

MYSORE HIGH COURT

Shivaraya

Vs

Siddamma

Civil Revn. Petn. No. 612 of 1961, Bidar in File No. 34/87/1960-61

(A.R. Somnath Iyer, J.)

20.06.1962

JUDGMENT

A.R. Somnath Iyer, J.

1. This revision petition arises out of an application presented by the petitioner who claimed to be a protected tenant, for an order for possession under Section 32 of the Hyderabad Tenancy and Agricultural Lands Act. That application was presented against respondent 2, and the Tahsildar gave the petitioner the order which he wanted. After that order was made by the Tahsildar, respondent 1 who is the brother's wife of respondent 2 presented an appeal to the Deputy Commissioner from the order made by the Tahsildar in which she stated that the petitioner was not a protected tenant of the land and that respondent 2 was not his landlord and that the land belonged to her. She also complained that a collusive order had been obtained by the petitioner with the connivance of respondent 2. The Deputy Commissioner in that appeal made an order setting aside the order made by the Tahsildar and remanding the proceedings to the Tahsildar for fresh disposal according to law.

2. Mr. Jahgirdar appearing for the petitioner in this revision petition questions the competence of the Deputy Commissioner to entertain an appeal by respondent 1 who was not a party to the proceedings before the Tahsildar.

3. It is clear that this contention is insubstantial. As pointed out by their Lordships of the High Court of Madras in *Ponnalagu Ammal v. The State of Madras*¹, under the practice consistently followed by the English Courts which is a just and equitable practice and which is in no way inconsistent with the doctrine that a right of appeal can only be created by statute, a person who is not a party to a suit may prefer an appeal if he is affected by the decree or order, to the appellate Court provided he obtains leave from the Court of appeal. That the Court of appeal has therefore the power to grant such leave being indisputable, the question is whether the Deputy Commissioner who must be regarded to have granted such leave to respondent 1 exercised his power arbitrarily or capriciously.

4. Mr. Jahgirdar's contention is that such leave could be granted only in special cases

¹ AIR 1953 Mad 485

in which the person applying for such leave would be bound by the decree or order against which he proposes to prefer an appeal if he does not so appeal, and, in support of that argument, he depended upon some observations to that effect contained in the Madras case to which I have already referred. But, it will be seen that their Lordships cannot be understood to have limited the application of the practice of the English Courts which, according to them, was a just and equitable practice, only to the cases to which they have referred in the course of their judgment. It is, in my opinion, clear that leave to a person to appeal from a decree or order in a proceeding to which he was not a party should not be ordinarily granted unless he establishes that he has an interest which is affected by the order or decree from which he proposes to appeal. If he establishes that he has such interest, it seems to me that it is not necessary for him to further establish that if he does not institute an appeal with the leave of the Appellate Court, the consequence will be that the order or decree against which he proposes, to appeal becomes conclusive without his being able to question such decree or order in other proceedings. In my opinion, the question as to whether leave should or should not be granted should depend upon the facts of each case and it is for the appellate Court to decide whether the case before it is a fit one for the grant of such leave.

5. So tested, it seems to me that the Deputy Commissioner was quite right in granting leave to respondent 1 to prefer the appeal before him in this case. The petitioner made his application only against respondent 2 and if the Tahsildar's order made on that application was not got rid of by respondent 1 by the appeal which she preferred to the Deputy Commissioner, the inevitable result would be that she cannot question the correctness of that order in any proceeding under the Hyderabad Tenancy and Agricultural Lands Act or even to make an application for a declaration that the petitioner is not the protected tenant, as pointed out by this Court in C. P. No. 269 of 1956. The petitioner would, on the contrary, be able to execute the order and take delivery of possession in pursuance of it without respondent 1 being able to make any effective resistance to the execution of the order, although it may be possible for her to institute a suit in the ordinary way and to obtain an injunction against the petitioner restraining him from disturbing her possession of the property. I do not think that the fact that she is able to do so would deprive the appellate Court of the power to grant her leave to appeal from the order made by the Tahsildar in favour of the petitioner in proceedings in which he did not implead respondent 1 as a party. In a case like the present one where respondent 1 made an allegation that respondent 2 and the petitioner had conspired to obtain an order from the Tahsildar under which it was their intention to dispossess respondent 1, to say that the appellate Court had no power to grant her leave to appeal from the order which they so obtained would be to render nugatory the just and equitable practice which is being followed by the English Courts and also by the Courts of our country.

6. This is not, therefore, a case in which I should disturb the order made by the Deputy Commissioner. I accordingly dismiss this revision petition with costs.
Revision dismissed.