITIONER.

v.

ALAMELU NATCHIAR AMMAL AND ANOTHER  
(PLAINTIFFS' LEGAL REPRESENTATIVE AND DEFENDANT), RESPONDENTS.\*

*Civil Procedure Code (Act V of 1908), sec. 115 and O. XXII, r. 5—Suit for rent in a Revenue Court—Death of plaintiff—Conflicting claims to represent plaintiff by widow and father—Necessity for inquiry—Order of District Collector recognizing widow as land-holder, effect of—Order of Revenue Court recognizing widow as legal representative—Revision to High Court, competency of—Madras Estates Land Act (I of 1908), sections 3 (5), 192 and 205, construction of.*

In a suit for rent instituted in a Revenue Court the plaintiff died; the widow of the deceased plaintiff claimed to be his legal representative to continue the suit, as against the father who claimed to be such representative as the legatee under an alleged will of the deceased plaintiff. Subsequent to the institution of the suit, the District Collector had passed an order, under section 3 (5) of the Madras Estates Land Act, recognizing the widow as 'Land-holder' in succession to the deceased plaintiff. The Revenue Court held that the widow should be held to be the legal representative to continue the suit, and dismissed the claim of the father without inquiring into the genuineness and validity of the will. The latter preferred a Civil Revision Petition to the High Court under section 115 of the Civil Procedure Code. The respondent raised a preliminary objection that no revision petition lay to the High Court and also contended that the point was concluded by the order of the District Collector.

*Held:* (1) that the High Court was competent to revise the order of the Revenue Court under section 115 of the Civil Procedure Code, which is made applicable to proceedings in Revenue Courts by section 192 of the Madras Estates Land Act, and section 205 of the Act does not relate to interlocutory orders in rent suits, the final decrees in which are appealable under Part A of the schedule;

(2) that the Revenue Court is bound under Order XXII, rule 5 of the Civil Procedure Code to hold an inquiry into the claims of the several claimants and determine who was entitled to be brought on the record as legal representative in the place of the deceased plaintiff; and

(3) that the order of the District Collector recognizing the widow as 'Land-holder' under section 3 (5) of the Madras Estates Land Act, was not only not conclusive on the point but has no bearing on it and could not be the basis of an order of the Court under Order XXII, rule 5 of the Code, or obviate the necessity for an enquiry thereunder.

\* Civil Revision Petition 256 of 1918.

PETITION under section 115 of Act V of 1908 and 107 of the Government of India Act, 1915, praying the High Court to revise the order of V. RAMASWAMI AYYAR, Deputy Collector on special duty, Madura District, in O.S. No. 702 of 1917.

RAMA-  
SWAMY  
Ayyangar  
v.  
ALAMELU  
Natchiar  
Ammal.

The material facts appear from the judgment of the High Court.

*K. Srinivasa Ayyangar, K. V. Krishnaswami Ayyar, K. V. Sesha Ayyangar and S. Aravamudhu Ayyangar* for the petitioner.

*M. Patanjali Sastri* for the respondent.

AYLING J.—This is an application to revise an order of the Special Deputy Collector, Madura District, in the matter of bringing on record the legal representative of the deceased plaintiff in certain suits under section 77 of the Madras Estates Land Act pending in his Court. AYLING, J.

The preliminary objection is taken that this Court has no power of interference in revision in such cases. Reliance is placed on section 205 of the Madras Estates Land Act. In my opinion this section relates, not to incidental orders in suits, the final decree in which is appealable, but to such proceedings as are specified in part B of the schedule to the Act, as those in which no appeal lies (Nos. 12—20). It is not, and cannot be, intended to affect the revisional powers of this Court, in suits which are made appealable to the District Court and this Court under part A of the schedule. Section 115, Civil Procedure Code, is one of the sections made applicable to suits under the Madras Estates Land Act by section 192 of the latter. No appeal lies against the Deputy Collector's order sought to be revised: and if, as is urged on plaintiff's behalf, the Deputy Collector has failed to exercise a jurisdiction vested in him by law, this would seem to be a fit case for interference in revision.

Reference was made to a recent unreported decision of Mr. Justice SESHAGIRI AYYAR in *Zamindar of Pamuru, v. Nagayya*(1). I have considered this, but in the view I take of section 205, I regret to find myself unable to follow it.

It has therefore to be determined whether the Deputy Collector has declined to exercise the jurisdiction vested in him by law. The dispute lay between the widow of the deceased

(1) C. R. P. No. 945 of 1916—unreported.

PARAMASWAMY  
 AYYANGAR  
 v.  
 ALAMELU  
 NATCHIAR  
 ANMAL.  
 AYLING, J.

plaintiff on the one hand, claiming as his natural heir, and his father and brothers claiming under wills, the validity of which was challenged by the widow. The claim of the brothers was dropped as the will they set up did not cover the present matter, so that only that of the father remains. The Deputy Collector held that, as the validity of the will was a very contentious matter, it might be left for settlement in another Court, and without taking evidence, dismissed the claim of the father and added the widow as legal representative of the deceased. The question is, whether this was a compliance with Order XXII, rule 5, which says :

“ Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court ”.

For respondent, much reliance is placed on an order of the District Collector passed under section 3 (5), Madras Estates Land Act subsequent to the institution of the suit recognizing the widow as ‘land-holder’ in succession to the deceased plaintiff. This order is referred to by the Deputy Collector, but the latter makes it quite clear that he does not rely on it as the basis of his own order.

Respondent’s wakil contends that it should have been treated by the Deputy Collector as conclusive of the point for determination under Order XXII, rule 5 ; and that, even if not, a reference to it is sufficient compliance with the provisions of the rule. I do not think either contention is sound. The Collector’s order (subject to determination by a Civil Court) is conclusive as to who is entitled to take subsequent proceedings under the Act, and probably also, in a case of succession like the present one, as to proceedings instituted between the death of the last holder and the passing of the order. But we are concerned here simply with the question of who is entitled to continue proceedings which were legally instituted by the last holder ; in other words, who should represent his estate for the purpose of the suit. This person will not necessarily be the same person as is entitled to succeed to his rights as land-holder after his death. As laid down by SESHAGIRI Ayyar, J. in *Sundaram Iyer v. Kulathu Aiyer*(1), a person can sue to recover rent which has accrued

(1) (1915) 31 I.C., 81.

due to him as a land-holder, although his estate as such may have terminated. The right to recover arrears of rent is a part of the estate of the deceased (in the personal sense, not in the sense of the definition in section 3 of the Madras Estates Land Act) and is devisable by will: such a devise could not possibly be defeated by an order of the Collector deciding who should succeed to the possession of land-holder after his death.

The Collector's order is, therefore, not only not conclusive on the point, but has no bearing on it, and cannot be the basis of an order of the Court under Order 22, rule 5, or obviate the necessity for an enquiry thereunder.

The words of the rule are imperative 'shall be determined' and I think this presupposes an enquiry in which any claimant shall be entitled to adduce evidence to support his claim. No such enquiry has been held here. I am fully alive to the practical objections to compelling a Court to conduct a long and complicated enquiry as a preliminary to a suit which may be of little value and importance, and which will not preclude further litigation on the very same question. But that is the law, and it must be followed.

I would therefore set aside the order of the Deputy Collector and direct him to enquire and determine who is entitled to be brought on record as legal representative of the deceased plaintiff. Costs to be provided for in the final decree.

KRISHNAN, J.—We have first to deal with the preliminary objection taken by the respondent's vakil that, as the order sought to be revised is that of a revenue court, no revision lies to the High Court and that, if any revision lies at all, it is to the Board of Revenue or to the District Collector under section 205 of the Estates Land Act.

It may be conceded that section 115, Civil Procedure Code, does not of its own force apply to the proceedings of a revenue court. The Civil Procedure Code is applicable only to the Courts of civil jurisdiction—see the Preamble to the Code—and section 3 which enumerates the Courts which are subordinate to the High Court and over which the High Court is empowered by section 115 to exercise revisional jurisdiction does not refer to revenue courts. Nevertheless section 192 of the Estates Land Act has made section 115

PARAMASWAMY  
AIYANGAR  
v.  
ALAMELU  
NATCHIAR  
AMMAL.  
AYLING, J.

KRISHNAN, J.

PARANA-  
SWAMY  
ATTANGAR  
v.  
ALAMBULU  
NATCHIAR  
AMMAL.

KRISHNAN, J.

applicable to proceedings in revenue courts. That section says: "Subject to the other provisions of this Act and subject to the following modifications and additions, the provisions of the Code of Civil Procedure shall apply to all suits, appeals and other proceedings under this Act so far as they are not inconsistent therewith." Section 622 of the old Code corresponding to section 115 of the new Code is not one of the excepted sections mentioned in the latter part of section 192. Section 115, Civil Procedure Code, would therefore seem to apply to proceedings in a revenue court under the Estates Land Act.

It is, however, argued for the first respondent that section 205 of that Act properly applies and, as that section specifically provides for the revision of orders like the present one, the jurisdiction of the High Court under section 115, Civil Procedure Code, should be held to be excluded as being inconsistent with it, or at any rate in the exercise of our discretion under that section, we should refuse to interfere. In considering this argument we have first to decide whether section 205 can be applied at all. That section speaks of 'any proceeding before a Revenue Officer from whose decision no appeal lies.' The question whether section 205 applies to orders in a rent suit depends upon the meaning we attach to the word 'proceeding' in it. To avoid the serious anomaly of a conflict of decision in the same matter that may otherwise result from the revenue authorities revising orders passed in rent suits in which the appeal lies from the final decree to the civil courts, I think we may well hold that the word 'proceeding' refers to the whole proceeding and not to a part of it, or in other words, in a rent suit to the whole suit itself and not to any interlocutory orders in it. If this is correct, as an appeal lies from the Revenue Officer's decision in the suit, section 205 will not apply to proceedings in rent suits; and section 115, Civil Procedure Code, stands unaffected.

It is argued that this is giving too restricted a meaning to the term 'proceeding' and that we should hold that it is not less extensive in scope than the word 'case' in section 115, Civil Procedure Code. The two words are not analogous and are used in different connexions, but even if we assume that what took place before the Deputy Collector in the present case can be treated as 'a proceeding' by itself, the result, so far as the

applicability of section 115, Civil Procedure Code, is concerned, seems to be the same. It will only make section 205 also applicable, and we have then a case of concurrent jurisdiction both in the High Court under section 115, Civil Procedure Code, and in the revenue authorities under section 205 of the Madras Estates Land Act. There is nothing in section 205 which expressly excludes the applicability of section 115 and, as the latter section is expressly made applicable to the revenue courts by section 192, we cannot treat it as impliedly abrogated by section 205, when there is nothing strictly inconsistent between the two sections.

PARAMASWAMY  
ATTYANGAR  
v.  
ALAMBETHU  
NATCHIAR  
AMMAL.  
KRISHNAN, J.

The next question is whether in the view that the revenue authorities have co-ordinate jurisdiction with the High Court in the matter, we should not, in the exercise of our discretion, leave it to them to revise the order in question. I do not think so. To avoid the anomaly pointed out above it is certainly more convenient and proper that this Court should exercise its jurisdiction in the matter. If a party has already elected his remedy by applying to the revenue authorities under section 205, it may be a question whether interference under section 115, Civil Procedure Code, should not be refused, but such a difficulty does not arise here.

The first respondent's vakil relied on the rulings in *Zamindar of Pamuru v. Nagayya*(1) and in *Ram Dayal v. Ramadhin*(2) in support of his argument. In the former case which is a ruling of a single Judge of this Court the learned Judge says: "The learned vakil for the petitioner has not been able to point to any section under which he can ask the High Court to revise the proceedings of a revenue court." His attention was not drawn to section 192 of the Estates Land Act and his ruling, therefore, loses its authority.

The case in *Ram Dayal v. Ramadhin*(2) arose under the North-West Provinces Rent Act XII of 1881 which, though similar in some aspects to the Act in this Presidency, differs materially on the very point we have to consider here. The ruling was given in a rent case from which there was no appeal to the civil courts under section 189 of Act XII of 1881, the

(1) C.R.P., No. 945 of 1916—unreported.

(2) (1890) I.L.R., 12 All., 198.

PARAMA-  
SWAMY  
AIYANGAR  
v.  
ALAMELU  
NATCHIAR  
AMMAL.

KRISHNAN, J.

amount claimed being less than Rs. 100. Furthermore, that Act has expressly excepted cases in which appeals lie to the civil courts from the decisions of the Revenue Officers under section 189, from the scope of section 199 which gives the revisional power to the Board. The ruling, therefore, cannot be treated as in point here.

I, therefore, agree with my learned brother that the preliminary objection fails. The next point is whether on the merits this is a fit case for our interference in revision. On that point also I agree with my learned brother because, when the Deputy Collector refused to consider the petitioner's claim based on his alleged will and referred him to a suit to establish its validity, he acted with material irregularity in the exercise of his jurisdiction. The order said to have been passed by the Collector in favour of the first respondent under section 3, clause (5) of the Estates Land Act, declaring her to be the land-holder in succession to the deceased plaintiff on which much reliance was placed by the first respondent before us, was not relied on by the Deputy Collector as the basis of his order. That order itself is not before us and we can, therefore, hardly decide the exact effect of it regarding the arrears of rent sued for in this rent suit, No. 702 of 1917. *Prima facie* the proper legal representative of the deceased plaintiff in the suit is the man to whom the ownership of the rent has passed on plaintiff's death, and the petitioner alleges that he is that person who has become the owner under the will. It may be that, if the right to continue the suit in the revenue court has passed to the respondent under the order of the Collector under section 3, clause (5), she will be the proper legal representative irrespective of the question of the ownership of the amount sued for; just as the holder of a succession certificate for a particular debt will be in a suit for that debt. The rights of the beneficial owner will not be defeated, as he could sue the person added as the legal representative and recover it from him. The legal representative, as defined in the Code, section 2, clause (11), means a person who in law represents the estate of a deceased person; so he need not necessarily be the beneficial owner of that estate. But even if that be so, the order of the Collector not being before us, it is not possible to say whether it refers to the arrears of rent sued

for and confers on the respondent the exclusive right to continue the suit or not. Unless the declaration by the Collector is given retrospective effect, it can scarcely affect the arrears of rent which had already accrued and had been sued for; and there is no reason to suppose that such effect should be given to it. If the Collector's order is to take effect only from its date, petitioner will be the land-holder *qua* the rent sued for, under section 3, clause (5), if his claim to collect it under the will is established. See *Sundaram Iyer v. Kulathu Iyer*(1). In that case it was held that a person to whom arrears of rent were due was a landholder though his estates had terminated. If he is such a landholder, petitioner will be the proper person to continue the suit under the Estates Land Act in the revenue court. I therefore agree that the order of the Collector under section 3, clause 5, is not shown to affect the question who the proper legal representative of the deceased plaintiff is; and for the purpose of deciding it, it seems necessary that the genuineness and the validity of the petitioner's will should be enquired into. I therefore agree in the order proposed by my learned brother.

K.R.

PARAMASWAMY  
AIYANGAR  
v.  
ALAMELU  
NATCHIAR  
AMMAL.

KRISHNAN, J.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.*

THE CROWN PROSECUTOR (COMPLAINANT), PETITIONER,

1918.  
August, 23.

v.

BHAGAVATHI (ACCUSED), RESPONDENT. \*

*Criminal Procedure Code (Act V of 1898), sections 254 and 347, commitment to Sessions by Magistrate competent to try and adequately punish, legality of,*

The terms of section 347 of the Criminal Procedure Code are general and give a Magistrate who is empowered to commit a discretion in committing cases for trial which is not limited by section 254 so as to make it obligatory on him to try every case which he can adequately punish.

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(1) (1915) 31 I.C., 81.

\* Criminal Miscellaneous Petition No. 403 of 1918.