
(1928) 04 MAD CK 0007
In the Madras High Court

Rampalli Ramachandrudu

APPELLANT

Vs

Karri Krishna Reddi

RESPONDENT

Date of Decision : 12-04-1928

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 14

Citation : 115 Ind. Cas. 829

Hon'ble Judges : Ramesam, J; Jackson, J

Bench : Division Bench

Judgement

1. These appeals are against orders recognising the respondent as assignee of the decree in O.S. No. 27 of 1919 and allowing attachment and sale.

That suit was filed on a mortgage and ended in a compromise. No part of the original mortgage was reserved at the time of filing of the suit. The

whole original mortgage was merged in the decree. The decree provided that the defendants were to pay a certain amount and that it shall be

charged on the mortgaged properties. Whether there is a sale decree as the first Subordinate Judge has thought or a decree creating a fresh charge

it is unnecessary to decide: The objections taken to the application of the respondent are:

1. That the assignment is not genuine, not for consideration and made with a view to evade the appellant's commission. There is no evidence on

the last point. The transfer is provided by a document and it is not for the appellant to raise the question of consideration apart from saying it is a

nominal transaction which case has not been suggested.

2. The assignment ought to have been made by the Receiver of the Kovvuri family litigation. There is no substance in this.

3. The next objection is that the decree is unenforceable because the decree-holder did not get Order S. No. 29 of 1920 withdrawn. That suit

against the appellant was allowed to be dismissed and was not prosecuted. There is no failure of consideration under the terms of the compromise.

4. The properties cannot be sold with reference to Order XXXIV, Rule 14 of the Code of Civil Procedure. The respondent gives up the charge

under the decree and is executing it as if it is a mere money decree. He applied for attachment and sale. Following Arumugam Pillai by mother and

guardian Gomathi Ammal Vs. N.P.R.M.V.R.M. Alagappa Chettiar, we hold that Order XXXIV, Rule 14 does not apply. The old mortgage does

not exist any more. The rule does not apply to a new charge created by the decree nor is the execution sought to be subject to the charge.

2. All the objections fail. The appeals are dismissed with cost a in Civil Miscellaneous Appeal Nos. 485 of 1925 and 340 of 1926.