

C.M.S.A.(MD)No.4 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 29.04.2026

PRONOUNCED ON:30.06.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.S.A.(MD)No.4 of 2024

and

C.M.P.(MD)No.975 of 2024

1.S.Selladurai
2.S.Nagarajan

: Appellants/Appellants/
Petitioners/Obstructors

Vs.

1. Ayeekannu

: 1st Respondent/1st Respondent/
Petitioner/1st Respondent/
Plaintiff-Decree holder

Mookkaiah Konar(died)

2.Muthaiah Konar

3.Kaliyaperumal Konar

4.Chinnaiah Konar

5.Balraj

6.Kannaiyan

: Respondents 2 to 6/Respondents 3 to 7/
Respondents 3 to 7/Respondents 3 to 7/
Defendants 2 to 6



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7.Rengammal(died)

(Memo dated 27.10.2025 presented before the Court on 29.10.2025 is recorded as R.7 died and R.4 to R.6, who are already on record are recorded as LRs of the deceased R.7 vide order dated 29.10.2025)

8.Katturaja

9.Mathi

: Respondents 7 to 9/Respondents 8 to 10
Respondents 8 to 10/Respondents 8 to 10
LRs of 1st Defendant

PRAYER:- Civil Miscellaneous Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 06.12.2021, passed in C.M.A.No.15 of 2018, on the file of II Additional District and Sessions Judge, Thanjavur, confirming the fair and decretal order dated 03.03.2018, passed in E.A.No.152 of 2017, in E.P.No.14 of 2015 in O.S.No.61 of 2005, on the file of Principal Subordinate Judge, Thanjavur.

For Appellants : Mr.Mr.M.P.Senthil

For Respondents :Mr.M.Saravanan
for R.1
: Mr.N.Balakrishnana
for R.4 and R.9
: No Appearance for R.2, R.3, R.5,
R.6 and R.8
: R.7 - died



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JUDGMENT

This Civil Miscellaneous Second Appeal is directed against the Judgment and decree passed in C.M.A.No.15 of 2018, dated 06.12.2021, on the file of II Additional District and Sessions Court, Thanjavur, confirming the order made in E.A.No.152 of 2017 in E.P.No.14 of 2015 in O.S.No.61 of 2005, dated 03.03.2018, on the file of the Principal Subordinate Court, Thanjavur, in dismissing the petition filed under Order 21 Rule 97 C.P.C.

2. The appellants are the third parties / objectors. The first respondent as plaintiff filed a suit in O.S.No.61 of 2005, on the file of the Subordinate Court, Thanjavur claiming partition and allotment of 1/4 shares in the suit properties. The deceased Mookaiyah Konar and the respondents 2 to 9 are the defendants and after full trial, the learned Principal Subordinate Judge, Thanjavur passed a preliminary decree dated 30.11.2007 as prayed for.

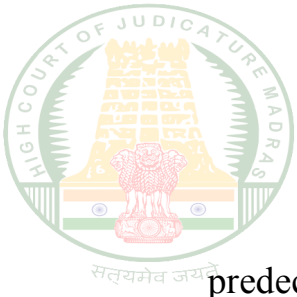


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3. The first respondent/plaintiff filed a petition in I.A.No.134 of 2008 for passing of final decree and after necessary enquiry, the Principal Subordinate Judge passed a final decree dated 16.07.2011, allotting the properties to the first respondent/plaintiff. Thereafter, the first respondent/plaintiff laid an execution petition in E.P.No.14 of 2015 seeking delivery of the properties allotted to her in the final decree. After enquiry, delivery was ordered on 05.04.2017 and since the delivery was resisted, the first respondent/plaintiff filed applications seeking the assistance of the Village Administrative Officer, Surveyor and the police help and when the said petitions were pending, the appellants who are the third parties to the suit, filed the above petition in E.A.No.152 of 2017 under Order 21 Rule 97 C.P.C., on 31.07.2017.

4. The case of the obstructors, who are father and son respectively is that they have purchased “A” schedule properties vide sale deeds dated 14.09.2005, 16.09.2009, 01.03.2010, 01.03.2010, 15.06.2011 and 09.11.2011 from the respondents 5 to 7 / defendants 5 to 7, that the petitioners have been in possession and enjoyment of the property since their purchase, that the petitioners were not aware of passing of preliminary decree and the final decree in O.S.No.61 of 2005, that their



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predecessors failed to inform about the same, that the petitioners came to know that the first respondent and other respondents have colluded together and obtained the preliminary decree and final decree to deceive the petitioners, that the first respondent/plaintiff who was fully aware of the purchase made by the petitioners, deliberately failed to implead them in the final decree proceedings, that the final decree passed in O.S.No.61 of 2005 is not binding on the petitioners and that the petitioners are entitled for equity towards the share of the respective respondents for “A” schedule properties purchased by the petitioners.

5. The first respondent/plaintiff filed a counter statement raising serious objections and stated that the sale deeds obtained by the petitioners are sham and nominal documents, that the petitioners have not been inducted into possession and enjoyment of the properties, that the suit properties were already delivered by the Amin of the Court as per the warrant issued to him and delivery was recorded, that the petitioners in collusion with the sixth respondent have filed the above petition to drag on the proceedings and that therefore, the petition is liable to be dismissed.



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6. During enquiry, the petitioners examined the first petitioner as P.W.1 and two other witnesses as P.W.2 and P.W.3 and exhibited 30 documents as Exs.P.1 to P.30. The first respondent adduced neither oral nor documentary evidence. The other respondents had remained exparte. The Executing Court, upon considering the evidence available on record and taking note of the provisions under Order 21 Rule 102 C.P.C., holding that the petitioners are subsequent purchasers from the judgment debtors pending litigation and hence, the petitioners are not entitled to get any relief claimed, dismissed the petition. Aggrieved by the order of dismissal, the petitioners/obstructors preferred an appeal in C.M.A.No.15 of 2018 and the learned II Additional District Judge, Thanjavur, upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment dated 06.12.2021, dismissing the appeal and thereby confirming the fair and decreetal order of the Executing Court. Challenging the dismissal of the appeal, the present Civil Miscellaneous Second Appeal came to be filed.

7. Though the above Civil Miscellaneous Second Appeal has been pending since 2024, the same has not yet been admitted and hence, no Substantial Questions of Law came to be formulated.



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8. Admittedly, the appellants/obstructors claimed title only through certain judgment debtors / defendants in the partition suit. It is evident from the records that out of six sale deeds relied upon by the appellants, one sale deed was executed after filing of the suit in O.S.No.61 of 2005 and four other sale deeds were executed after passing of the preliminary decree and during the pendency of the final decree proceedings and another sale deed came to be executed even after passing of the final decree. Hence, it is very much clear that none of the transactions had taken place prior to the filing of the suit.

9. It is settled law that any transfer effected during the pendency of the suit is covered by the doctrine of lis pendens as contemplated under Section 52 of the Transfer of Property Act. A transferee pendente lite takes the property subject to the rights of the parties, as may be ultimately determined in the litigation and cannot claim any better title than that of his vendor. Such a purchaser pendente lite merely steps into the shoes of the judgment debtor and is bound by the decree passed in the suit irrespective of whether he was impleaded as a party or not. In the case on hand, as already pointed out, out of six sale deeds relied upon by



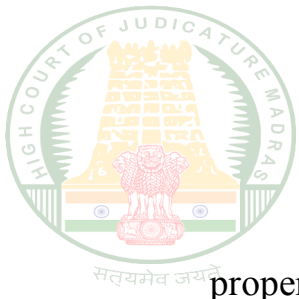
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the obstructors, four were executed after passing of the preliminary decree and during the pendency of the final decree proceedings. Before the said purchase, the shares of the parties had already been determined under the preliminary decree. Hence, the vendors / judgment debtors themselves were entitled only to such rights as were available to them under the decree and they could not convey any better or independent right or title to the obstructors.

10. It is pertinent to mention that once a final decree is passed and specific allotments are made, the right of the parties stand crystalised and any subsequent transfer made by judgment debtor cannot defeat or nullify the allotments made under the final decree. In the present case as already pointed out, one of the sale deeds came to be executed even after the passing of the final decree.

11. As rightly pointed out by the learned Counsel for the first respondent/plaintiff, the Advocate Commissioner appointed in the final decree proceedings inspected the suit properties on 14.02.2009 and except for the first sale deed dated 14.09.2005, all other sale deeds came to be executed after the Advocate Commissioner had inspected the suit



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properties for the purpose of effecting division. As rightly contended by the learned Counsel for the first respondent, in such circumstances, the obstructors cannot be heard to contend that they were unaware of the pending proceedings and the above circumstances would clearly indicate that the purchases were made with full knowledge of the pending proceedings and were subject to the result thereof.

12. The contention of the obstructors that their vendors had failed to disclose the pendency of the proceedings cannot be gone into in the present proceedings. If the obstructors have any grievance in that regard, it is for them to work out their remedies against their vendors and not against the first respondent/decreed-holder.

13. The next contention of the obstructors that the first respondent/plaintiff, despite being fully aware of their purchases, failed to implead them in the final decree proceedings, is devoid of merits and no law mandates a decree holder for impleadment of the purchasers pendente lite in the final decree proceedings. Though the obstructors have alleged collusion between their vendors and the first respondent, they have not produced any iota of evidence to substantiate the same.



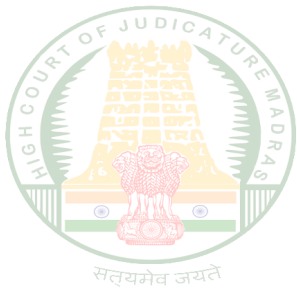
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14. The learned Counsel for the first respondent/plaintiff would contend that the Executing Court has rightly invoked Order 21 Rule 102 C.P.C., and the said provision stipulates that Rules 98 and 100 of Order 21 C.P.C., shall not apply to any resistance or obstruction to the execution of a decree for possession of the property by a person to whom the judgment-debtor has transferred the property after the institution of the suit, in which the decree was passed or to the dispossession of any such person.

15. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Tahir V.Isani Vs. Madan Waman Chodankar (since deceased) now through his legal representatives and others*** reported in ***2025 LiveLaw SC 845***, wherein the Hon'ble Apex Court has specifically observed that Rule 102 intends to protect the interests of the decree-holder against the attempts of unscrupulous judgment-debtors and their subsequent transferees who indulge in activities and leave no stone unturned to deprive the decree-holders from reaping the benefits of the decree granted in their favour and the relevant portions are extracted hereunder:

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“9. The whole scheme of Rule 102 of Order XXI intends to preserve the idea of achieving finality of the judicial decisions. The provision imbibes the principle of “interest reipublicae ut sit finis litium” i.e., it is in the interest of the State that there should be an end to litigation. In a suit pending between a plaintiff and a defendant as to the right to a particular estate, the decision of the court in that case shall be binding not only on the litigating parties, but also on those who derive title under them by alienations (transfer) made while the suit was pending, whether such alienees, i.e. transferees, had or had not notice of the pending proceedings. In this regard, we are benefitted by the decision of this Court in Usha Sinha v. Dina Ram and others 4 , where this Court had the occasion to deal with the scheme of Rule 102 of Order XXI, and held that: -

“17. Rule 102 clarifies that Rules 98 and 100 of Order 21 of the Code do not apply to transferee pendente lite. That Rule is relevant and material and may be quoted in extenso:

“102. Rules not applicable to transferee pendente lite.— Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of

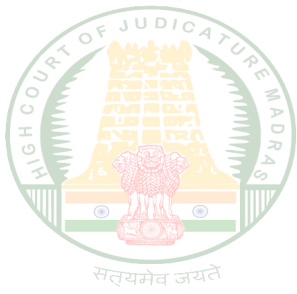


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any such person.” Bare reading of the Rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment- debtor is presumed to be aware of the proceedings before a court of law. He should be careful before he purchases the property which is the subject-matter of litigation. It recognises the doctrine of lis pendens recognised by [Section 52](#) of the Transfer of Property Act, 1882. Rule 102 of Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree-holder will never be able to realise the fruits of his decree. Every time the decree- holder seeks a direction from a court to execute the decree, the judgment-debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, (2008) 7 SCC 144 the Rule has been enacted.” (emphasis supplied) Therefore, Rule 102 of Order XXI intends to protect the interests of the decree-holder against the attempts of unscrupulous judgment-debtors and their subsequent transferees who indulge in activities and leave no stone unturned to deprive the decree-holders from reaping the benefits of the decree granted in their favour. The Rule being equitable in nature, therefore, estops further creation of rights as it explicitly states that nothing in Rules 98 and 100



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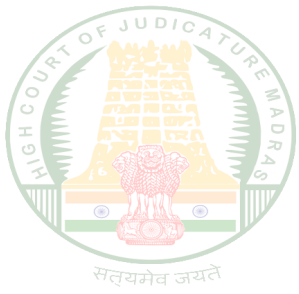
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shall apply to the resistance or obstruction being made by the transferee pendente lite of judgment-debtor.

11. While it is important to protect the interests of decree-holders, who hold an enforceable decree in their favour, it cannot be gainsaid that such interests cannot be blanketly protected. Rule 102 of Order XXI expressly lays down the ingredients as to when it can be applied. For a case to fall under Rule 102, it is condition precedent that there exists a decree for the possession of immovable property. Secondly, there must be a resistance or an obstruction in the execution of the said decree. Thirdly, such obstruction or resistance must be made by a person to whom the judgment-debtor has transferred the property. Fourthly, such transfer must have occurred after the institution of the original suit, i.e. the one in which the decree was passed. If the aforesaid ingredients are made out, Rule 102 prohibits the protection of Rules 98 and 101 to such errant transferee of judgment-debtor.

12.

Therefore, it is absolutely clear, that the transferee of a judgment-debtor who traces his title to the immovable property, that is the subject matter of a pending suit, is not entitled to seek the remedy available under Rules 97 to 102 of Order XXI. At the cost of repetition, we state that the whole scheme of Rule 102 of Order XXI read with [Section 52](#),



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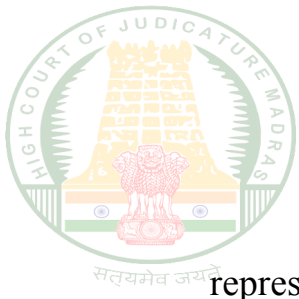


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Transfer of Property Act, 1882 is to protect the interest of a decree-holder who has successfully attained a decree of possession of an immovable property.

13. However, Rule 102 of Order XXI applies only to a person to whom the judgment-debtor has transferred the immovable property which was subject matter of that suit pendente lite. If the person who is resisting or obstructing the execution of the decree for possession of such property, is not the transferee of judgment-debtor, i.e. he does not trace his title from judgment-debtor, bar of Rule 102 does not apply to him. That is to say that if the person who is resisting or obstructing the decree for possession has received the property from person other than the judgment-debtor, such person is competent to gain the benefit of Rules 97 to 101 of Order XXI. In fact, he is entitled to such benefit even if he had been transferred the immovable property pendente lite, i.e. during the pendency of the suit, in which the decree was passed.

16. In the case on hand, as already pointed out, the appellants/obstructors do not claim any independent title but trace their rights through certain judgment debtors and as such, they are bound by the preliminary decree, final decree and all other consequential execution proceedings. The possession of the obstructors, if any, is only



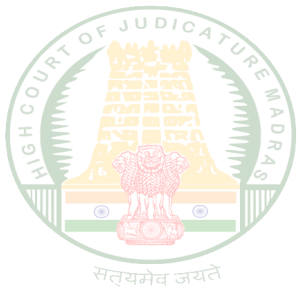
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representative of that of the judgment debtors and cannot constitute an independent obstruction so as to attract Order 21 Rule 97 C.P.C.

17. When the matter was taken up for final hearing, the learned Counsel for the first respondent submitted that the delivery of properties has already been effected and recorded and that consequently, the E.P., had been closed. The learned Counsel for the obstructors would contend that the first respondent had subsequently filed a suit challenging the sale deeds executed in favour of the obstructors, but had allowed the said suit to be dismissed for default.

18. As rightly contended by the learned counsel for the first respondent, the dismissal of the said suit for default neither confers any right upon the obstructors nor disentitles the first respondent/deeree-holder from obtaining delivery of possession in pursuance of the final decree passed in the suit. Moreover, the dismissal of the said suit cannot be said to have any bearing on, or effect upon, the present proceedings.

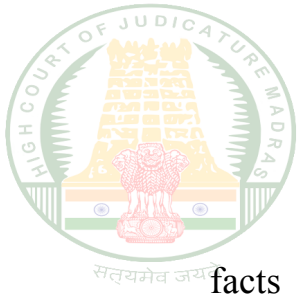


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19. On a consideration of the entire facts and circumstances, it is clearly evident that the obstructors entered the picture only after the filing of the suit and continued to purchase portions of the suit properties even after the passing of the preliminary decree and in one instance, even after the passing of the final decree. Having purchased the properties pendente lite and subject to the outcome of the litigation, they cannot now seek to obstruct the execution of the decree and thereby deprive the decree-holder of the fruits of the decree obtained after prolonged litigation.

20. Both the Executing Court and the first appellate Court, upon a proper appreciation of the pleadings and evidence, have concurrently held that the obstructors have no legally enforceable right to obstruct the delivery of possession. Moreover, this Court is constrained to say that the present proceedings appear to be yet another attempt to obstruct and delay the execution of the decree that has attained finality. On a careful consideration of the entire records, this Court of the clear view that no Substantial Questions of Law arises for consideration, in this Civil Miscellaneous Second Appeal. Consequently, this Court concludes that the Civil Miscellaneous Second Appeal is liable to be dismissed. In the



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facts and circumstances of the case, this Court holds that the first respondent/plaintiff is entitled to costs throughout.

21. In the result, the Civil Miscellaneous Second Appeal is dismissed. Consequently, the connected Civil Miscellaneous petition is also dismissed. The first respondent/plaintiff shall be entitled to costs throughout payable by the appellants.

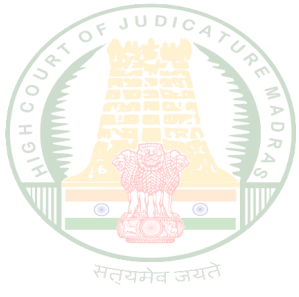
30.06.2026

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

- 1.II Additional District and Sessions Court, Thanjavur,
2. The Principal Subordinate Court, Thanjavur.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.S.A.(MD)No.4 of 2024

30.06.2026