

(1930) 12 MAD CK 0024
In the Madras High Court

Edupuganti Buchayya and Another

APPELLANT

Vs

Edupuganti Sriramamma

RESPONDENT

Date of Decision : 12-12-1930

Acts Referred:

Citation : AIR 1931 Mad 603 : (1931) 33 LW 559

Judgement

1. So far as the amount covered by this execution petition is concerned, the question whether payment should be in money or kind is res judicata by reason of the order in E.P. No. 32 of 1928.

2. For the judgment-debtors Mr. Lakshmanma contends that the decree, so far as it creates a charge, is not executable but can only be the basis of a further suit for sale. That is against the decision in Sowbagia Ammal v. Manicka Mudaliar [1917] 42 I.C. 975, where the decree was in similar terms to that in this suit: see also Muttia v. Veerammal [1887] 10 Mad. 283 and Minakshi v. Chinnappa [1901] 24 Mad. 689 Mr. Lakshmanma has a further contention that, even if the charge can be executed by sale without a fresh suit, the land charged must first be attached. No authority for that proposition can be cited and to require attachment of the property to be sold is inconsistent with the sale in execution" of property mortgaged or charged. The mention of attachment in the head note to the report of Sowbagia Ammal v. Manicka Mudaliar is a mistake. Apparently the decree-holder wished to attach the property, but the learned Judges did not suggest anywhere in their judgment that it was necessary.

3. This appeal is dismissed with costs.