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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.07.2026**

CORAM

THE HONOURABLE MR JUSTICE S. SOUNTHAR

**C.R.P(MD).No.1674 of 2026
and C.M.P(MD).No.8086 of 2026**

1.Shamsudeen

2.Ilanjiyam @ shamsad Beegam

... Petitioners

Vs

Sherfuddin

rep., by his power agent

Kattubava

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure to set aside the order dated 29.06.2022 in E.A.No.38 of 2018 in E.P.No.10 of 2017 in O.S.No.219 of 2005 on the file of the Subordinate Court, Thuraiyur, Trichy District.

For Petitioners : Mr.K.Prakash

For Respondent : Mr.H.Lakshmi Shankar

ORDER

This civil revision petition has been filed challenging the order passed by the Executing Court dismissing the application filed by the petitioners/ judgment-debtors seeking stay of execution petition.

2.The respondent herein filed a suit in O.S.No.219 of 2005 seeking for declaration and permanent injunction with alternative prayer for recovery of



possession. The Trial Court passed an *ex-parte* decree granting declaration of title and recovery of possession on 05.04.2013. The present execution petition in E.P.No.10 of 2017 has been filed before the Subordinate Court, Thuraiyur, Trichy District, seeking execution of decree for recovery of possession. The said execution petition has been pending for the past nine years.

3.The petitioners herein filed an application seeking to set aside the *ex-parte* decree in E.A.No.38 of 2018 before the Subordinate Court, Thuraiyur, Trichy District, and the same was dismissed. Aggrieved over the same, according to the learned counsel for the petitioners, an appeal has been preferred by the petitioners in C.M.A.No.27 of 2024 and the same is pending on the file of III Additional District Judge, Tiruchirappalli. When the appeal filed by the petitioners challenging the dismissal of the application filed by them to set aside the *ex-parte* decree is pending before the First Appellate Court for the past two years, the petitioners could have moved the First Appellate Court seeking stay of execution petition. Instead of approaching the First Appellate Court, the petitioners moved the Executing Court under Order 21 Rule 26 of the Code of Civil Procedure. The said proviso merely enables the Court to grant interim relief to facilitate the petitioner in



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preferring an appeal and obtaining an order of stay from the First Appellate Court. In the present case, as submitted by the learned counsel for the petitioners, an appeal in C.M.A. No.27 of 2024 has already been preferred. It is, therefore, evident that the said appeal has been pending for nearly two years. In such circumstances, the petitioners are not entitled to invoke under Order 21 Rule 26 of the Code of Civil Procedure to seek relief before the Executing Court. The Trial Court rightly appreciated the position and dismissed the application by observing that the execution petition has been pending for several years.

4. In view of the subsequent development that the petitioners have preferred an appeal in C.M.A. No.27 of 2024 before the First Appellate Court, it is always open to them to move the Appellate Court and seek an appropriate order of stay. In such circumstances, this Court is not inclined to interfere with the order passed by the Executing Court. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

01.07.2026

NCC : Yes/No
Index : Yes/No
Rmk



To

1. The Subordinate Judge, Thuraiyur, Trichy District .
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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S. SOUNTHAR.J.

Rmk

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