

APPELLATE CIVIL.

Before Mr. Justice Burn and Mr. Justice Stodart.

S. P. PERUMAL CHETTIAR (RESPONDENT),
APPELLANT,

1938,
November 3

v.

M. K. KONDAL CHETTY AND ANOTHER
(PETITIONERS), RESPONDENTS.*

*Madras City Tenants' Protection Act (III of 1922), sec. 7—
Order passed by City Civil Court under—Appeal from—
Competency of—Code of Civil Procedure (Act V of 1908),
ss. 105 and 96—Effect of.*

No appeal lies from an order passed by the City Civil Court under section 7 of the Madras City Tenants' Protection Act (III of 1922).

The Madras City Tenants' Protection Act does not allow an appeal from an order passed under section 7 of that Act, and under section 105 of the Civil Procedure Code, save as otherwise expressly provided, no appeal lies from an order made by a Court in the exercise of its original jurisdiction. An order passed under section 7 of the Madras City Tenants' Protection Act is not a decree from which an appeal will lie under section 96 of the Code of Civil Procedure. The provision in section 8 of the City Tenants' Protection Act that such an order "shall have effect as a decree in a suit" shows that it is not a decree.

APPEAL against the order of the Court of the City Civil Judge, Madras, dated 12th March 1937 and made in Original Petition No. 115 of 1936.

P. V. Vallabhacharyulu for appellent.

P. Somasundaram for second respondent.

First respondent was not represented.

The JUDGMENT of the Court was delivered by
BURN J.—The appellent is the owner of 1/34, Selva

BURN J.

* Appeal Against Order No. 27 of 1938.

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Vinayagar Koil Street, Old Washermanpet, Madras. This house is the superstructure upon a site belonging to the respondents, and the appellant pays ground rent to the respondents. The respondents applied by a petition under section 7 of the Madras City Tenants' Protection Act (Madras Act III of 1922) to the City Civil Court to fix a reasonable rent for the occupation of the land on which the appellant's house is built. The ground rent previously paid was Rs. 7 per mensem. The learned Principal Judge of the City Civil Court heard the application, came to the conclusion that a reasonable rent would be Rs. 7-12-0 and fixed the rent at that figure. This is within the limit fixed by the proviso to section 7 of the Act. The proviso is

“ that the rent previously payable for the land shall not be enhanced by more than two annas in the rupee.”

The appellant has filed this appeal purporting to be under section 15 of the City Civil Court Act read with section 96 of the Civil Procedure Code.

Learned Counsel for the respondents has taken a preliminary objection that the order passed by the learned Principal Judge of the City Civil Court in this case is not subject to appeal. He has pointed out that section 7 enables the Court to fix a reasonable rent “ by its order ”. In the Madras City Tenants' Protection Act, no appeal is given from an order passed under section 7. On general principles, it is laid down in section 105 of the Civil Procedure Code :

“ Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction.”

Learned Counsel for the appellant relies upon section 8 of the Act which runs as follows :

“ An order passed by a Court under section 6, section 7, or section 7-A shall have effect as a decree in a suit and the rent

so fixed shall not be revised nor shall a tenant be liable to be evicted, for a period of five years."

The appellant's learned Counsel refers to section 96 of the Civil Procedure Code by which it is provided :

"Save where otherwise expressly provided in the body of this Code or any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court."

Learned Counsel says that, since the order passed in this case is to have effect as a decree in a suit, therefore it must be treated as a decree for all purposes and therefore it is appealable. We are not able to accept this contention. As already noticed, section 7 of the Act says that the Court shall by its *order* fix such rent as it deems reasonable. Section 8 shows that the decision of the Court is expressed in an order and the direction that this order shall have effect as a decree in a suit shows that it is not a decree. If it were a decree, the provision that it "shall have effect as a decree in a suit" would be superfluous and otiose. We think the scheme of the Act is to make these orders not appealable. In the first place the Court is authorized to fix "such rent as it deems reasonable." It would obviously be very difficult for an appellate Court to deal in appeal with a matter decided under this section by a Judge. Further section 8 gives a kind of compensation to the tenant by which the tenant is not liable to be evicted for a period of five years after the determination of the rent under section 7. Agreeing with the learned Counsel for the respondents, we uphold the preliminary objection and find that no appeal lies. This appeal is therefore dismissed with costs.

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