

## APPELLATE CIVIL.

Before Sir Owen Beasley Kt., Chief Justice,  
and Mr. Justice Cornish.

1932,  
March 7.

KUMARASWAMI MUDALI, MINOR, BY NEXT FRIEND  
GANAPATHI MUDALI (PLAINTIFF), PETITIONER,

v.

MUNIRATHNA MUDALI (DEFENDANT), RESPONDENT.\*

*Madras Hereditary Village-Offices Act (III of 1895), sec. 23—  
Second appeal to Board of Revenue under—Hearing of  
parties in—Not necessary—Rule 16 of Standing Order  
No. 172 of Board of Revenue (paragraph 11)—Ultra  
vires if—Sec. 3 of Act—Office specified in—Claim to—  
Decision of Board of Revenue on—High Court's juris-  
diction to revise, excluded by sec. 21 of Act.*

The Board of Revenue, having jurisdiction to decide a second appeal to it under section 23 of the Madras Hereditary Village-Offices Act, has jurisdiction to decide it without giving the parties an opportunity of being heard.

Rule 16 of Standing Order No. 172 of the Board of Revenue (paragraph 11) is not *ultra vires*. Section 18 of the Madras Hereditary Village-Offices Act by expressly providing for parties or Counsel to be heard in cases of reference makes the procedure not allowing the parties to be heard on second appeals to the Board of Revenue quite consistent with the provisions of the Act.

The High Court has no jurisdiction to revise a decision of the Board of Revenue on a claim to one of the offices specified in section 3 of the Madras Hereditary Village-Offices Act. Its jurisdiction to do so is expressly excluded by section 21 of that Act.

PETITION under section 115 of Act (V of 1908) and section 107 of the Government of India Act praying the

---

\* Civil Revision Petition No. 608 of 1927 and Civil Miscellaneous Petition No. 3228 of 1927.

High Court to revise the order of the Board of Revenue, Madras, dated the 30th March 1927, and made in Miscellaneous No. 863 of 1927 (Suit Appeal No. 2 of 1926 on the file of the Court of the District Collector of North Arcot—Revenue Suit No. 1 of 1925 on the file of the Court of the Deputy Collector of Ranipet). Civil Miscellaneous Petition No. 3228 of 1927.—Petition praying that, in the circumstances stated in the affidavit filed with Civil Miscellaneous Petition No. 1703 of 1927 and in the memorandum of grounds in Civil Revision Petition No. 608 of 1927 on the file of the High Court, the High Court will be pleased to issue a writ of *certiorari* to bring in and quash and set aside the judgment and proceedings of the Board of Revenue, Madras, in Miscellaneous No. 863 of 1927, dated 30th March 1927.

KUMARA-  
SWAMI  
v.  
MUNIBATHNA  
MUDALI.

*L. A. Govindaraghava Ayyar* and *P. S. Ramachandra Ayyar* for petitioner.

*The Government Pleader (P. Venkataramana Rao), C. S. Venkatachariar* and *T. K. Srinivasa Thathachariar* for respondent.

### JUDGMENT.

BEASLEY C.J.—This is an application for the issue of BEASLEY C.J. a writ of *certiorari*. There is also a civil revision petition. Both arise out of an order made by the Board of Revenue in a second appeal to it under section 23 of the Madras Hereditary Village-Offices Act. The petitioner in a suit before the Revenue Divisional Officer got himself registered as a village officer. An appeal under the Act was taken to the District Collector who confirmed the Revenue Divisional Officer's order and there was a second appeal to the Board of Revenue. The Board of Revenue allowed the appeal. The petitioner argues that he is entitled to a writ of *certiorari*

KUMARA-  
SWAMI  
v.  
MUNIRATHNA  
MUDALI.  
BEASLEY C.J.

or to have the order of the Revenue Board revised here on a civil revision petition. A preliminary objection is taken both to the petition for a writ of *certiorari* and the civil revision petition. With regard to the issue of a writ of *certiorari*, it has been laid down by this Court, following the decisions of English Courts, that a writ of *certiorari* will only issue where it is shown that the Court, whose order is sought to be made the subject of the writ, has acted either without jurisdiction or in excess of it. It is clear also that, even if either of these essentials is present, the issue of the writ is purely discretionary in the High Court. We have got to consider here, first of all, what is the want of jurisdiction or excess of it alleged by the petitioner. It is stated—and it is a fact—that the Board of Revenue came to a decision and made its order in the second appeal without hearing the petitioner. It is said that, in doing so, the Board acted in excess of its jurisdiction. This contention has to be examined in the light of the Act itself and of the rules made both under the Act and in consequence of the Act. By section 23 of the Act, in such cases as the present, an appeal is given from the District Collector to the Board of Revenue. Certain rules are made by the Board of Revenue with the approval of Government under section 20 of the Act, and, amongst others, are rules for the holding of enquiries under sections 6, 7 and 8 and the hearing of appeals under section 23. It is with the hearing of the appeal under section 23 that we are concerned here. Those rules commence at No. 11 and provide for the service of notice upon the parties to the suit and the appeal and also for the hearing of the parties on an appeal to the District Collector. Although the rules proceed to lay down the procedure to be adopted on a second appeal to the Board of Revenue, they are silent

with regard to the hearing of the parties to the appeal. Hence it is argued on behalf of the Board that, whilst the rules provide for the hearing of the parties both in the suit stage of the case and in its first appellate stage, when it reaches the stage of a second appeal, that provision is expressly omitted. The matter is, however, made more certain by rule 16 (under Standing Order No. 172, paragraph 11), which is not a rule made under section 20 of the Act. That is as follows:—

“The Board will not hear either petitioners or their Counsel in person except as provided by section 18 (2) of Madras Act III of 1895 or by sections 190 and 205 of Madras Act I of 1908.”

Section 18 (1) deals with the reference in certain cases of questions of law by the Collector to the Board of Revenue; and sub-section (2) of the same section provides the procedure and states that the Board of Revenue shall, if any of the parties so request, hear him or his agent and shall decide the point referred. Here there is in the Act an express provision for the hearing of the parties when the case is considered by the Board of Revenue on a reference and it seems to me that this shows that an exception is made to the case which comes up to the Board on second appeal. In my view it is only in cases of reference of points of law to the Board of Revenue that it is bound, on the request of the parties, to hear them. It is, however, argued on behalf of the petitioner that rule 16 is *ultra vires* because it goes beyond anything in the Act and it is contrary to law and justice that, in the absence of a party, his rights should be injuriously affected. For the reasons which I have already stated, I am of the opinion that rule 16 is certainly not inconsistent with the sections dealing with this matter in the Act. It seems to me that section 18 by expressly providing for parties' Counsel to be heard in cases of reference makes

KUMARA-  
SWAMI  
v.  
MUNIRATHNA  
MUDALI.  
—  
BEASLEY C.J.

KUMARA-  
SWAMI  
v.  
MUNIRATHNA  
MUDALI.

BEASLEY C.J.

the procedure not allowing the parties to be heard on second appeals to the Board of Revenue quite consistent. It is, therefore, clear that the Board of Revenue in making its order in the absence of the petitioner was not acting in excess of its jurisdiction. That being so, this is certainly not a case for the issue of a writ of *certiorari*. Upon this point there is a case in this High Court, viz., a decision of AYLING Offg. C.J. and ODGERS J. in *In re Chinnayya Gounder*(1). The case deals with the question of the right of the High Court to interfere with the orders of the Board of Revenue made under the Madras Hereditary Village-Offices Act under either section 115 of the Code of Civil Procedure or section 107 of the Government of India Act. Dealing with section 107 of the Government of India Act, AYLING Offg. C.J. says:—

“Appellate jurisdiction no doubt includes the power to interfere in revision and is not confined to cases in which the law allows a regular appeal. As stated by SUBBAMANIA AYYAR J. in *Chappan v. Moidin Kutti*(2), the two things required to constitute appellate jurisdiction are the existence of the relation of superior and inferior Court and the power on the part of the former to review the decisions of the latter. I accept this definition but I cannot see here either the relation or the power. It cannot be assumed that every officer exercising statutory powers in this Presidency stands to this Court in the relation of an inferior Court to a superior, or that we have the power to review his decisions. Madras Act III of 1895 is a self-contained Act which, as set out in its preamble, purports to provide ‘for the succession to certain hereditary village-offices in the Presidency of Madras; for the hearing and disposal of claims to such offices or the emoluments annexed thereto; for the appointment of persons to hold such offices and the control of the holders thereof; and for certain other purposes’.”

It is difficult to see how in such a case as this it can be argued that a Revenue Court is a Court which

(1) (1921) 41 M.L.J. 577.

(2) (1898) I.L.R. 22 Mad. 68 (F.B.).

stands in relation to the High Court as an inferior Court to a superior Court, when reference is made to section 21 of the Act which says :

KUMARA-  
SWAMI  
v.  
MUNIRATHNA  
MUDALI.  
BEASLEY C.J.

“No Civil Court shall have authority to take into consideration or decide any claim to succeed to any of the offices specified in section 3 or any question as to the rate or amount of the emoluments of any such office . . . .”

This is one of the offices specified in section 3, and, if a civil revision petition lies, then the High Court will be taking into consideration a claim to one of the offices specified in that section. That is expressly barred by section 21 of the Act. However, it is argued that, the Act being a purely local one, it cannot by its legislation take away the powers which the High Court possesses under its charter. It is quite true that a local Act cannot take away any of the powers which the High Court possesses but it is perfectly clear that the High Court never did possess the power of interference in such matters as this. That also is pointed out in *In re Ohinnayya Gounder*(1), already referred to. At page 580, AYLING Offg. C.J. says :

“It has been suggested that if this be so, Act III of 1895 purported to take away powers which the High Court possessed prior to its enactment and to that extent is *ultra vires* ; but I can discover no basis for this. Prior to its enactment the position of hereditary village officers was governed by Regulation VI of 1831 ; and this Regulation is, if possible, even more explicit than the Act now in force in placing such village officers as the petitioner under the exclusive control of the Revenue authorities.”

The preamble to that Regulation is as follows :—

“And whereas effectually to prevent the appropriation of such emoluments to purposes other than those for which they were originally designed, it is requisite to declare that all such emoluments are inalienable by mortgage, sale, gift or otherwise ; to provide that no claim to such offices, or to any

(1) (1921) 41 M.L.J. 577.

KUMARA-  
SWAMI  
v.

MUNIRATHNA  
MUDALI.

of the emoluments annexed thereto, shall be cognizable by the ordinary Courts of judicature.”

That, in my view, makes it perfectly clear that the High Court never did have any power of interference with the Revenue Courts in such matters as this. For these reasons, the petition for the issue of a writ of *certiorari* and the civil revision petition must be dismissed with costs (two sets).

CORNISH J.

CORNISH J.—I am of the same opinion. The question is whether the Board, which clearly had jurisdiction to decide the appeal, had jurisdiction to decide it without giving the petitioner an opportunity of being heard. The answer to that question depends upon whether rule 16 of Standing Order 172 of the Board of Revenue (paragraph 11) is *ultra vires*. That rule is not described as a rule made under section 20 (2) of the Act, but it is obviously made with reference to the Act and to the powers given by section 20, and must, I think, be taken to be a rule made in regard to the hearing of appeals under section 23. Section 20 requires that the rule so made shall not be inconsistent with the provisions of the Act. The test, then, whether this rule is *ultra vires* is whether it is inconsistent with anything provided in the Act. It is only necessary to look at section 18 of the Act, which is the one section in the Act expressly providing for the procedure in matters coming before the Board, to see how completely consistent with it the rule is. Section 18 (2) makes a special provision for allowing the parties or their agents to be heard on a reference to the Board of a point of law under section 18 (1) if any of the parties so request. In my view, it is quite consistent that the right of being heard in person or by Counsel should be limited by rule to the only occasion on which this right is given by the Act.

With regard to the civil revision petition which has been argued before us, in my judgment, the jurisdiction of the High Court to revise the decision of the Board on the petitioner's claim is expressly excluded by section 21 of the Act. This is not a case of a provincial Act purporting to take away from the High Court a right to supervise Courts of inferior jurisdiction, for, as was held in *In re Chinnaayya Gounder*(1), the power of control given to Collectors over village officers was never subject to the High Court's superintendence. I agree that both the petitions should be dismissed.

KUMARA-  
SWAMI  
v.  
MUNIRATHNA  
MUDALI.  
—  
CORNISH J.

A.S.V.

---

## APPELLATE CIVIL.

*Before Mr. Justice Ramesam and Mr. Justice Madhavan Nair.*

R. M. M. S. T. VYRAVAN CHETTIAR (APPLICANT),  
APPELLANT,

1932,  
March 8.

v.

THE OFFICIAL ASSIGNEE OF MADRAS  
(RESPONDENT), RESPONDENT.\*

*Indian Contract Act (IX of 1872), ss. 126 and 141—Joint-debtors—When sureties as amongst themselves.*

In the absence of a custom or contract to the contrary between joint-debtors who are jointly and severally liable to a creditor, each is not a surety to the other as defined by section 126 of the Indian Contract Act nor do they occupy a position analogous to that of surety strictly so-called so as to attract the provisions of section 141 of the Indian Contract Act.

APPEAL from the judgment of WALLER J. in the exercise of Insolvency Jurisdiction of the High Court in

---

(1) (1921) 41 M.L.J. 577.

\* Original Side Appeal No. 98 of 1929.