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C.R.P.(MD)Nos.3025 and 3419 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.02.2026

PRONOUNCED ON : 27.02.2026

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)Nos.3025 and 3419 of 2025

and

C.M.P.(MD)Nos.17120 and 18546 of 2025

C.R..P(MD)No.3025 of 2025:-

R.Balasankar

... Petitioner

-VS.-

1.Ramalakshmi

2.Ramasamy

3.Balasubramanian

4.Ramasubramanian

5.Kumaresan

6.Kowselaya Devi

...Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Constitution of India, to set aside the order, dated 06.10.2025 made in E.A.No. 34 of 2014 in E.P.No.46 of 2009 in O.S.No.470 of 1986 on the file of the Munsif Court, Sankarankovil, Tenkasi District.



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For Petitioner :Mr.R.Bharanidharan
for Mr.R.Murali
For Respondents :Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.Thirunavukkarasu

C.R..P(MD)No.3419 of 2025:-

Ramasubramanian

... Petitioner

-VS.-

1.Ramalakshmi
2.Ramasamy
3.Balasubramanian

Mariammal (Died)

4. R.Balasankar
5.Kumaresan
6.Kowselaya Devi

...Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Constitution of India, to set aside the order, dated 06.10.2025 made in E.A.No. 34 of 2014 in E.P.No.46 of 2009 in O.S.No.470 of 1986 on the file of the Munsif Court, Sankarankovil, Tenkasi District.

For Petitioner :Mr.A.Srinivasan
For R1 to R3 :Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.Thirunavukkarasu



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COMMON ORDER

The present Civil Revision Petitions have been filed challenging the order passed by the learned Principal District Munsif, Sankarankovil, Tenkasi District, in E.A.No.34 of 2014 in E.P.No.46 of 2009 in O.S.No.470 of 1986, dated 06.10.2025.

2.Heard Mr.R.Bharanidharan, learned Counsel representing Mr.R.Murali, learned Counsel for the Revision Petitioner in C.R.P(MD)No. 3025 of 2025, Mr.A.Srinivasan, learned Counsel for the Revision Petitioner in C.R.P(MD)No.3419 of 2025, Mr.S.Meenakshi Sundaram, learned Senior Counsel for Mr.Thirunavukkarasu learned Counsel for the respondents in C.R.P(MD)No.3025 of 2025 and for the respondents 1 to 3 in C.R.P(MD)No. 3419 of 2025.

The facts of the case in nutshell are as follows:-

3.One Appasamy Battar, the father of the respondents 1 to 3, as plaintiff, had originally filed a suit in O.S.No.470 of 1986 before the District Munsif



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Court, Sankarankovil, against one Sankarasubramania Battar and one Alagu Thevar, the father of the Revision Petitioner in C.R.P(MD)No.3419 of 2025, seeking for the relief of declaration to declare the suit 1st schedule property belongs to the plaintiff and for recovery of possession with respect to the suit 2nd schedule property against the second defendant.

4.During the pendency of the suit, the defendants 1 and 2 died and their legal heirs were brought on record as defendants 3 to 13. Subsequently, the plaintiff also died and the respondents 1 to 3 and their mother, Valliammal were brought on record as plaintiffs 2 to 5.

5.The suit was decreed *ex parte* on 12.09.2002. Subsequently, the decree holders have filed an Execution Petition in E.P.No.46 of 2009. During the pendency of the execution proceedings, the defendants/judgment debtors have filed an application in E.A.No.34 of 2014 in E.P.No.46 of 2009 in O.S.No.470 of 1986, under Section 47 of CPC to declare the judgment and decree passed in O.S.No.470 of 1986 as null and void and to dismiss the Execution Petition in E.P.No.46 of 2009. The learned Principal District



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Munsif, Sankarankovil, vide impugned order, dated 06.10.2025, had dismissed the said application on the ground that the grounds raised by the defendants are not in accordance with law. Challenging the same, the above Civil Revision Petitions have been filed.

6.Mr.R.Bharanidharan, learned Counsel for the Revision Petitioner in C.R.P(MD)No.3025 of 2025 submitted that originally, the plaintiff has filed the suit in O.S.No.470 of 1986 before the Principal District Munsif Court, Sankarankovil, for declaration and recovery of possession against the second defendant alone and pending suit, after the demise of the plaintiff and the second defendant, their legal heirs were impleaded as parties to the suit, after making necessary amendments. However, after impleading the legal heirs of the second defendant, the plaintiffs have not taken any steps to to amend the prayer with regard to the relief sought as against the second defendant. As the plaintiffs have not amended the prayer seeking relief against the legal heirs of the second defendant, the decree is inexecutable as against the other defendants.



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7.It is further submitted that subsequently, the plaintiffs have made an application in I.A.No.462 of 2016 in O.S.No.470 of 1986 to amend the decree by seeking the relief of recovery of possession against all the defendants. However, on 08.06.2018, they withdrew the said application, which itself is evident that the plaintiffs are aware of the fact of inexecutable decree. However, the Court below has wrongly dismissed the application filed by the defendants, which needs interference of this Court.

8.It is further pointed out that the plaintiffs while proceeding with the execution petition, filed an application in E.A.No.3 of 2024 to amend the prayer in the execution petition to include the buildings, which are available in the suit schedule property. However, in the suit, the second defendant has filed a written statement in the year 1987 specifically mentioning the buildings available in the suit property from 1976 onwards with proper electricity service connection and licence. Hence, it is submitted that in order to overcome the lacuna in the decree, the plaintiffs have filed an application in the year 2024 and without pursuing the said application, they withdrew the said application,



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which is evident that the plaintiffs are aware of the lacuna in the decree.

9.It is their primary contention that the judgment made by the trial Court in O.S.No.470 of 1986, which is sought to be executed by the plaintiffs is not a judgment in terms of Order 20 Rules 4, 5 and 6 of CPC, as the trial Court never discussed about the case of the plaintiffs, the documents produced by the plaintiffs, issues, which are required to be considered and without any consideration, the suit was decreed in two lines by the trial Court on 12.09.2002.

10.It is further contended that the Court below ought to have seen that the decree against the other defendants cannot be executed, as they are not parties. The executing Court cannot go beyond the decree and hence, the execution petition against the other defendants is liable to be dismissed. Further, it is contended that the Executing Court has not considered the provision of law and without applying the law governing the same, has dismissed the execution application filed by the petitioners and the same is liable to be interfered with by this Court. Further, the trial Court ought to have considered that there existed a building in the second suit schedule property



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prior to the suit and the same has been pleaded by the second defendant before the trial Court, however, the trial Court has considered the same while passing the judgment and decree. It is their further contention that the Executing Court has miserably failed to consider that the decree for recovery of possession has been obtained against a dead person and the same cannot be executed against the other defendants. Hence, they seek interference of this Court.

11. In support of his contentions, the learned Counsels for the petitioners relied upon the following judgments:

(1) The judgment of Hon'ble Supreme Court in the case of ***Arun Lal and others vs Union of India and others***, reported in ***(2010) 14 SCC 384***, wherein, the Hon'ble Supreme Court has held as follows:

“13. Answering Question 1 in the affirmative the High Court held that the grant in question was an old grant and that resumption of land measuring 2.792 acres in terms of Notice dated 23-9-1970 and taking over of possession on 6-11-1970 had attained finality between the parties. Question 2 was answered by the High Court in the negative. It was held that the question whether the grant was old or new was not directly and substantially in issue in Suit No. 842 of 1958. The principle of res judicata did not, therefore, debar the plea that the grant was an old grant. Insofar as Question 3 is concerned, the High Court held that there was no limitation prescribed for filing



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of objections under Section 47 CPC and hence rejection of objections by the Revisional Court on that ground was not legally correct. The present appeals assail the correctness of the judgment and order of the High Court as already noticed above.

14.Having heard the learned counsel for the parties at considerable length we do not find any reason, much less a compelling one, for us to take a view different from the one taken by the High Court. That land measuring 2.792 acres appurtenant to the bungalow was resumed in terms of the Notice dated 23-9-1970 has not been disputed before us. That the said notice was not assailed by the grantees before any court or authority is also not in dispute. That possession of the resumed land appurtenant to the bungalow was taken over on 6-11-1970 has also not been assailed nor is the finding recorded to this effect by the High Court under challenge. At any rate we see no error or perversity in that finding of the High Court to warrant interference.

15.It is common ground that the land appurtenant to the bungalow had been utilised by the Union of India for construction of barracks. The entire extent of 2.792 acres of land including the one under the barracks could, therefore, be taken over pursuant to the resumption order which was never assailed and had thereby attained finality. Such being the position, the High Court was right in holding that possession of the above extent of land could not be taken away from the Union of India for delivery to the decree-holders. That is because after the resumption of the property and the taking over of the possession by the Union of India in exercise of its rights as the paramount title-holder, it was no longer holding the same as a tenant so as to be answerable to the petitioners as its landlords. The Union of India was on the contrary holding the resumed property in its own right and in a capacity that was different from the one in which it had suffered the decree for eviction. This was a significant change in the circumstances in which the decree was passed rendering it inexecutable.

16.So also the question whether the grant of land was old or new has in our opinion been correctly answered by the High Court. There is nothing before us nor was any serious attempt made by the learned counsel appearing for the appellant to demonstrate that the finding of the High Court in regard to the said question suffered from



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any error or perversity. Similarly, the question whether the objections filed by the respondent judgment-debtor were barred by limitation should also not detain us, for we endorse the view taken by the High Court that such objections could not be ignored or rejected on the ground that the same were filed beyond the period of limitation.

17.That leaves us with the question whether the decree is executable qua the main bungalow itself. We must to the credit of the respondents mention that the executability of the decree qua the main bungalow was not assailed or questioned on behalf of the respondents. As a matter of fact, the possession of the main bungalow appears to have been delivered to the decree-holders, which the decree-holders will be entitled to retain, till such time the Union of India issues any further orders of resumption of the property in exercise of powers vested in it under the relevant provisions of law.”

(2)The judgment of Hon'ble Supreme Court in the case of

K.P.Natarajan and another vs Muthalammal and others, reported in (2021)

15 SCC 817, wherein, the Hon'ble Supreme Court has held as follows:

“21.The contention that in a revision arising out of the dismissal of a petition under Section 5 of the Limitation Act, 1963, the High Court cannot set aside the ex parte decree itself, by invoking the power under Article 227, does not appeal to us. It is too well-settled that the powers of the High Court under Article 227 are in addition to and wider than the powers under Section 115 of the Code. In Surya Dev Rai v. Ram Chander Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] , this Court went as far as to hold that even certiorari under Article 226 can be issued for correcting gross errors of jurisdiction of a subordinate court. But the correctness of the said view insofar as it related to Article 226, was doubted by another Bench, which resulted in a reference to a three-member Bench. In Radhey Shyam v. Chhabi Nath [Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] ,



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the three-member Bench, even while overruling Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] on the question of jurisdiction under Article 226, pointed out that the jurisdiction under Article 227 is distinguishable. Therefore, we do not agree with the contention that the High Court committed an error of jurisdiction in invoking Article 227 and setting aside the ex parte decree.”

(3)The judgment of Hon'ble Division Bench of this Court in the case of ***K.Loganathan vs K.Sahadevan and others***, reported in **2013 2 CTC 177**, wherein, the Hon'ble Division Bench of this Court has held as follows:

“8.It is also settled position of law that, when a vakalat has been filed by the Counsel appearing for the Defendant or the Plaintiff, as the case may be, and the said Counsel has not appeared, it is incumbent upon the Court to issue notice to the parties concerned, vide judgment of the Hon'ble Apex Court in Malkiat Singh v. Joginder Singh, 1997 (3) CTC 619 (SC) : AIR 1998 SC 258. The said method has not been adopted while setting the Appellant ex parte. Even otherwise, the Appellant was said to be absent for only three hearings. The hearings were between 23.4.2010 & 28.4.2010, within a span of seven days.”

(4)The judgment of this Court in the case of ***J.Savithri and another vs Selvaraj and others***, reported in **2023 4 LW 716**, wherein, this Court has held as follows:

6. When I have found the judgment and decree itself to be contrary to law applicable under the Hindu Succession Act and the



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Code of Civil Procedure, I am not bound by this technical objection taken by the learned counsel for the petitioner. Infact the Supreme Court in the case of K.P.N. atrajan v. Muthalamman, [\(2021\) 15 SCC 817](#) (Per V. Ramasubramaniam J.) has held that during the course of dealing with a revision under Section 5 of the Limitation Act, if it is found the decree is contrary to law, it can be interfered with. If in a collateral proceedings, it comes to the notice of the Court that the judgment is a contrary to law, even then the High Court, under Article [227](#) of [Constitution of India](#), is empowered to set aside the decree.”

(5)The judgment of this Court in the case of ***Subbathal (died) and others vs Narayanasamy and others***, reported in ***(2025) 6 MLJ 551***, wherein, this Court has held as follows:

“36.In the light of the settled legal position, as expanded by the Hon'ble Supreme Court as well as this Court, the said judgment is exfacie illegal and inexecutable and it is open to be challenged even in a petition under Section 47 of CPC which has rightly been done by the revision petitioners in the present case. Unfortunately, the trial Court has not adverted and focussed its attention to the core dispute involved in the present case and has erroneously proceeded to dismiss the application filed by the revision petitioners, instead of allowing the same. For all the above reasons, I am inclined to allow the Civil Revision Petition.”

(6)The judgment of this Court in the case of ***The Tahsildar and others vs P.Ganesan***, in ***C.R.P(MD)No.3669 of 2025***, dated 17.12.2025, wherein, this Court has held as follows:



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“11.From the perusal of the judgment passed by the learned District Munsif, Sivagangai, in O.S.No.190 of 2010, dated 24.02.2011, it is to be noted that the learned trial Judge has not passed the judgment in consonance with Order 20 Rules 4, 5 and 6 of CPC. Further, it is to be noted that judgment of a Court, shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. However, in the present case, the defendants were set ex parte and the trial Court did not frame any issue for deciding the suit and had simply examined PW-1 and marked Ex-A1 to Ex-A7 and has passed a cryptic judgment, which is contrary to the provisions of Order 20 Rules 4, 5 and 6 of CPC, which is ex facie illegal.”

12.Mr.A.Srinivasan, learned Counsel for the Revision Petitioner in C.R.P(MD)No.3419 of 2025 submitted that he has adopted the arguments advanced by the learned Counsel for the petitioner in C.R.P(MD)No.3419 of 2025.

13.*Per contra*, Mr.S.Meenakshi Sundaram, learned Senior Counsel for the respondents refuted the contentions raised by the learned Counsel for the petitioners. It is his contention that the first defendant in the suit, who claimed to be the owner of the property, had sold the suit property to the second defendant. After the death of the second defendant in the suit, his legal heirs were brought on record as defendants 3 to 7, however, they did not participate



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in the suit. Therefore, they were remained *ex parte* on 12.09.2002. Therefore, an Execution Petition was filed in E.P.No.46 of 2009, wherein, the revision petitioners were participated and thereafter, an order of delivery was passed in the Execution Petition on 12.09.2013, which attained finality. In the interregnum, two applications were filed in E.A.Nos.33 and 34 of 2014 to appointment an Advocate Commissioner and the same got dismissed on 08.10.2014 and the said order was challenged before this Court in C.R.P(MD)No.2439 of 2014, which was also dismissed on 27.11.2014.

14.He also submitted that the present impugned order has been passed on the ground of maintainability and on merits. He vehemently contended that the application filed by the defendants under Section 47 of CPC is not maintainable, when the legal heirs of the second defendant were made as defendants 3 to 7 and after the amendment made, the revision petitioners did not make any attempt to establish that the suit property belongs to the first defendant and *ex parte* judgment and decree was passed against the defendants. It is his further submission that against the judgment and decree passed in the original suit, dated 12.09.2002, the defendants did not file any



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appeal or file an application to set aside the *ex parte* decree and therefore, the judgment and decree passed in O.S.No.476 of 1985 has reached its finality and that the present application has been rightly dismissed by the Court below, which needs no interference of this Court.

15.In support of his contentions, the learned Senior Counsel has relied upon the following judgments:

(1)The judgment of Hon'ble Supreme Court in the case of ***Rahul S.Shah vs Jinendra Kumar and others***, reported in ***(2021) 6 SCC 418***, wherein, the Hon'ble Supreme Court has held as follows:

“24.In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.”



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(2)The judgment of Hon'ble Supreme Court in the case of ***Pradeep Mehra vs Harijivan J.Jethwa and others***, reported in **2023 SCC OnLine SC 1395**, wherein, the Hon'ble Supreme Court has held as follows:

“11. The multiple stages a civil suit invariably has to go through before it reaches finality, is to ensure that any error in law is cured by the higher court. The appellate court, the second appellate court and the revisional court do not have the same powers, as the powers of the executing court, which are extremely limited. This was explained by this Court in Dhurandhar Prasad Singh v. Jai Prakash University, [\(2001\) 6 SCC 534](#), in para 24, it had stated thus:

“24. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing.”

12. This Court noted further:

“..... The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available under law on the ground that the original defendant absented himself from the proceeding of the suit after appearance as he had no longer any interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law.

13. The reality is that pure civil matters take a long time to be decided, and regretfully it does not end with a decision, as execution of a decree is an entirely new phase in the long life of a civil litigation. The inordinate delay, which is universally caused throughout India in the execution of a decree, has been a cause of concern with this Court for several years. In *Rahul S. Shah v. Jinendra Kumar Gandhi*, [\(2021\) 6 SCC 418](#), this Court had observed that a remedy which is provided for preventing injustice (in



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the Civil Procedure Code) is in fact being misused to cause injustice by preventing timely implementation of orders and execution of decrees. Then, it had observed as under:

“23. The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.”

14. The above judgment is an important judgment in respect of Section [47](#) as well as Order XXI, [CPC](#) as the three Judge Bench decision of this Court not only condemned the abuse of process done in the garb of exercise of powers under Section [47](#) read with Order XXI, [CPC](#), but also gave certain directions to be followed by all Civil Courts in their exercise of powers in the execution of a decree. It further directed all the High Courts to update and amend their Rules relating to the execution of decrees so that the decrees are executed in a timely manner. As far as Section 47 is concerned, this Court had stated as under:

“24. In respect of execution of a decree, Section [47 CPC](#) contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 [CPC](#). Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is



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allowed to benefit from the subject-matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment-debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.”

15. This Court then gave certain directions, which were to be mandatorily followed by all Courts dealing with civil suits and execution proceedings. Two of its directions were as follows:

“42.....

42.8. The court exercising jurisdiction under Section [47](#) or under Order 21 [CPC](#), must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

.....

.....

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13.”

16. It further directed all the High Courts to update their Rules relating to execution of decrees. It was as under:

“43. We further direct all the High Courts to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article [227](#) of the [Constitution of India](#) and Section [122 CPC](#), within one year of the date of this order. The High



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Courts must ensure that the Rules are in consonance with [CPC](#) and the above directions, with an endeavour to expedite the process of execution with the use of information technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable.”

(3)The judgment of this Court in the case of ***K.S.Chidarambaram vs Gomathi Ammal and others***, in ***S.A.No.333 of 1983***, dated 06.02.1996, wherein, this Court has held as follows:

“9.Considering the entire evidence on record in this case, I am of the view that neither acquiescence nor estoppel could be inferred from the nebulous and too general manner of allegations and claims made by the defendant, merely taking advantage of the observations contained in the judgments about the construction having been made in the year 1972. The very case of the defendant was that after his purchase, he has not only re-built the house, but thereafter put up the offending wall also and in the absence of any specific plea or material to substantiate the point of time at which the offending construction has been put up, the courts below would only be justified, in my view, to come to the conclusions that the construction in this case was contemporaneous with the disputes between the parties emerging with the issue of notice by the defendant marked as Ex.A-5. Though it is merely claimed for the defendant that there was no objection when the construction was made, the facts pleaded and deposed on the plaintiffs" side show that disputes really cropped up between parties with objections followed by the issue of notice by the defendant and the murder of the husband of the first plaintiff as a sequel and the suit immediately following the exchange of notices cannot be completely ignored. If the defendant has to succeed on the ground of estoppel or acquiescence so as to deny the relief of recovery of possession to the plaintiffs, whose title has been sustained by both the courts below, it is for the plaintiffs to



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not only prove specifically the point of time of construction but also the further claim made by the defendant that there was no objection at all at the relevant point of time, as also the circumstances under which the notice under Ex.A-5 came, to be issued. In my view, except making mere general averments and claims, the necessary factual details do not appear to have been either pleaded with precision or proved with any positive material. While that be the position, it would be inappropriate on them besides available on record in this case to, draw an inference of estoppel by conduct or acquiescence against the plaintiffs so as to deny them the relief of recovery of possession. The principle of estoppel by conduct or acquiescence itself being a matter of inference, the same could be deduced from and only on the basis of properly pleaded and proved facts and the necessary factual basis also cannot be inferred from the conduct to further infer the principle of estoppel to the detriment of the plaintiffs, who succeeded in both the courts below. In view of the above, there is no scope for applying the principles laid down by this Court in the two decisions referred to above to deny the relief of recovery of possession concurrently granted by both the courts below. It is by now well settled that recovery of possession can be granted by courts on declaring title of the plaintiffs and such recovery of possession can be enforced even after removing the superstructure, if any, put up without any separate decree in the form of mandatory injunction in that regard. Consequently, I do not see any infirmity in law in the relief of recovery of possession granted by the courts below, as a consequence of declaration of title in favour of the plaintiffs. The second appeal, therefore, fails and shall stand dismissed. There will be no order as to costs."

(4)The judgment of this Court in the case of ***Kannu Gounder vs Natesa Gounder***, reported in ***2004 SCC OnLine Mad 292***, wherein, this Court has held as follows:



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“8.In the case of *B. Gangadhar v. B.G. Rajalingam*, 1995 (2) MLJ (SC) 107 : ((1995) 5 SCC 238 : AIR 1996 SC 780) the Apex Court held as under:

The exercise of incidental, ancillary or inherent power inconsequential to deliver possession of the property in execution of the decree. No doubt, the decree does not contain a mandatory injunction for demolition. But when the decree for possession had become final and the judgment-debtor or a person interested or claiming right through the judgment-debtor has taken law in his hands and made any constructions on the property pending suit, the decree-holder is not bound by any such construction. The relief of mandatory injunction, therefore, is consequential to or necessary for effectuation of the decree for possession, it is not necessary to file a separate suit when the construction was made pending suit without permission of the Court. Otherwise, the decree becomes inexecutable driving the plaintiff again for another round of litigation which the Code expressly prohibits such multiplicity of proceedings.”

9.As such, it is contended that though the plaintiff/decreed-holder had obtained a decree for mandatory injunction. It is only superfluous and when the Court granted a decree for possession, the said decree can be executed for removing any manner of superstructure in the suit property.

10.Learned advocate for the revision petitioner would once again submit that the decision rendered in 1995 (2) MLJ (ASC) 107 : ((1995) 5 SCC 238 : AIR 1996 SC 780) is applicable only to the case, where the defendant/judgment-debtor has put up construction during the pendency of the proceedings i.e. pendente lite only and in the present case, the construction was put up by the defendant/judgment-debtor prior to the filing of the suit and therefore, the construction cannot be removed.

11.Though the ruling deals with the construction put up during the pendency of the suit, the same principle would be applicable even to the construction put up prior to the filing of the suit also. It is needless to point out that the construction put up by the defendant/judgment-debtor whether before or after filing of the suit, is liable to be removed if there is a prayer for possession. When there is a decree for delivery for vacant possession which would mean and



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include, delivery after removing all the structures or anything in the suit property and therefore, the plaintiff/decree holder is entitled to take delivery of possession after removal of any manner of construction or structures in the suit property and therefore, I am not inclined to accept the arguments advanced on behalf of the revision petitioner.”

(5)The judgment of this Court in the case of ***Padmavathi vs Kaveriammal***, reported in ***2009 1 CTC 58***, wherein, this Court has held as follows:

“9.As for the facts of the present case, there is no allegation in the Petition to the effect that the final decree was passed by the Court which has no jurisdiction. Further there is nothing in the pleading that the Court which passed the decree has usurped jurisdiction which it did not have. Even if a decree is considered to be an illegal one, still it cannot be stated that it is unworkable and the remedy open to the party aggrieved is to prefer Appeal or Revision before the higher forum, in case if the same was passed by the Court of competent jurisdiction. A decree could not be allowed to starve for its execution.”

(6)The judgment of this Court in the case of ***Ramachandran vs Sankaraiah Naidu***, reported in ***2010 5 MLJ 382***, wherein, this Court has held as follows:

“17. In the instant case on hand, the Civil Revision Petitioner had categorically admitted in his evidence as P.W.1 before the Executing Court that he was aware of O.S.No.207 of 1991 details 5



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years before and that the Mother had executed the Settlement Deed Ex.P1 dated 28.11.2002 in his favour. In E.A.No.252/2003 filed by the Respondent/Decree Holder for Delivery, Delivery was ordered as early as on 30.07.2003 and pending delivery being effected, E.A.No. 50 of 2004 was filed by the Revision Petitioner. From the evidence of P.W.1, it is candidly clear that the Revision Petitioner being an one of the legal heirs of the deceased Mother viz., Judgment Debtor was aware of the entire transaction between his Mother and the Respondent/Decree Holder in law, an Executing Court is duty bound to give effect to the Decree in its substance and must not pass any order rendering the judgment of the trial Court as an otiose one and in that view of the matter, inasmuch as Ex.P1 Settlement Deed dated 28.11.2002 after passing of the Decree dated 11.06.2001 certainly the said document was executed by the Deceased Mother of the Civil Revision Petitioner (Judgment Debtor) in his favour only with the view to deprive the Respondent/Decree Holder in enjoying the fruits of the Decree and it is well settled principle of Law that a specific performance decree obtained by a Litigant/Party implies the Decree for possession and as such, the Civil Revision Petitioner cannot lay a claim as per Ex.P1 Settlement Deed dated 28.11.2002 which is non est in Law. In that view of the matter, E.A.No.50 of 2004 filed by the Revision Petitioner under [Section 47](#) of the Civil Procedure Code is per se not maintainable in law and resultantly, the Civil Revision Petition fails.”

16.This Court considered the submissions made on either side and perused the materials available on record.

17.The facts are not in dispute. Admittedly, one Appasamy Battar, the father of the respondents 1 to 3, as plaintiff, had originally filed a suit in



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O.S.No.470 of 1986 seeking for the relief of declaration to declare the suit 1st schedule property belongs to the plaintiff and for recovery of possession with respect to the suit 2nd schedule property against the second defendant, before the Additional District Munsif Court, Sankarankovil, against one Sankarasubramania Battar and one Alagu Thevar. Both the plaintiff and the defendants died during the pendency of the suit and their legal heirs were impleaded as parties to the suit. In the said suit, the defendants remained *ex parte* and the said *ex parte* judgment and decree was not challenged by the defendants. However, an interlocutor application was filed by the plaintiffs in I.A.No.462 of 2016 seeking to amend the decree for recovery of possession as against all the defendants. However, the said application was withdrawn by the plaintiffs on 08.06.2018.

18.It is to be noted that in the written statement filed by the second defendant in the year 1987, it had been clearly stated about the building along with proper electricity service connection and licence for the same. After filing of the Execution Petition, the plaintiffs have filed an application in E.A.No.3 of 2024 in E.P.No.46 of 2009 to amend the schedule. The said application was



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also withdrawn by the plaintiff on 28.08.2025. Thus, it is evident that I.A.No. 462 of 2016, which was filed to amend the prayer of recovery of possession against all the defendants was withdrawn on 08.06.2018 and the amendment application in E.A.No.3 of 2024 to amend the suit schedule property was also withdrawn on 28.08.2025, thereby, the prayer sought in the original suit is intact without any alteration.

19.It is one of the frontal attack of the revision petitioners that the *ex parte* judgment in O.S.No.470 of 1986, dated 12.09.2002, is a cryptic in nature, which will not satisfy the requirements of Order 20 Rules 4, 5 and 6 of CPC. This judgment passed in O.S.No.470 of 1986, dated 12.09.2002 is extracted hereunder:

“பிராது 1வது தபசில் சொத்து வாதிக்குப் பாத்தியப்பட்டதென விளம்புனை செய்வதன் மூலம் பிராது 1வது தபசில் சொத்தின் ஒருபகுதியான 2ம் தபசில் சொத்திலிருந்து 2ம் பிரதிவாதியை அப்புறப்படுத்தி, வாதிக்கு வசம் ஷ சொத்தை நீதிமன்றம் மூலம் வாழ்வித்துக் கொடுக்கும்படிக்கும், வாதிக்கு 2ம் பிரதிவாதியிடமிருந்து பிராது தேதியிலிருந்து வாழ்விப்பு தேதி வரை மத்திய கால நஷ்டம் கிடைக்ககும் படிக்கும் வழக்கின் செலவுத் தொகை கோரியும் இந்த வழக்கு தாக்கல் செய்யப்பட்டுள்ளது.

வாதி ஆஜர். நிரபன உறுதிக்கற்றாணை தாக்கல் செய்யப்பட்டது. வா.சா.ஆ.1 மற்றும் வா.சா.ஆ.2 குறியிடப்பட்டன. வழக்கு நிரூபணமானது. வழக்கு செலவுத்



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தொகையுடன் தீர்ப்பாணை செய்து தீர்ப்பளிக்கப்படுகிறது.□

20. With regard to the law laid down by the Hon'ble Supreme Court, as discussed supra, the issue whether the prayer, which is now sought by the revision petitioners under Section 47 of CPC can be entertained or not. There is no dispute with regard to the executability of the decree. Even if the decree is an *ex parte* decree, it has to reach its logical conclusion through the execution petition. As seen from the records, before going into the procedure adopted by the Executing Court, it is incumbent to read the *ex parte* judgment. The above judgment, which is extracted supra, would only reveal that the *ex parte* judgment has not discussed about the contents in the plaint and the written statement filed by the second defendant and there is no discussion about the documents produced. In an *ex parte* judgment, the judgment should speak about the relevance of the plaint, written statement filed and the issue for determination and the conclusion. If all these factors are not stated in an *ex parte* judgment and if a judgment is a cryptic judgment in nature, then the said cryptic judgment cannot be considered as a judgment in the eye of law, as it is not satisfied the requirements Order 20 Rules 4, 5 and 6 CPC.



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21.Coming to the execution petition filed by the decree holder, the Executing Court is bound to pass an order without making any alteration in the decree. The prayer sought in the suit is as follows:

“எ)பிராதின் 1வதுதபசில் சொத்து வாதிக்குப் பாத்தியப்பட்டதென டிக்ளரேஷன் செய்வதன் மூலமாக, பிராதில் 1வது தபசில் சொத்தில் ஒரு பகுதியான 2ம் தபசில் சொத்திலிருந்து 2ம் பிரதிவாதியை அப்புறப்படுத்தி, வாதி வசம் ஷ சொத்தை சமூகம் கோர்ட் மூலம் வாழ்வித்துக் கொடுக்கும்படி டிகிரி பிறப்பிக்கும்படிக்கும்

(பி)வாதிக்கு 2ம் பிரதிவாதியிடமிருந்து பிராது தேதியிலிருந்து வாழ்விப்பு தேதி வரை மத்திய கால நஷ்டம் கிடைக்கும்படிக்கும்.

(சி)இவ்வியாஜிய செலவு வாதிக்கு பிரதிவாதியிடமிருந்து கிடைக்கும்படிக்கும்.

(டி)மற்றும் சமயத்திற்கும் சந்தர்ப்பத்திற்கும் ஏற்ற சகல பரிகாரங்களையும் வாதிக்கு அளித்து டிகிரி பிறப்பிக்கும்படிக்கும் வாதி சமூகம் கோர்ட்டர் அவர்களை வணக்கமாய் பிரார்த்திக்கிறார்.”

22.The first prayer is to declare that the suit schedule properties are the absolute properties of the plaintiff and to recover and handover the possession of the suit second schedule property to the plaintiff by evicting the second defendant. The second prayer is to recover the mesne profits from the second defendant. The suit schedule property is as follows:



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“1வது தபசில்

சங்கரன்கோவில் தாலுகா, களப்பாகுளம் கிராமம், ராகக்குடிகாட்டில் புஞ்சை சர்வே எண்.614, ஏக்கர் 3, செண்டு 93. இதற்கு மால், பெரியூர் ரோட்டுக்கும் தெற்கு: கல்யாண கிருஷ்ணன் பட்டர் புஞ்சைக்கும் வடக்கு : ஓடைக்கும் மேற்கு: முகம்மது ராவுத்தர் புஞ்சைக்கும் ஊரணிக்கும் கிழக்கு.

2வது தபசில்

ஷ தாலுகா, ஷ கிராமம் ஷ காட்டில் ஷ புஞ்சை சர்வே எண் 614 ஏக்கர் 3 செண்டு 93ல் மேல்பக்கம் ஏக்கர் 2 செண்டு 72க்கு மால்: பெரியூர் ரோட்டுக்கும் தெற்கு வாதி எஸ்.என்.அப்பாசாமிபட்டர் புஞ்சைக்கும் மேற்கு, கல்யாணகிருஷ்ணபட்டர் புஞ்சைக்கும் வடக்கு முகம்மது ராவுத்தர் புஞ்சைக்கும் ஊரணிக்கும் கிழக்கு.□

23.Schedule A deals with S.No.614 to an extent of 3 acres 93 cents and it is a punja land, which is a vacant land. This plaint was filed on 12.10.1986, whereas, in the written statement filed by the second defendant, it has been categorically stated in paragraph No.4 that the suit schedule property was purchased by the second defendant for a consideration of Rs.1,400/- on 21.10.1974 and thereafter, he has constructed a building worth of Rs.1,00,000/- and had spent Rs.10,000/- for construction of Well. Further, there was a specific plea in the written statement with regard to the measurement reflected in the plaint and with regard to the four boundaries and the Court fee and the dispute the claim made by the plaintiff. The relief was sought only as against



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the first defendant for declaration and not against the second defendant and the prayer in the suit confines to removal of the second defendant from the suit second schedule property.

24.It is to be noted that two amendment applications in I.A.No.462 of 2016 in O.S.No.470 of 1986 to amend the decree was withdrawn on 08.06.2018 and the another application in E.A.No.3 of 2024 to amend the suit schedule in the execution petition was also withdrawn. Therefore, the plaintiffs/decreed holders have not take contested the applications to amend the prayer at two stages one before the trial Court and other before the Executing Court. As the relief in the suit is sought only against the second defendant and not against his legal heirs or assignees after the demise of the second defendant, the prayer cannot be enlarged to the other defendants.

25.The judgments relied upon by the learned Senior Counsel for the respondents with regard to the recovery of possession, as stated supra, would show that a decree has to be enforced, however, on perusal of the judgment and decree, which is a cryptic order, the same cannot be construed as a judgment in



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nature, which is contrary to the provisions of Order 20 Rules 4, 5 and 6.

26.In the result,

(1)The Civil Revision Petitions are allowed.

(2)The order passed by the learned Principal District Munsif, Sankarankovil, Tenkasi District, in E.A.No.34 of 2014 in E.P.No.46 of 2009 in O.S.No.470 of 1986, dated 06.10.2025, is hereby set aside.

(3)The judgment and decree passed in O.S.No.470 of 1986, dated 12.09.2002 passed by the Principal District Munsif, Sankarankovil, is hereby set aside.

(4)No costs.

(5)Consequently, connected miscellaneous petitions are closed.

27.02.2026

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

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To



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The Principal District Munsif,
Sankarankovil, Tenkasi District.

N.SENTHILKUMAR, J.

cmr

Order made in
C.R.P.(MD)Nos.3025 and 3419 of 2025

27.02.2026