
(1935) 09 MAD CK 0033
In the Madras High Court

Vuddagiri Ammanna

APPELLANT

Vs

Gada Subbayya

RESPONDENT

Date of Decision : 19-09-1935

Acts Referred:

Citation : 159 Ind. Cas. 804 : (1936) 43 LW 144 : (1935) 69 MLJ 854

Judgement

1. The case is clearly covered by the decision of the Privy Council in Ram Raghubir Lal v. The United Refineries Burma, Ltd. I.L.R. (1933) 60 Cal. 1467. The decree in this case was not a decree for sale at all. It was a decree for payment of money, and declared that the plaintiff had a charge on the scheduled property for unpaid purchase money. As their Lordships observe, in such a case the decree-holder cannot bring the property to sale without getting a preliminary decree for sale (Order 34, Rule 14). The decree in this case did not create the charge but merely declared it. Hence the decisions in A.C. Dastoor v. H.A. Kandazvalla I.L.R.(1933) 60 Cal. 1467 and Ambalal Bapubhai v. Narayan Tatayaba I.L.R.(1919) 43 Bom. 631 have no application, or rather, they are against Mr. Appa Rao who has cited them in his favour. For the same reason the decision in Edupuganti Buchayya and Another Vs. Edupuganti Sriramamma, is not applicable, this was not a case of a charge created by the decree.

2. The appeal is accordingly allowed and the order of the learned Subordinate Judge is set aside. It is clear that the property could not be sold in execution of the decree in this case. The E.P. is not before us and therefore we cannot say whether it did or did not contain any prayer for execution in any other manner than by sale of the property. If it did, there is nothing to prevent the lower Court from proceeding.

4. Mr. M. Appa Rao for respondent (decree-holder) takes a technical objection that the fourth defendant had been adjudicated insolvent before the suit and that therefore he had no locus standi to maintain this petition. This objection was not taken in the lower Court and we see no reason to entertain it now. If it were entertained, it might be necessary to consider whether the respondent himself

had any right to file the suit without leave of the Insolvency Court.

5. The appeal is allowed with costs.