

THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 23.07.2026

Order pronounced on : 31.07.2026

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

CRP.No.3202 of 2025
& CMP.No.17758 of 2025

Radha

.. Petitioner

Vs.

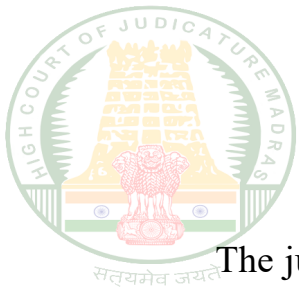
1.P.Mani
2.Rathinam
G.Rajendiran (Died)
3.Dhanam
4.Vasanthi
5.Settu

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the order dated 19.02.2025 in E.A.No.1 of 2023 in E.A.No.115 of 2018 in E.P.No.8 of 2016 in O.S.No.21 of 2015 on the file of the learned Sub Judge, Katpadi.

For Petitioner : Mrs.R.Sripriya

For Respondents : Mr.Vasudevan
for Mr.E.Kannadasan for R1
No appearance for RR2 to 5



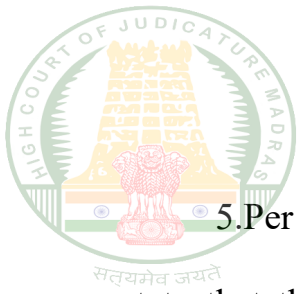
ORDER

The judgment debtor and the 3rd respondent in E.A.No.1 of 2023 in the execution proceedings is the revision petitioner.

2.I have heard Mrs.R.Sripriya, learned counsel for the revision petitioner and Mr.Vasudevan, for Mr.E.Kannadasan, learned counsel for the contesting 1st respondent.

3.The revision petitioner challenges an order passed by the Executing Court, directing demolition of a temporary cement sheet in the decretal property and to effect delivery of possession against the judgment debtors.

4.The learned counsel for the revision petitioner, Mrs.R.Sripriya, taking me through the decree, would firstly contend that the decree is only in respect of vacant land. According to the learned counsel for the revision petitioner, the petitioner was born in the subject property and brought up there. The property has also been subject matter of the mortgage to K.V.Kuppam Co-operative Bank, which is still subsisting and further, after the demise of the defendant, his children continue to reside in the suit property, by constructing a pucca house. It is also her contention that the last three generations have been enjoying the suit property and therefore, the Executing Court ought not to have proceeded to allow the application, treating the building as a temporary sheet house, contrary to the overwhelming documentary evidence filed on behalf of the petitioner.



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5. Per contra, Mr. Vasudevan, learned counsel appearing for the respondents would state that the suit was decreed way back on 28.10.2015 and in order to execute the decree, E.P.No.8 of 2016 was filed and despite a passage of decade, the respondents have not been able to enjoy the fruits of the decree. He would further state that the decree being only for vacant land, the Bailiff was not in a position to execute the warrant of delivery and the Ameen has taken an objection in this regard. He would therefore state that it has become necessary for the petitioner to move E.A.No.1 of 2023 for a direction, seeking demolition of the construction. He would further state that the construction was put up, only after the decree and only to deny the fruits of the decree being enjoyed by the respondents. He would therefore state that the Executing Court has rightly allowed the application, appreciating the documentary evidence adduced on the side of the petitioner and no interference is warranted in revision.

6. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the order of the Executing Court.

7. Admittedly, the decree passed in O.S.No.21 of 2015 on 28.10.2015 has become final. In order to execute the decree, an execution petition was filed by the 1st respondent. The suit is one for specific performance. The sale deed has also been executed and registered in favour of the 1st respondent-decree holder by the Court



already and E.A.No.115 of 2018 was filed for the purposes of taking possession from judgment debtors. In view of the demise of the 2nd judgment debtor, his legal heirs were brought on record in the execution petition.

8.The primordial objection of the learned counsel for the petitioner is that the suit property has been described as vacant land and there is no reference to any construction whatsoever. Admittedly, the Bailiff has also noticed existence of construction and has returned the warrant unexecuted. In view of the above, the decree holder was necessitated to take out the present application in E.A.No.1 of 2023 for demolition of the superstructure. Though the petitioner claims that the last three generations have been in possession and that was born and brought up in the suit property, no acceptable evidence has been adduced on the side of the petitioner to substantiate such false claims. The electricity consumption card, which was marked as Ex.R1 is of recent origin and does not even refer to payment of consumption charges for any particular period.

9.In fact, the petitioner's husband and mother-in-law are the defendants in the suit for specific performance and they chose not to contest the proceedings, by remaining ex-parte. The agreement has went unchallenged in the suit. No attempt was made to set aside the ex-parte decree or even prefer an appeal against the decree for specific performance. In fact, even in the execution petition, the 1st respondent has not raised such objection with regard to executability of the decree, citing existence of a



superstructure. Though it is contended by the learned counsel for the petitioner that even all the legal representatives have not been impleaded in the execution petition, pursuant to the demise of the 2nd judgment debtor, I find that the respondents 3 to 6 were impleaded in the capacity of judgment debtors, respondents in the EP, pursuant to an application taken out and the order in the impleading application has also become final and it is no longer open to the petitioner to contend that one of the daughters by name, Priyanka has not been impleaded.

10. Even this argument has been effectively met by Mr. Vasudevan stating that the said daughter Priyanka was also known as Settu, who has been admittedly impleaded. In any event having not challenged the order in the impleading application, today it is not open to the petitioner to raise such contentions.

11. Coming to the core issue that is now agitated by the petitioner, the decree is for vacant land. However, the petitioner's case is that he has been residing, in fact, was born and brought up in the house constructed in the suit property. There is no reference either in the agreement of sale or in the plaint or even in the decree about such consideration. It is only on this ground that the executability of the decree is challenged. E.A.No.1 of 2023 is only an application filed by the decree holder and admittedly, the decree has not been challenged either in appeal or in execution proceedings by invoking Section 47 of CPC.



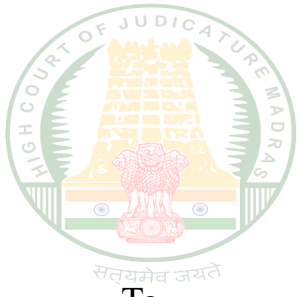
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12. The documents that were filed on the side of the petitioner also do not compel me to accept the contention that the petitioner and other legal heirs have been residing in the property for three decades. Even the property tax receipt that has been relied and exhibited as Ex.R5 is only for the period 2020-2021, long after the decree passed in the year 2015. In such circumstances, the Executing Court rightly came to the conclusion that the construction was put up was only pursuant to the decree and in order to stall the execution proceedings and the Executing Court rightly allowed E.A.No.1 of 2023 to facilitate the execution of the decree, by directing demolition of the construction. I do not find any infirmity or perversity in the findings arrived at by the Executing Court, warranting interference in revision.

In fine, the Civil Revision Petition is dismissed. No costs. Connected Civil Miscellaneous Petition is closed.

31.07.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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The Sub Judge, Katpadi.



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P.B.BALAJI.J,

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Pre-delivery order made in
CRP.No.3202 of 2025
& CMP.No.17758 of 2025

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