
(1939) 09 MAD CK 0004
In the Madras High Court

Juluri Venkataratnam and Others

APPELLANT

Vs

Balabhadruni Chennayya and Others

RESPONDENT

Date of Decision : 05-09-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 39

Citation : AIR 1940 Mad 214 : (1939) 50 LW 764

Judgement

1. The decision of the learned Subordinate Judge is, we think, clearly wrong. It is opposed to the decision in *Modali Ademmma v. Venkatasubbayya*

AIR (1933) Mad. 627. With respect, we are unable to agree with the decision in *Devi Dial Sahu v. Moharaj Singh* (1895) 22 Cal. 764. Rules 5

and 8 of Order 21, Civil P.C., are distinct and independent. u/s 39, Civil P.C., the Court which passed the decree may send it for execution ""to

another Court."" The Court which passed the decree in this case had power to send the decree for execution to the Sub-Court, Vizagapatam and in

fact that was the order passed by the learned Subordinate Judge, Guntur, on 29th August 1936. The decree, under Rule 5, Order 21 had to be

sent to the District Court, Vizagapatam, for mere transmission to the Sub-Court, Vizagapatam: vide C.E.P. No. 139 which forbids the decree-

holder to make any application to the District Court. Rule 8 of Order 21 applies only to those cases in which the decree is sent for execution to the

District Court in another district, (or for that matter in the same district). In such cases, the District Court is not obliged to execute the decree itself

but may transfer it for execution to any Subordinate Court having jurisdiction. If the decree is not sent for execution to the District Court, the

District Court cannot execute it but must merely transmit it to the Court specified in the order of the Court which passed the decree: vide Section

38, Civil P.C., which shows that the only Courts competent to execute a decree are (1) the Court which passed it, (2) the Court to which it is sent for execution.

2. Following *Modali Ademma v. Venkatasubbayya* AIR (1933) Mad. 627, we hold that the order of transfer in this case took effect from 29th

August 1936, that the Sub-Court, Vizagapatam, had jurisdiction to execute it thereafter and that the decree-holder's application on 31st August

1936 was not barred by limitation. The order of the lower Court is accordingly set aside and the petition must be restored to file and disposed of

According to law. The appellants will recover their costs here and in the lower Court from the contesting respondent 1.