



**C.R.P.(PD)(MD)No.1604 of 2021**

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 29.02.2024**

**CORAM:**

**THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**

**C.R.P.(MD)No.1604 of 2021**

and

**C.M.P.(MD)No.8702 of 2021**

1. P.Yesudhas,

2. F. Mary,

... Petitioners

Vs.

1. M.Thuraimony (Died)

2.The Secretary,

No. 4336, Cooperative Housing Society Ltd.,

Colachel.

3.Selvarani,

4.Titus Jebaprabhu

5.Buetlin Vincy Rani

6.Sweetlin Hency Rani

7. Raju Martin Durai,

Respondents 3 to 7 are brought on record as LR's of  
the deceased first respondent vide order dated 16.06.2023.)

... Respondents

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PRAYER : Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order dated 03.09.2021 passed in E.P.No. 12 of 2020 in O.S.No. 69 of 1997 on the file of the learned Subordinate Judge, Eraniel.

For Petitioners : Mr.M.P.Senthil

For Respondents : Mr.M.R.Sreenivasan for R3 to 7

: No appearance for R2

### **ORDER**

This Civil Revision Petition is filed aggrieved by the order passed in E.P.No.12 of 2020 ordering for sale of the residential house of the petitioners herein, in execution of a decree passed as early as on 05.11.2003 allowing the Execution Petition.

2. The petitioners herein are the judgment debtors and respondents in the Execution Petition. The suit filed by the respondent No.1 herein was decreed by the lower Appellate Court on 05.11.2003, for recovery of an amount of Rs.65,000/- together with interest. The said decree has admittedly attained finality. For the execution of the said decree, the respondent No.1 filed E.P.No.



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12 of 2020, on the file of the Court of learned Subordinate Judge, Eraniel and the said petition was allowed by the Executing Court.

3. The learned counsel for the petitioners submits that the petitioners are agricultural coolies and solely depending on the amount paid for their agricultural work for their livelihood and therefore, they are entitled for benefit under Section 16 (1)(c) of the Code of Civil Procedure, which prohibits attachment of the house of agriculturists or agricultural coolies from attachment. The petitioners have taken the very same plea in the Executing Court, the learned Executing Court, on examining both side oral and documentary evidences available on record, came to the conclusion that the petitioners in their cross examination admitted that the first petitioner has been carrying out quarry contract and their children have settled in Abroad and that they have sufficient means to repay the decretal amount, but, they are deliberately avoiding the same. Thus, the learned Executing Court has come to the conclusion that the valid decree passed by the competent Court should not be allowed to frustrated by abusing the process of law, has been pleased to allow the Execution Petition.



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4. The learned counsel for the petitioners placed reliance on the decisions reported in ***1982-SCC-Online-AP-203 (Duggirala Lalarama Krishnayya V. Arokapudi Jagannadha Rao)*** and reported in ***2005-4-CTC-194 (Dharma V. Chinnathambi)***. This Court have gone through the said decisions relied upon the learned counsel for the petitioners and the said decisions have no application to the present case. In the instant case, the trial Court on arriving at a conclusion on the facts of the case and basing upon material available on record to the effect that the petitioners herein have sufficient means to repay the decretal amount and they are not entitled for the benefit under Section 16(1)(c) of the Code of Civil Procedure.

5. This Court is inclined to acknowledge the view taken by the Execution Court to the effect that the decrees passed by the competent Court should not be allowed to frustrated by the litigant judgment debtor taking advantage of the techniculier under law to defeat the valid decrees.



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6. This Court having gone through the order passed by the learned Executing Court and on thoroughly considering the arguments of the learned counsel for the petitioner, does not find any reason to interfere with the order and accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**29.02.2024**

Neutral Citation: Yes / No  
Index : Yes / No  
Internet : Yes/No  
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To

- 1.The Subordinate Judge, Eraniel.
- 2.The Secretary,  
No. 4336, Cooperative Housing Society Ltd.,  
Colachel.
- 3.The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**MUMMINENI SUDHEER KUMAR, J.**

LS

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