



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) (MD) No.1957 of 2018

and

C.M.P. (MD) No.8615 of 2018

1.Theresa  
2.Johnson  
3.Rani

... Petitioners/Respondents/  
Defendants

-Vs-

A.R.Santhanasamy (Died)  
A.R.Lawrence (Died)  
1.A.Sudhamary  
2.Shoba Lidiya  
3.Ramola Krichansiya  
4.Arul Pradeepan

... Respondents 1 to 4/  
Decree Holders/Plaintiffs

**Prayer:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the order dated 12.07.2018 in E.P.No.38 of 2012 in O.S.No.75 of 96 on the file of the learned District Munsif, Thiruvaiyaru, Thanjavur District and allow the above Civil Revision Petition.

For Petitioners : Mr.B.Jameel Arasu

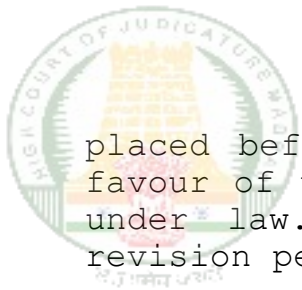
**ORDER**

This Civil Revision Petition has been filed to set aside the order of delivery dated 12.07.2018 in E.P.No.38 of 2012 in O.S.No.75 of 1996 passed by the learned District Munsif, Thiruvaiyaru, Thanjavur District.

2.Admittedly, the revision petitioners are the judgment debtor against whom, the decree is passed.

3.It is the main contention of the learned counsel appearing for the revision petitioners before this Court that the legal heirs of one of the decree holders have not been impleaded. Therefore, the entire execution proceeding is vitiated.

4.It is curious to note that in previous occasions, similar revision petition in C.R.P.(MD)No.379 of 2016 is filed by the revision petitioners herein, in which, similar contention was



placed before this Court, contending that the decree obtained in favour of the deceased / first plaintiff is void and unenforceable under law. Such contention has been negatived and the said revision petition is dismissed by an order dated 28.06.2017.

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5. Taking clue from the observation made in Paragraph No.7 of the order made in C.R.P.(MD)No.379 of 2016, the learned counsel appearing for the petitioners would contend that having made a representation that the legal representatives of the other plaintiffs sought to be impleaded, no such application has been filed. Hence, it is the contention of the revision petitioners that the execution petition is not maintainable.

6. I am of the considered view that such contention has no force in the eye of law. Admittedly, the revision petitioners are the judgment debtors against whom, the delivery has been ordered. Merely because all the co-owners have not been included in the execution petition, judgment debtors cannot object such execution petition as not maintainable. Admittedly, the suit has been filed by both co-owners. It appears that during the pendency of the suit, one of the plaintiffs had died and the suit was decreed against the respondents. Hence, filing an application by one of the decree holders to recover the possession on the basis of the decree is not prohibited under law.

7. The further contention of the learned counsel appearing for the revision petitioners is that the right of other legal representatives of the deceased will be affected. Mere one co-owner exercising right to recover the property on behalf of the other co-owners will not give him absolute right over the entire property. Hence, I could not find any merits in this Civil Revision Petition. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar (CS-I)

To

1. The District Munsif, Thiruvaiyaru,  
Thanjavur District.

+1 CC To MR.B.JAMEEL ARASU, Advocate SR. NO. 83754

**C.R.P. (NPD) (MD) No.1957 of 2018**