

(1940) 08 MAD CK 0070
In the Madras High Court

Palanivel Gounden

APPELLANT

Vs

Subbaroya Gounden

RESPONDENT

Date of Decision : 26-08-1940

Acts Referred:

Transfer of Property Act, 1882 — Section 55(4)(b)

Citation : AIR 1941 Mad 889 : (1941) 54 LW 240

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The petitioner applied u/s 19 of Act 4 of 1938, to scale down the decree and his application was rejected. The grounds for this rejection were two-fold. Firstly it was held that the petitioner could not be regarded as a judgment-debtor, he being impleaded as the vendee of the hypotheca in a mortgage suit. This decision cannot be upheld having regard to the decision of the bench in Perianna Goundan Vs. Sellappa Goundan and Others, . The second ground on which the application was rejected is that the liability which the petitioner seeks to scale down is one in respect of which there is a charge u/s 55 (4)(b), T.P. Act, and that therefore by Section 10 (2)(ii) of Madras Act 4 of 1938, the debt cannot be scaled down. This contention must be negated, having regard to our decision in o. n. p. No. 602 of 1939 Reported in Doraikannu Odayar Vs. Veerasami Padayachi alias Veerasami Chatrakondar, . The liability to the decree-holder is not the same as the liability to the mortgagor in respect of which "the vendor"s lien subsists. In the result therefore the civil revision petition must be allowed with costs and the application remitted to the trial Court for disposal in the light of this judgment.