**(1935) 02 MAD CK 0041**

**In the Madras High Court**

G. Ramachandran Chettiar APPELLANT

Vs

V. Verivada Chettiar (dead) Verivada Chetty and Others are minors by guardian V. Eswara Chettiar RESPONDENT

**Date of Decision :** 14-02-1935

**Acts Referred:**

**Citation :** (1935) 41 LW 763 : (1935) 68 MLJ 628

## Judgement

1. It is contended that no appeal will lie as the order passed is to require a receiver to pay a sum of money into Court and must therefore fall under

Order 40, Rule 3 (c) of the CPC Code. The application was filed under Order 21, Rule 11(2) and Section 151 of the Code of Civil Procedure.

The order, it is true, treats the respondent to it, in his capacity as receiver, but it directs him to deposit in Court a sum part of which was probably

collected by hirri before the date of his appointment as such, that is, collected as fourth defendant in the suit and owner of the equity of redemption

of the property. The substance and effect of this order is to direct a party to make a payment, and it is an order in execution. The Court in fact has

also directed the payment of the costs of execution. We think that this part of the order, at least, is appealable u/s 47 of the Code of Civil

Procedure.

2. On the merits, the Court had no power to order the receiver, as such, to account for money collected before he assumed office. Such

collections were made not by the receiver but by the party, and the position is the same whether the party or some third person is appointed

receiver. We must therefore allow the appeal with costs and set aside the order of the lower Court. There is some doubt whether the appellant is to account only for the net amount which he specifies. He must pay into Court sums collected during his period of receivership deducting therefrom

any payments on account of municipal tax, etc., paid within the same period. We therefore remand the case for fresh disposal in accordance with

the principle we have laid down above.

 