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**(1893) 04 MAD CK 0001**  
**In the Madras High Court**

Lakshmi Ammah

APPELLANT

Vs

Ponnassa Menon and Others

RESPONDENT

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**Date of Decision :** 19-04-1893

**Acts Referred:**

**Citation :** (1894) ILR (Mad) 394

**Hon'ble Judges :** Muttusami Ayyar, J; Best, J

**Bench :** Division Bench

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## **Judgement**

1. We are of opinion that from an order u/s 231 of the Code of Civil Procedure, being an order relating to the execution of a decree between the parties to the decree within the meaning of Section 244 of the same Code, an appeal lies. If all the joint decree-holders apply for execution, there can be no doubt that the order passed on such application, whether refusing or granting it, will be appealable. Section 231 provides for the case in which all the decree-holders are unable or are unwilling to join in the application, and in such case enables one or more of such decree-holders to apply for execution of the whole decree, and then the Court is authorized to impose such terms as are necessary for the protection of the interests of the other decree-holders. This appears to us to disclose an intention to provide facility for executing decrees even when all the decree-holders are unable or unwilling to join in applying for execution. It is no doubt true that the Court has discretion to refuse execution for sufficient cause; but that is no reason for holding such order to be other than an order relating to the execution of the decree within the meaning of section 244. In *Gooroo Doss Roy v. Ram Ruginee Dossia* 17 W.R. 136 which was followed in *Odhoya Pershad v. Mahadeo Dutt Bhandaree* 17 W.R. 415 the

question was not between the decree-holder on one side and the judgment-debtor on the other, but merely between two of the joint decree-

holders. With reference to the learned Judge's observation, we find that there has been no contest as between the decree-holders, but only an

allegation that some of them had come to terms with the judgment-debtor.

2. We set aside the order of the learned Judge and of the Lower Appellate Court, and remand the case to the District Judge for replacement on

the file and disposal on the merits, so far as the order of the District Munsif cancels the previous order in favour of third plaintiff.

3. The costs in this Court and the District Court will abide and follow the result.