



C.R.P.No.593 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 20.10.2022**

**CORAM:**

**THE HONOURABLE Mr. JUSTICE S.SOUNTHAR**

**C.R.P.No.593 of 2022**

Seenivasalu Naidu

.. Petitioner

Vs.

1.Nallammal (Deceased)

2.Saroja (Deceased)

3.Kanthammal

.. Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the fair and decreetal order dated 08.10.2021 passed in E.P.No.43 of 2020 in O.S.No.411 of 2003 on the file of the Principal District Munsif, Tiruvannamalai.

For Petitioner : Ms.S.Suseela Devi

For Respondents : Mr.K.Prabhakaran for M/s.R.Rajaraman

**ORDER**

This Civil Revision Petition has been filed challenging the order passed by the Court below, dismissing the execution petition filed by the petitioner/decreed holder seeking execution of the decree for recovery of possession passed in O.S.No.411 of 2003.



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WEB COPY 2. According to the petitioner, pending execution petition the first respondent/JD1 died on 12.05.2021. Even prior to that she was set *ex-parte* in the execution petition and therefore, the petitioner herein/decreed holder filed a memo dated 12.08.2021, seeking exemption from bringing her legal representatives on record. The said memo was recorded and the petitioner was given exemption from bringing legal representatives of the deceased first respondent by an order dated 12.08.2021. It is also stated that the second respondent herein died even prior to filing of the execution petition. The petitioner herein filed a memo dated 12.03.2020 seeking to not press the execution petition against the second respondent/JD2, who died even prior to filing of execution petition. Thereafter, the execution petition went on against first and third respondents and they resisted the execution petition by disputing the description of the suit properties and also raised a plea of limitation. Both these pleas were neglected by the executing Court. However, execution petition was dismissed on the ground that the revision petitioner failed to implead the legal representatives of the deceased second respondent and hence the execution petition was liable to be dismissed.



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3. The learned counsel for the petitioner submitted that the execution petition was already non pressed by the petitioner as against the second respondent and the petitioner seeks no relief against the second respondent. When the execution petition was proceeded only as against the first and third respondent, the Court below ought not to have dismissed the execution petition in toto as against all the respondents.

4. The learned counsel for the third respondent submitted that the decree passed against the respondents is inseparable and hence the petitioner/deGREE holder is not entitled to execute the decree against the first and third respondents alone.

5. Heard the arguments of the learned counsel for the petitioner and the respondents and perused the typed set of papers.

6. This Court is not convinced with the submissions made by the learned counsel for the third respondent. The third respondent is a party to the decree and it is binding on him. It is not open to him to say that the decree is not executable for failure of the petitioner to implead the original legal representatives of the deceased second respondent/second defendant. It is also not open to the third respondent/JD3



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to raise the plea that the decree is inseparable and hence it is not executable without

impleading the legal representatives of the deceased second respondent. In view of the fact that execution petition was not pressed by the revision petitioner by filing a memo as early as 21.03.2021, there is no impediment for the petitioner to execute the decree for recovery of possession as against the first and third respondent. It is also pertinent to mention that in the description of the properties found in the schedule to the plaint, it was specifically mentioned that second item of 'B' schedule was exclusively occupied by the third respondent and the said fact was also reiterated by third respondent in his affidavit dated 27.08.2021 filed before the execution Court, wherein it was specifically mentioned by the third respondent that he was in exclusive possession of the second item of 'B' schedule property. Therefore, objection made by the learned counsel for the respondents that the decree is inseparable cannot be accepted, in the light of his admission that he was in exclusive possession of item 2 of 'B' schedule.

7. In view of the above discussions, the order passed by the Court below is liable to be set aside. Therefore, the fair and decreetal order dated 08.10.2021 passed in E.P.No.43 of 2020 in O.S.No.411 of 2003, on the file of the Principal District Munsif, Tiruvannamalai is set aside and the Civil Revision Petition is



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allowed. There shall be no order as to costs.

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Index: Yes/ No

Speaking Order / Non-Speaking Order  
gd

To

The Principal District Munsif,  
Tiruvannamalai.



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**S.SOUNTHAR, J.**

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