

(1918) 03 MAD CK 0008
In the Madras High Court

Lakshmanan Chetty and Others

APPELLANT

Vs

P.P.V. Palaniappa Chetty and Others

RESPONDENT

Date of Decision : 18-03-1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5

Citation : (1918) ILR (Mad) 813 : 45 Ind. Cas. 30 : (1918) 7 LW 612 : (1918) 34 MLJ 470

Judgement

1. As regards the preliminary objection that no petition under Order 41, Rule 5 of the CPC lies in this court, in respect of stay of sale of

Immovable property, Wallis, C.J. and Hannay, J. doubted in C.M. P. No. 1595 of 1914 (in A.A.O. No. 173 of 1914) the soundness of the

decision in N.P.L.N.K.R. Kanniappan Chetti Vs. P.R. Manikavasagam Chetti, which was quoted in support of the objection. We are inclined to

go further and dissent (with great respect) from the decision in N.P.L.N.K.R. Kanniappan Chetti Vs. P.R. Manikavasagam Chetti, . The inherent

powers of the Appellate Court clearly recognised by Order 41 Rule 5 cannot be held to have been cut down or limited by the special and

exceptional power conferred on the executing Court by Order 41 Rule 6, which rule seems to have been clearly intended in order that the

executing court might be compelled to exercise it in emergent cases for benefit of the judgment debtor. (See also the pertinent observations of

Mookerjee, J. in Tribeni Sahu v. Bhagwat Bux I.L.R (1907) . C. 1037 and Rama Prasad v. Anukul Chandra (1914) 20 C.L.J. 512 We overrule

the preliminary objection.

2. On the merits it is not the decree under appeal that is sought to be executed by the sale of Immovable property but another decree against the

execution of which the decree under appeal refused to grant an injunction. The present petition is not for a temporary injunction but it is for stay of

execution of the decree under appeal. The decree appealed against not being under execution, Order 41, Rule 5 does not apply, and this petition is

misconceived. It is therefore dismissed with costs.