
(1937) 08 MAD CK 0023
In the Madras High Court

Pola Venkatarama Sastri

APPELLANT

Vs

Kakumani Venkatanarasimhan and Another

RESPONDENT

Date of Decision : 26-08-1937

Acts Referred:

Citation : AIR 1938 Mad 144 : (1937) 46 LW 700 : (1937) 2 MLJ 881

Judgement

1. We are unable to support the order of the learned Subordinate Judge in this case. The final decree in O.S. No. 15 of 1926 expressly provides

for sale of item 6 to discharge the debt due to the second defendant (appellant) under his prior mortgage. This is in pursuance of the provision in

the preliminary decree declaring that he should be at liberty to apply for.... the sale of the mortgaged property (item 6). Whether that direction is

right or wrong is not a question which can be discussed by a Court executing the decree. It is quite impossible to hold that the decree is merely

declaratory of the rights of the second defendant.

2. As for the point of limitation it cannot be said that the appellant's application of 21st September, 1932, was not an application in accordance

with law. There was no obligation on him, under Order 21, Rule 11 of the Code of Civil Procedure, to produce a copy of the decree with the

application. Under Order 21, Rule 11(3) of the CPC the Court required him to produce a copy of the decree. He failed to do so and his

application was accordingly rejected on 10th March, 1933. His application when made was perfectly "in accordance with law " and the order of

10th March, 1933, was the final order on it. His present application dated 16th April, 1934, was therefore clearly in time.

3. The appeal is accordingly allowed. The execution application must be restored

to file and disposed of according to law. The contesting respondent, the plaintiff, Will pay the appellant's costs in both Courts.