

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2026

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CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

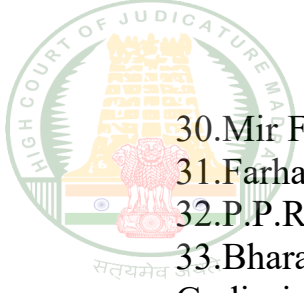
**CRP No.2949 of 2026
& CMP.No.12133 of 2026**

Mary Kala

..Petitioner

Vs

- 1.Hussaini Begum
- 2.Mir Dilwar Hussain
- 3.Mir Dilber Hussain
- 4.Mir Dhildher Hussain
- 5.Mir Mustak Hussain
- 6.Mir Imdad Hussain
- 7.Mir Zahira Begum
- 8.Amtul Zainab
- 9.Rokiya Begum
- 10.Mir Abid Hussain
- 11.Mir Anwar Hussain
- 12.Mir Azhar Hussain
- 13.Mir Azhad Hussain
- 14.Mohammed Begum
- 15.Asifa Begum
- 16.Nasima Begum
- 17.Salma Begum
- 18.Mir Askar Hussain
- 19.Tahira Begum
- 20.Dr.Abbasi Begum
- 21.Azra Begum
- 22.Asiya Begum
- 23.Sadikha Begum
- 24.M.M.Mehdi Hussain
- 25.Sirdar Begum @ Khatija Begum
- 26.Nasreen Zehra
- 27.Thaseen Zehra
- 28.A.Afroze
- 29.Shaheen Zehra



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- 30.Mir Feroze Ali
- 31.Farhana Fathima
- 32.P.P.R.Hariharan
- 33.Bharat Rajiv Gandhi Nagar
Gudisaivashi Pothunala Sangam,
Rep.by its President P.Shanmuga Vadivukkarasi
No.20, Navalar Nagar, Thirumangalam Road,
Villiwakkam, Chennai-49.
- 34.Vadivukkarasi
- 35.Renuka
- 36.Kanagadurga
- 37.Mirulalini
- 38.Girija
- 39.Sathyanarayanan Prasad
- 40.Balaji Prasad
- 41.Uma Maheswari
- 42.Sumathi Tiwary
- 43.Ravi Tiwary
- 44.Parvathi Tiwary
- 45.Alagarswamy
- 46.Meena
- 47.Krishnamani
- 48.Balasubramaniam
- 49.Vishwanath Prasad
- 50.Sekar
- 51.Dakshinamoorthy
- 52.Dharmalingam
- 53.Balu
- 54.Rukmangathan
- 55.S.Vasudevan
- 56.T.Sekar
- 57.Kannan
- 58.Dayalan
- 59.A.Chinnadurai
- 60.Michael
- 61.Jamuna
- 62.Elumalai
- 63.Sankar
- 64.Bharat Sevak Samaj
Represented by its Secretary,
having his office at Government Estate,
Chennai – 2.
- 65.Kushkarni



66.The Executive Engineer,
Water Resources Department,
Kosasthalaiyaru North Division,
Thiruvallur.

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[R66 impleaded as suo motu vide
order dated 24.06.2026 in
CRP.No.2949 of 2026]

..Respondents

Prayer: Civil Revision petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 27.03.2026 in E.A.SR.No.16315 of 2026 in E.P.No.90 of 2007 on the file of the X Assistant City Civil Court, Chennai.

For Petitioner:

Mr.C.Umashankar
for Mr.A.Ramalingam

For Respondents:

Mr.Manoj Sreevalsan for RR26 & 30
Mrs.S.Yogalakshmi
Government Counsel for R66
RR1 to 17, 19 to 25, 27 to 29 and 31
not ready in notice
No appearance for RR32 to 65
RR18 & 56 died

ORDER

A party to the execution proceedings, aggrieved by the dismissal of her application under Order XXI Rule 97 of CPC, even at the stage of numbering, has come up by way of this revision petition.



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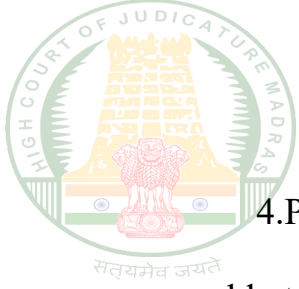
2.I have heard Mr.C.Umashankar, for Mr.A.Ramalingam, learned counsel for the revision petitioner and Mr.Manoj Sreevalsan, learned counsel for the contesting respondents and Mrs.S.Yogalakshmi, learned Government counsel for the official respondents.

3.The primordial grievance of the learned counsel for the revision petitioner is that the Executing Court, without even numbering the application under Order XXI Rule 97 of CPC, has proceeded to dismiss the same at the SR stage. According to the learned counsel for the revision petitioner, the suit property is a water body and the respondents/plaintiffs cannot claim any legitimate right over the suit property. It is his further contention that no opportunity was given by the Executing Court to the petitioner to establish as to how the petitioner claimed right in respect of the petition mentioned property. He further states that an application under Order XXI Rule 97 of CPC has to be tried like a suit and the parties are at liberty to even lead evidence. In such circumstances, he challenges the order of the Executing Court dismissing the application in a summary manner. In support of his submissions, he has relied on the following decisions:

1.Silverline Forum Private Limited Vs. Rajiv Trust and another, reported in (1998) 3 SCC 723.

2.Shreenath and another Vs. Rajesh and others, reported in AIR 1998 Supreme Court 1827.

3.Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and another, reported in (1997) 3 SCC 694.



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4.Per contra, the learned counsel appearing for the contesting respondents would state that despite obtaining a decree way back in 2006 and despite the competent Court declared the title of the plaintiffs, the plaintiffs are unable to enjoy the fruits of the decree for the past two decades. He would also place reliance on the order passed by this Court in CRP.Nos.2043 to 2045 of 2024 and contend that the Executing Court has rightly followed the order of this Court in the said common order, which also pertains to the very same lis. He would further state that the petitioner has no iota of right and when the petitioner herself is claiming right and seeking to obstruct the execution of the decree, she cannot contend in the same breadth that the suit property is a water body, which would only render the petitioner also an encroacher.

5.The learned counsel for the contesting respondents would further state that the suit property is a larger extent of lands comprised in Survey Nos.13/1A (part) and 14 of Kolathur Village and the petitioners claim right only in respect of 880 sq.ft. He would also contend that as many as 14 revision petitions and 15 execution applications have been filed, besides 100 suits to thwart the lawful enjoyment of the suit property of the plaintiffs. In support of his contentions, he has relied on the following decisions:

1.Rahul S.Shah Vs. Jinendra Kumar Gandhi and others, reported in (2021) 6 SCC 418.



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6. The learned counsel for the contesting respondents would further submit that in order to prevent the decree holders from enjoying the fruits of the decree, the judgment debtors have been setting up one person after the other to obstruct and rightly this Court had dismissed the revision petitions referred herein above and the Executing Court was perfectly in order in referring to the decision of this Court in the above said revision petitions and refusing to entertain the Order XXI Rule 97 of CPC application. He would therefore pray for dismissal of the revision petition.

7. I have carefully considered the submissions advanced by the learned counsel on either side.

8. The fact that the contesting respondents have a decree in their favour is not in dispute. When the decree was put to execution, the petitioner herein obstructed to the execution, contending that the petitioner has an independent right and title in respect of an 880 sq.ft house constructed in the suit property. Insofar as the reference to the revision petitions that have been already decided by this Court, as seen from the order dated 22.01.2025, as many as 126 revision petitioners sought to implead themselves as parties to the execution proceedings and also for cancellation of the delivery warrant. This Court found that all the petitioners were claiming right under the judgment debtors and already several suits had been filed which all ended against the petitioners therein. It is under



these circumstances that this Court held that the petitioners therein are not entitled to re-litigate the issues, which were already settled by the competent Civil Court up to the Hon'ble Supreme Court. However, the present petitioner does not claim under the judgment debtors.

9.It is the specific case that the petitioner has been in possession for over three decades and that the lands are poramboke lands belonging to the Government. However, in the affidavit filed in support of the application under Order XXI Rule 97 of CPC, I find that the petitioner has set up independent title in herself. No doubt, it is for the petitioner to establish that the petitioner has such an independent right, title or interest in order to succeed in her application to obstruct the execution of the decree in favour of the contesting respondent. The Code contemplates all questions to be decided, even touching title of the obstructors in the application under Order XXI Rule 97 of CPC. No separate suit can be entertained for such purposes. In the light of the above, the Executing Court ought to have numbered the Order XXI Rule 97 of CPC, without contending any roving enquiry at the numbering stage itself.

10.No doubt, the Executing Court has laboured much to deal with the contentions put forth in the affidavit in support of the Order XXI Rule 97 application. Unfortunately, the Executing Court has lost sight of the fact that the petitioner is entitled to lead oral and documentary evidence in the said



application as well and by dismissing the application at the SR stage, the Executing Court has virtually shut out the valuable rights of the petitioner.

Merely because the respondents/decreed holders are being made to run from pillar to post and have been suffering for two decades, without being able to execute the decree, it cannot be a ground to dismiss an Order XXI Rule 97 application, especially when the petitioner claims an independent right and not under the judgment debtors. At the same time, it is needless to state that it is not open, in such an application under Order XXI Rule 97 of CPC, to question the entitlement of the plaintiffs/decreed holders. The limited scope of enquiry is as to whether the obstructor is able to make out a valid right, title or interest in the suit property in the property in respect of which obstruction is made and the Executing Court has to decide the same, after affording a fair opportunity to the parties. In fact, this Court in similar circumstances, in CRP.No.1715 of 2026 dated 24.03.2026, also found fault with the approach of the Executing Court for dismissing the application at the stage of numbering.

11.Coming to the decisions that have been relied on by the learned counsel on either side, in *Silverline Forum Private Limited's case*, the Hon'ble Supreme Court held that even a third party to the decree, including a transferee *pendente lite* can offer resistance or obstruction to execution and the Executing Court has to decide whether the obstructor is bound by decree. The Hon'ble Supreme Court further held that though an adjudication in this regard need not



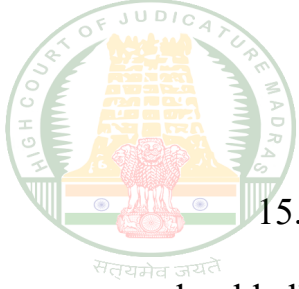
be based on detailed enquiry or evidence, but if deemed necessary, the Court can require adduction of evidence as well.

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12. In *Shreenath's case*, the Hon'ble Supreme Court held that a third party in possession, claiming independent right can object and get his claim adjudicated, when sought to be dispossessed by the decree holder.

13. In *Brahmdeo Chaudhary's case*, the Hon'ble Supreme Court upheld the right of an obstructor in possession to be heard and his alleged right to be adjudicated upon, before proceeding to direct delivery of possession.

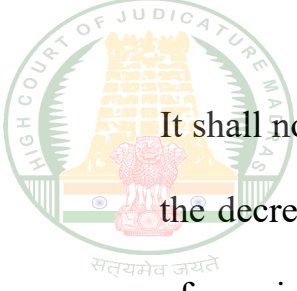
14. In *Rahul S. Shah's case*, the Hon'ble Supreme Court held that the Court exercising jurisdiction under Section 47 or under Order XXI of CPC is not required to issue notice on an application of a third party claiming rights in a mechanical manner and cautioned that the Court should refrain from entertaining such applications that have already been considered by the Court, while adjudicating the suit or which raises any such issue which otherwise would have been raised and determined during adjudication of the suit, if due diligence was exercised by the applicant. I am unable to see how the said decision would apply to the facts of the present case, since admittedly the petitioner is a third party to the suit and the decree and there was no occasion for his objections to be raised during the adjudication of the suit or the same having been considered by the Court, while adjudicating the suit.



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15.The Hon'ble Supreme Court further held that the Executing Court should allow taking of the evidence only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials, including photographs or video with affidavits. The Hon'ble Supreme Court therefore did not foreclose the right of an obstructor to lead evidence and has only directed the Executing Court to ensure that such applications are decided expeditiously and in such context, has held that permitting evidence to be adduced should be restricted when factual disputes can be decided by resort to expeditious methods like appointment of Commissioner, etc. Hence, I do not see this decision coming to the aid of the contesting respondents. For all the above reasons, I am inclined to set aside the order of the Executing Court.

16.In fine, the Civil Revision Petition is allowed and the order dated 27.03.2026 in E.A.SR.No.16315 of 2026 in E.P.No.90 of 2007 on the file of the X Assistant City Civil Court, Chennai, is set aside. The application under Order XXI Rule 97 of CPC in E.A.SR.No.16315 of 2026 shall be numbered and after giving an opportunity to the respondents/decreed holders to file counter, due enquiry shall be conducted in the application. The X Assistant City Civil Court, Chennai, shall dispose of the application on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.



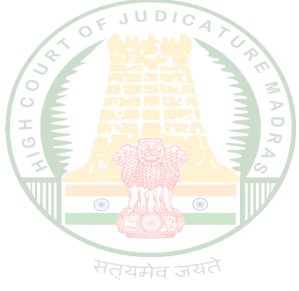
It shall not be open to the Executing Court to go into right, title or entitlement of the decree, while enquiring into the application of the obstructor and the scope of enquiry shall be strictly restricted to the 880 sq.ft, over which the petitioner claims a right. No costs. Connected Civil Miscellaneous Petition is closed.

21.07.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
ATA

To

- 1.The X Assistant City Civil Court, Chennai.
- 2.The Executive Engineer, Water Resources Department,
Kosasthalaiyaru North Division,
Thiruvallur.



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P.B.BALAJI, J.

ATA

CRP No.2949 of 2026

21.07.2026