

(1920) 10 MAD CK 0040
In the Madras High Court

Gunupati Narasa Reddi

APPELLANT

Vs

Makkena Kondap Naidu and Others

RESPONDENT

Date of Decision : 29-10-1920

Acts Referred:

Citation : AIR 1921 Mad 85 : 61 Ind. Cas. 759 : (1921) 13 LW 143

Hon'ble Judges : Sadasiva Aiyar, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. The plaintiff had a first mortgage over the property in dispute. The 6th and 7th defendants in the case are puisne encumbrancers and the 4th and 5th defendants are the purchasers of the equity of redemption, from the owner of the property. Before the plaintiff, however, instituted the suit on the mortgage the 4th and 5th defendants, who are the owners of the equity of redemption, had been adjudicated insolvents, and we must take it that the property had vested in the Receiver. Somehow or other, the Receiver was not made a party and the suit proceeded to a decree. When the present application was made for execution of the mortgage-decree for the sale of the property, the Executing Court apparently gave notice to the Receiver appointed in the insolvency of defendants Nos. 4 and 5 and became in and objected to the sale on the ground that the property had vested in him and that the decree, therefore, had no effect, The District Judge upheld the objection of the Receiver and dismissed the application for sale. This order must be held to be bad. The Executing Court's only duty is to execute the decree according to its term and it is not for that Court to pay that the decree is not binding on the property in the absence of certain parties. That it is not open to an Executing Court to deal with questions of this character has long been established, and we need only refer to the latest decision of the subject reported in *Zamindar of Ettyapuram v. Chidambaram Chetty* 58 Ind. Cas. 871 , where it was held that even questions of jurisdiction could not be properly raised before the Executing Court. It may be that the plaintiff decree-holder by proceeding to sell the property will in no way benefit his position. But it is his own look out. The Receiver, we understand, is in procession of the property and if his possession is

in any way disturbed, it is open to him to take such steps as the law allows. However that may be, the District Judge had no power to reject this application holding that the property is not liable in execution of the mortgage decree, on the objection of the Receiver who was not a party to the decree at all. The appeal must, therefore, be allowed, and the order of the District Judge must be set aside. Each party will bear his own costs in both the Courts.