

(1929) 12 MAD CK 0034
In the Madras High Court

(Nagari) Subbanna

APPELLANT

Vs

(Karapakula) Naranayya and Others

RESPONDENT

Date of Decision : 10-12-1929

Acts Referred:

Citation : AIR 1930 Mad 349

Hon'ble Judges : Kumaraswami Sastri, J

Bench : Division Bench

Judgement

Kumaraswami Sastri, J.—I think Article 29, Lim. Act is not applicable. The deed of hypothecation does not give the appellant any right to be in possession of the cattle attached. The seizure cannot be said to be wrongful as all that the appellant is entitled to is to have the sale subject to his hypothecation. Niadar Singh v. Ganga Dai [1916] 38 All. 676, is in point. As pointed out there can only be a wrongful seizure when the property was in the possession of the person. It may be that constructive possession will do. But when there is no right to possession there can be no wrongful seizure. Damaraju Narasimha Row v. Gangaram [1908] 4 M.L.T. 271, was a case of possession. I set aside the decree of the District Judge and remand the appeal for disposal on the merits. Costs will abide and follow the result. Court-fees will be refunded.