



C.R.P. (NPD) No.1635 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2022

DELIVERED ON : 08.11.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. No.1635 of 2006
and M.P.No.1 of 2006

Nachimuthu Gounder (Died)

1.N.Nachammal

W/o Late Nachimuthu Gounder

2.Thambu

S/o Late Nachimuthu Gounder

3.Maniyam

S/o Late Nachimuthu Gounder

4.Ponnusamy

S/o Late Nachimuthu Gounder

5.Santhamani

D/o Late Nachimuthu Gounder

6.Baby

D/o Late Nachimuthu Gounder

... Petitioners/Respondents/
Judgment Debtors.

Vs.

Shanmugam (Died)

1.Mani

S/o Muthusamy Thevar

No.1/Petitioner

... Respondent/

Decree Holder



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2.K.Saminathan
S/o Karuppasamy Thevar

**(2nd respondent brought on record
vide order of this Court dated 17.08.2022
made in C.M.P.No.5029 of 2022)**

... Respondent No.2

Prayer : Civil Revision Petition filed under Section 115 of CPC,
against the order passed by the learned Judge in E.P.No.100 of 2005 in
O.S.No.80 of 1997 dated 02.08.2006, on the file of the District Munsif
Court, Tiruppur.

For petitioners : Ms.H.Sujithra for
Ms.P.T.Ramadevi

For 1st respondent : Mr.N.S.Sivakumar

ORDER

This Civil Revision Petition has been filed challenging the order
passed by the learned Judge in E.P.No.100 of 2005 in O.S.No.80 of
1997 dated 02.08.2006, on the file of the District Munsif Court,
Tiruppur.



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2.Facts of the case in nutshell is as follows:-

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Suit in O.S.No.80 of 1997 was filed by the respondent/plaintiffs for permanent injunction and other reliefs. The Trial Court decreed the suit in favour of the respondent/plaintiffs on 28.02.2002. As against the same, the petitioners herein filed an appeal in A.S.No.16 of 2002 and the same was partly reversed by the Judgment and Decree dated 04.09.2003, in so far as grant of permanent injunction and confirmed the decree in so far as mandatory injunction is concerned. On the strength of the Judgment and Decree made in the appeal, the respondent/plaintiffs filed E.P.No.100 of 2005 to execute the Judgment and Decree. On 02.08.2006, the Executing Court ordered delivery of the properties. Before the executing court, it was contended by the petitioners/ defendants that the respondent/plaintiffs has no *locus standi* to continue the Execution Proceedings and the rights were transferred to third parties. Subsequently, delivery was also ordered. Aggrieved over the same, the present Civil Revision Petition has been filed.



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3.The learned counsel for the petitioners/defendants would submit that the respondent/Mani executed sale deed in favour of the 2nd respondent/ K.Saminathan and the same will not entitle the respondents to get the decree executed. It is further contended that the execution petition is not maintainable insofar as the decree stands transferred to the purchaser in view of the terms of the sale deed declaring that the purchaser shall be entitled to take possession and therefore, the order is without jurisdiction. He would further submit that though the 1st respondent/plaintiff is the decree-holder, he has transferred his interest in the properties to K.Saminathan (impleaded 2nd respondent), by means of registered documents. The said documents have been marked as Exs.R.1 and R.2. According to the defendants, by virtue of transfer of rights in respect of the schedule properties, the plaintiff is not entitled to get the decree executed and he has no right to maintain the Execution Petition.



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4. Per contra, the learned counsel for the 1st respondent/plaintiff,

would submit that even though the interest of the properties were transferred by the decree-holder to a third-party transferee, until the name of the transferee is brought to record, the decree holder has got every right to execute the decree so long as his name continues to appear in the execution petition as if he is the party competent to execute the decree.

5. When an execution petition is filed, the judgement debtor, is bound to hand over possession of the suit property in the execution proceedings. Merely because the decree holder has sold the property to some third party during the pendency of the execution proceedings, that does not mean that he is not entitled to continue the execution proceedings and recover possession of the suit property. It is settled position of law that the executing court cannot go beyond the decree and consider its correctness or validity, unless it is shown that the decree was passed by a Court having lack of jurisdiction.



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6. The main issue involved in this Civil Revision Petition is that the decree holder/1st respondent/plaintiff has transferred his interest in the properties by means of registered documents by virtue of the deeds, marked as Exs.R.1 and 2. So, according to the revision petitioner/defendant, when the property has been transferred to the 2nd respondent, the execution petition filed by the plaintiff, is not maintainable.

7. It is pertinent to point out herein that the 2nd respondent herein/ subsequent purchaser has been impleaded only in this CRP filed by the defendant and not in any other proceedings.

8. The correctness of the finding of the Court below as regards the validity of the decree, was not challenged in the appeal by the revision petitioner. In the case of [Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman](#) (1970)1 SCC 670, J.C. Shah, J. speaking for a three-Judge Bench of the Apex Court made the following pertinent



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observation in connection with the jurisdiction of the executing court, when called upon to execute the decree and on the question as to under what circumstances the executing court can go behind the decree sought to be executed. A court executing a decree cannot go behind the decree; between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties. It is not for the Executing Court to decide whether the Decree passed is legal or illegal or whether it is erroneous or not; Since the decree is of a Court with jurisdiction, the executing Court is bound to execute the decree as it stands.

9. The suit is decreed in favour of the Plaintiff. So, on the basis of the decree passed in the suit, the Executing Court viewed that the rights stands transferred to the purchaser in view of the terms of the sale deed declaring that the purchaser shall be entitled to take



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possession. In the light of settled proposition of law the executing court cannot go behind the decree and that the Executing Court cannot entertain any objection that the decree was incorrect in law or in facts.

10. In view of the foregoing discussion, the objections preferred by the revision petitioner/judgment debtors are not tenable and are rejected. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

08.11.2022

Jer/nvsri

Index :Yes/No

Internet:Yes/No

Speaking order/Non-speaking order



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To

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1. The learned Judge, District Munsif Court, Tiruppur.
2. The Section Officer, V.R.Section, High Court, Madras.



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J.NISHA BANU, J.

Jer/nvsri

ORDER
MADE IN
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