



C.R.P(MD)No.1778 of 2023

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

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**DATED:03.01.2024**

CORAM

**THE HON'BLE MR.JUSTICE G.ILANGO VAN**

**C.R.P(MD)No.1778 of 2023**

**and**

**C.M.P.(MD)No.8849 of 2023**

Ramanathapuram Samasthanam  
Devasthanam, through its Diwan,  
Office at Aranmanai,  
Ramnad.

.. Petitioner/3<sup>rd</sup>Respondent/  
3<sup>rd</sup> Defendant

Vs.

1. C.Palanivel

.. 1<sup>st</sup> Respondent/Petitioner/  
Plaintiff

2.M.Ramu

3.T.Ramu

.. Respondents 2&3/  
Respondents 1&2/  
Defendants 1&2

**Prayer:** Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order passed by the District Munsif Court, Thiruvadanai in E.P.No.1 of 2021 in O.S.No.52 of 2003, dated 30.06.2023 by allowing the Civil Revision Petition.

For Petitioner : Mr.Lakshmi Gopinathan

For Respondents : Mr.A.Balaji

for R1



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: Mr.I.Srihari Suriya

for R3

: No appearance for R2.

### **ORDER**

This Civil Revision Petition has been filed challenging the order passed by the learned District Munsif, Thiruvadanai in E.P.No.1 of 2021 in O.S.No.52 of 2003, dated 30.06.2023.

2. The District Munsif Court, Tiruvadanai in O.S.No.52 of 2003 by judgment dated 17.06.2008, decreed the suit declaring that the plaintiff's title over the suit property and consequential permanent injunction was also granted. Apart From that for the use and occupation of the property by the defendants, rent was also fixed from January 2003 till they handover the suit property. Delivery of possession was also granted, against which A.S.No.55 of 2008 was preferred by the third defendant, who is the petitioner herein. The Appellate Court passed the interim order dated 22.12.2008 directed the plaintiff to amend the plaint and to pay the deficit Court fee. The operative portion of the Appellate Court order reads as under:



*“1) The respondent/plaintiff is directed to take appropriate steps in original court to rectify the mistakes in the Amended plaint and decree.*

*2) The original court is required to make corrections in the certified copies decrees obtained by both parties.*

*3) The original court's decree copy filed along with this memorandum of Appeal is ordered to be returned to the Appellant/defendant.*

*4) After get it rectified from the original court the Appellant and original court defendant shall file the decree copy.*

*5) On filing of the rectified decree copy the Appeal shall be revived automatically and with the directions, this Appeal is closed.”*

3. Against the above said order passed in the appeal, it appears that the first respondent/plaintiff preferred C.R.P(MD)No.1110 of 2009 before this Court. By order dated 09.04.2011, this Court dismissed the same with the following direction:

*“10. Since the suit is of the year 2003 and the appeal has been filed against the judgment and decree made on 17.06.2008, I direct the plaintiff to carry out necessary corrections and amendment for revival of the Appeal suit and for completion of the final*



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*hearing, within four weeks from the date of receipt of a copy of this order. On such rectification, the plaintiff shall report to the First Appellate Court within four weeks thereafter, so as to enable the first appelle court to take up the first appeal and dispose of the same on merits within a period of six month thereafter.”*

4. Thereafter, the 1<sup>st</sup> respondent/plaintiff herein took steps to amend the decree by way of paying the deficit Court fee and the original plaint by order dated 21.07.2012 in IA.No.184 of 2012. The decree was rectified. Thereafter, the appeal was not revived by the Appellate Court since the learned counsel for the appellant did not intimate the compliance of the direction already passed.

5. Without reviving the appeal proceedings, it appears that EP.No.1 of 2021 was preferred by the 1<sup>st</sup> respondent/plaintiff seeking execution of decree wherein the present revision petitioner also appeared and made objection. There was non-compliance of the direction already issued. But however Execution Court did not accepted the objection made by the revision petitioner and ordered execution of the decree against which this civil revision petition has been preferred.



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6. The learned counsel for the 1<sup>st</sup> respondent/plaintiff submitted that even as per the observation made by the Execution Court, the compliance of the order was reported to the Appellate Court. It was also known to the revision petitioner herein. They have known all those facts but the appellant did not prosecute the appeal. It is referred in para 4 (ii) of the order which reads as follows:

*“ii. Further, as a consequence of the petition filed by the decree-holder the decree was rectified by the original court by the order dated 21.07.2012 and the counsel for the decree-holder stated that the rectification of the decree was reported to the 1<sup>st</sup> Appellate court's registry. The main contentions of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are the decree-holder failed to comply with the order of the High Court by not reporting the rectified decree. It is pertinent to state the settled principle of law that even mere pendency of appeal will not operate as a stay for the execution proceeding unless and until there is an order of stay. Thus this court concludes that this decree is executable as per the wings of law.”*

Thus the Execution Court held that the rectified decree was intimated to the revision petitioner. Whereas it was represented that he is not aware of the said fact. The intimation has sent to the Appellate Court, it is the duty



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of the Appellate Court to revive the appeal proceedings by issuing notice to the parties. But it is not revived. Hence, the mistake committed by the appellate Court should not penalize the parties.

7. Considering the limited request made by the revision petitioner, this Civil Revision Petition is partly allowed with the following directions:

(i) The Appellate Court, namely, the learned Sub Judge, Ramanathapuram shall revive the appeal in A.S.No.55 of 2008 on its file and revival must be intimated to the parties by mentioning specific date for hearing.

(ii) Though a direction was already issued by this Court by order dated 09.04.2011 in CRP(MD)No.1110 of 2009, because of the above said development, further direction is hereby issued to the learned Sub Judge, Ramanathapuram to dispose the appeal in A.S.No.55 of 2008 within a period of two months from the date of receipt of a copy of this order. Compliance must be submitted to the Registry.

(iii) Both the parties are directed to cooperate with the appellate Court proceedings to comply this order.



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(iv) In view of the above directions, the execution proceedings in E.P.No.1 of 2021 in O.S.No.52 of 2003, on the file of the learned District Munsif, Thiruvadanai, shall be kept in abeyance till the disposal of the appeal in A.S.No.55 of 2008 on the file of the learned Sub Judge, Ramanathapuram.

Consequently, connected miscellaneous petition is closed.

**03.01.2024**

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

***Note: Issue order copy on 08.01.2024.***

To

1. The Sub Judge,  
Ramanathapuram.

2. The District Munsif,  
Thiruvadanai.



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**G.ILANGO VAN, J.**

PJL

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