

(1898) 01 MAD CK 0002
In the Madras High Court

Chidambaram Chettiar

APPELLANT

Vs

Rama Row and Others

RESPONDENT

Date of Decision : 28-01-1898

Acts Referred:

Citation : (1898) 8 MLJ 135

Judgement

1. The 2nd, 3rd, and 4th defendants were entitled to payment of the amounts adjudged to them only out of the sale proceeds. There were no sale

proceeds in this case inasmuch as the sale was set aside under the provisions of Section 310 (a) of the CPC by payment, so far as this case is

concerned, of the amount due to the decree-holder, the appellant, who was, therefore, entitled to the whole of that amount. We cannot accept the

contention that the 2nd, 3rd, and 4th defendants were also decree-holders. It is true the decree recognizes certain charges in their favour, but they

could obtain no orders in execution on account of those charges until there were sale proceeds available for distribution according to the decree.

They have, therefore, never become decree-holders. We, accordingly, set aside the order of the Judge, and hold that the appellant is entitled to the

whole of the sum of Rs. 8,127-11-0; and if any portion thereof has been paid to respondents (defendants 2, 3 or 4), we direct that the same be

refunded to the appellant with interest at the rate of 6 per cent. per annum from date of receipt to date of repayment. The respondents must pay

the plaintiffs' (appellants') costs in this and in the lower Courts.