
(1968) 10 MAD CK 0050
In the Madras High Court

Monna Ahamad (Died) and Others

APPELLANT

Vs

Khadeeja Beevi and Others

RESPONDENT

Date of Decision : 11-10-1968

Acts Referred:

Citation : (1973) 86 LW 673 : (1970) 1 MLJ 285

Hon'ble Judges : K.S. Venkataraman, J

Bench : Single Bench

Judgement

K.S. Venkataraman, J.—This is an appeal of a judgment-debtor against the order of the learned Subordinate Judge of Padmanabhapuram in Kanyakumari District overruling his objection to the execution and allowing execution to proceed. The decree was passed in a mortgage suit by the District Court, Nagercoil, on 24th August, 1954. Actually, Kanyakumari District was integrated with the Madras State only with effect from 1st November, 1956. Though the provisions of the CPC (Act V of 1908) and in particular Order 34 had been brought into force even from 1951 in the area which then formed part of Travancore-Cochin, the practice which existed before 1951 prevailed, namely, of drawing up only one decree even in a mortgage suit instead of two decrees, one preliminary decree and final decree as contemplated in Order 34. The one decree which was drawn up was to the effect that if the amount mentioned in the decree was not paid before a certain date, the hypotheca would be brought to sale. The objection which was taken before the learned Subordinate Judge was that there should have been two decrees and that the above decree could not be executed straightway by bringing the property to sale. The objection was over-ruled by the learned Subordinate Judge on the ground that the correct procedure of drawing up two decrees has been followed only from 1958. It seems to me that the learned Subordinate Judge was right in over-ruling the objection, which is after all only technical. In fact, it may be said that the form of the decree itself gave jurisdiction to the executing Court to bring the property to sale, if the amount due was not paid before a certain date. This being the only objection persisted in before me on behalf of the appellant by the learned Counsel Sri Padmanabhan and that

objection having failed, the appeal is accordingly dismissed, but without costs.