

Radhakrishnier and ors. Vs. Muthusami Sholagan and ors.

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SooperKanoon Citation : sooperkanoon.com/781115

Court : Chennai

Decided On : Sep-07-1908

Reported in : (1908)18MLJ564

Appellant : Radhakrishnier and ors.

Respondent : Muthusami Sholagan and ors.

Judgement :

1. Certain property was usufructuarily mortgaged to the plaintiffs in 1890. The plaintiffs subsequently got two other mortgages on the same property. They brought the present suit on the two subsequent mortgages and asked for sale subject to their prior usufructuary mortgage. Both the Courts below held that the suit was not maintainable. That in a case like the present the plaintiff could have a decree for sale on the subsequent mortgages free of the prior mortgage is clear from *Rengasami Nadan v. Subbaroya Iyer* I.L.R. (1907) M. 408. The plaintiffs are willing to accept such a decree if the decree they asked for cannot be granted. But we see no good reason why there should not be a decree for sale subject to the prior mortgage, and there is direct authority for granting such a decree in *Ram Shankar Lal v. Ganesh Prasad* I.L.R. (1907) A. 385.

2. We, therefore, reverse the decree of the District Judge and remand the appeal for disposal on the merits. Costs will abide the result.