

(1940) 11 MAD CK 0050
In the Madras High Court

Nagasundaram Pillai

APPELLANT

Vs

Mathurbootham Aiyar

RESPONDENT

Date of Decision : 25-11-1940

Acts Referred:

Citation : AIR 1941 Mad 556 : (1941) 53 LW 158 : (1941) 1 MLJ 218

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—In the light of the subsequent events this appeal is now only of importance so far as the question of costs is concerned. The appellant was the second defendant in a suit on a mortgage. The mortgage was executed by an individual of whom the appellant is one of the heirs. After the decree there were two applications to scale down the decree u/s 19 of the Madras Act IV of 1938, one by the ninth defendant, a stranger, and the other by the fourth defendant who is a co-heir with the appellant, but not a co-parcener. There was a dispute as to whether the appellant was or was not duly served with notice of these applications. For the sake of argument we will assume that he was served. The lower Court has held, quoting the decision in Gaja Gopi Reddi, minor by guardian and mother Seshamma Vs. Pulla Rami Reddi, , that the appellant cannot move u/s 20 of the Act by reason of his failure to apply for scaling down at the time when the other co-defendants filed applications. It seems to us that this conclusion cannot be supported with reference to the terms of the Act. The decision quoted in Gaja Gopi Reddi, minor by guardian and mother Seshamma Vs. Pulla Rami Reddi, , relates to quite different facts, namely, the case of successive applications by members of the same joint family which was the judgment-debtor. There is nothing in Section 19 or Section 20 which compels all co-judgment-debtors who have claims as agriculturists to join in an application for stay or for scaling down filed by any other judgment-debtor. It is quite possible that the case of the appellant may be totally different on the facts and evidence from the cases of the fourth and the ninth defendants. There was, in our opinion, no obligation upon him to file his application as part of the proceedings initiated

by his co-defendants. The decision of the lower Court is therefore erroneous.

2. However since that decision was passed the lower Court has entertained an application by the appellant for scaling down the decree u/s 19 and the decree has been scaled down in his favour. There is therefore no longer any necessity to stay the execution. In the result therefore the appeal is dismissed. But the respondent will pay the costs of the appellant here and in the Court below.