
(1903) 04 MAD CK 0003

In the Madras High Court

Case No : Civil Miscellaneous Second Appeal No. 43 of 1902

Gomatham Alamelu

APPELLANT

Vs

Komandur Krishnamacharlu

RESPONDENT

Date of Decision : 02-04-1903

Acts Referred:

Transfer of Property Act, 1882 — Section 89

Citation : (1903) 04 MAD CK 0003

Hon'ble Judges : Subrahmania Ayyar, J; Davies, J

Bench : Division Bench

Advocate : P.R. Sundara Ayyar, for the Appellant;

Judgement

Davies, J.—Assuming that the District Munsif who gave the decree should not have entertained the suit so far as it related to an order for the

sale of the land, we are clearly of opinion that the decree was not void inasmuch as the Munsif was competent, as regards the nature and value of

the suit, to exercise jurisdiction and his decree was passed without objection. No objection could therefore have been taken to the validity of that

decree in execution. Accordingly the orders of both the Courts below must be set aside and the application restored to the file and proceeded with

according to law. In the circumstances no order will be made as to costs.

Sujbrahmaniya Ayyar, J.

2. The proper Court for the institution of the suit in so far as the order for the sale of the mortgaged land, was concerned was, in my opinion, the

Tirupati District Munsif's Court (Vithalrao v. Vaghoji ILR 17 Bom 570. Nevertheless the decree of the District Munsif's Court at Nellore, as that

of a Court perfectly competent to try a suit of the nature in question, were the

lands within the local limits assigned to that Court, could not be held to be a nullity, no objection having been taken to the entertainment of the suit by that Court before the decree was passed. Compare *Revell v. Blake* ILR 8 C.P. 533 and see also *Naro Hari v. Anpurnabai* ILR 11 Bom. 160 note at p. 170. The judgment-debtor should not therefore have been allowed to object to the validity of the decree in the course of its execution.

3. I therefore agree in the order proposed.