



C.R.P.(MD)No.1897 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.1897 of 2023

and

C.M.P.(MD)Nos.11654 of 2023

Ramadaoss (Died)

... Petitioner/ 1st Respondent/ 1st Plaintiff

1.R.Vijayalakshmi

2.R.Sundar

3.R.Arun

... Petitioners 1 to 3/ Respondents 2 to 4/ LR's of
1st Respondents

(Petitioners are represented by their Power
Agent, T.Nellaikumar)

Vs.

T.P.Kathiresan (Died)

... 1st Respondent/ 1st Petitioner

1.Bhuvaneswari

2.Sivakameshwari

3.Saratha Devi

4.Saravanan

5.Lalithambigai

6.Senthilkani

7.Abirami

8.Sankareswaran

9.Ramachandra Ganesh

... Respondents 8 & 9/ Respondents 5 & 6/
LR's of 1st Petitioner



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PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the order, dated 24.07.2023, passed in E.P.No.26 of 2010 in O.S.No.10 of 2007 on the file of the District Munsif Court, Sivakasi.

For Petitioners : Mr.A.Sivaji

For R1 to R5 & R7 : Mr.S.Parthasarathy

For R6, R8 and R9 : No appearance

ORDER

The present civil revision petition is filed by the plaintiff / tenant against the order, dated 24.07.2023, passed in E.P.No.26 of 2010 in O.S.No.10 of 2007 on the file of the District Munsif Court, Sivakasi.

2. The suit in O.S.No.10 of 2007 was filed by the tenant Mr.Ramadass against the landlord Mr.T.P.Kathiresan. Since both the plaintiff and the defendant died, their legal heirs are impleaded as parties. For the sake of convenience, the parties are referred as landlord Mr.T.P.Kathiresan and tenant Mr.Ramadass. When legal heirs were impleaded the parties are referred as legal heirs of landlord and legal heirs of tenant.

3. The present litigation have chequered history. The facts are that the landlord Mr.T.P.Kathiresan had let the suit property admeasuring 7 cents for lease to the tenant Mr.Ramadass to use the place as parking place for the college buses by



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erecting iron shed. Interestingly the tenant Mr.Ramadass had filed the suit in O.S.No.10 of 2007 inter alia praying for permanent injunction restraining the landlord Mr.T.P.Kathiresan from interfering in the peaceful possession and enjoyment of the suit property by the tenant Mr.Ramadass. Pending suit the parties had filed compromise memo in I.A.No.153 of 2010 in O.S.No.10 of 2007, wherein it was agreed by the tenant Mr.Ramadass that he would remove the iron shed before 30.06.2010 and hand over the vacant possession of the suit property, failing which the landlord Mr.T.P.Kathiresan is entitled to evict the tenant Mr.Ramadass by filing execution petition. Thereafter, the said compromise was referred to Lok Adalat, wherein the settlement memo was recorded and an award dated 31.03.2010 was passed in Lok Adalat and the same is recorded in B Diary as “the suit is disposed of in accordance with terms of settlement entered into between the parties at Lok Adalat and decree is ordered to be drafted in accordance with the award passed by the Lok Adalat”. Thereafter decree dated 31.04.2010 was passed. Since the tenant/plaintiff had not vacated the premises as per compromise terms, the landlord/defendant had filed execution petition in E.P.No.26 of 2010.

4. Meanwhile, two sons of landlord Mr.T.P.Kathiresan namely T.P.K.Saravanan and K.Senthilnathan had filed O.S.No.1 of 2008 on the file of District Court, Srivilliputtur for partition of the schedule of properties claiming 1/5th



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shares each and to allot 2/5th shares to them and the remaining 3/5th shares to Mr.T.P.Kathiresan and his other sons namely K.Sankareswarn and Ramachandra Ganesh. In the suit, the tenant Mr.R.Ramadass and his brother Mr.Solaisamy were arrayed as the defendants. Pending suit the said K.Sankareswarn and Ramachandra Ganesh had entered into sale agreement to sell their share in the suit property to the tenant Mr.R.Ramadass. A preliminary decree dated 06.01.2011 was passed by the District Court, Srivilliputtur in O.S.No.1 of 2008 on 06.01.2011. Meanwhile, tenant Mr.R. Ramdass had purchased 2/5th shares from the said K.Sankareswarn and Ramachandra Ganesh through two separate sale deeds dated 17.03.2011.

5. Then to execute the Judgment and Decree passed in O.S.No.10 of 2007, the landlord Mr.T.P.Kathiresan had filed E.P.No.26 of 2010 to evict the tenant Mr.R.Ramadass. In the light of the purchase of 2/5th shares from the said K.Sankareswarn and Ramachandra Ganesh, the tenant Mr.R.Ramadass had filed E.A.No.27 of 2011 under Section 47 of the Code of Civil Procedure, 1908 to declare the decree passed in O.S.No.10 of 2007 on 31.03.2010 as inexecutable. Further the tenant Mr.R.Ramadass had also filed O.S.No.142 of 2010 on the file of Principal District Court, Virudhunagar District at Srivilliputtur to declare the award passed by the Lok Adalat on 31.03.2010 as null and void. During the interregnum, daughters of the landlord Mr.T.P.Kathiresan had filed O.S.No.38 of 2012 before the



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Additional District Court, Srivilliputtur claiming 1/10th share each and the O.S.No.

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38 of 2012 is still pending.

6. In the meanwhile the E.A.No.27 of 2011 in E.P.No.26 of 2010 in O.S.No.10 of 2007 filed by the tenant Mr.R.Ramadass was allowed on 20.10.2011 and the same was challenged in C.R.P.(NPD)(MD)No.2275 of 2011 by landlord Mr.T.P.Kathiresan and he had also filed C.R.P.(PD) (MD)No.2368 of 2010 to strike off O.S.No.142 of 2010 filed by the tenant Mr.R.Ramadass (the suit in O.S.No.142 of 2010 was filed to declare the Award dated 31.03.2010 before the Lok Adalat as null and void). During the pendency of the said Civil Revision Petitions, the original plaintiff and the defendant in O.S.No.10 of 2007 namely, Mr.R.Ramadass and Mr.T.P.Kathiresan died and they were represented by their respective legal heirs. By the common order dated 27.02.2020, both the Civil Revision Petitions filed by the late Mr.T.P.Kathiresan were allowed. In the result, the order dated 20.10.2011 allowing the E.A.No.27 of 2011 filed under Section 47 of CPC was set aside. And the plaint filed in O.S.No.142 of 2010 was struck off. The relevant paragraph is extracted hereunder:

"16. As already pointed, the suit in O.S.No.142 of 2010 is clearly not maintainable in view of the provisions of Section 21 of the Legal Services Authorities Act, 1987 as well as the judgments of the Hon'ble Supreme Court referred to supra. The said suit should not be allowed to be on file even for a

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moment. When such dereliction is brought to the notice of the High Court, the High Court cannot, in my considered opinion, close its eye and drive the parties to the regular remedy under Order 7 Rule 11 of the Civil Procedure Code. There are cases, where the High Court in exercise of the power under Article 227 of the Constitution of India, had even struck off suits, which amount abuse of process of law or which are clearly barred by law. The power under Article 227 of the Constitution of India is so wide that it can be exercised by the High Court to redress the grievance of the litigant, which is genuine. This power also encompasses in itself the power to prevent any abuse of process of Court. The suit in O.S.No.142 of 200 in my considered opinion is a clear abuse of process of Court.

.....

29. In my considered opinion that reliance placed by the Executing Court on the judgment in **Savithri Dei and others vs. Saratchandra Rao and others** [1996 (3) SCC 301] is wholly misconceived. The other decision that is relied upon by the Executing Court in **Imambi Vs. Azeeza Bee** [2002 (2) L.W. 808] dealt with the case, where the tenant entered into an agreement of sale with the landlord in respect of entire tenanted premises. The Hon'ble Supreme Court held that upon such agreement the tenant would lose the character of tenant and he would part take the character of an agreement holder in possession. Therefore the Hon'ble Supreme Court held that the decree for eviction cannot be executed against such tenant.

30. It is not the case on hand. Here is a case, where the tenant, who had suffered a decree for possession had purchased an undivided interest in the property



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from two of the coparceners. The property being undivided, the tenant cannot claim to be in possession of the entirety of the property and contend that the decree against him for eviction becomes inexecutable as a whole. The remedy as pointed by the Hon'ble Supreme Court is for the purchaser to seek partition and get a definite share allotted to him and his right to possession will accrue only from the date, on which he gets the definite share allotted to him. So long as the definite share is not allotted to him, he cannot resist execution of a validly obtained decree.

31. I am therefore of the considered opinion that the Executing Court was in error in allowing application under Section 47 of the Civil Procedure Code at the instance of the tenant, who had suffered a decree for eviction that too a compromise decree before the Lok Adalat. The order of the Executing Court allowing the Section 47 application, to say the least, is materially irregular and is against all principles of the law laid down by the Hon'ble Supreme Court. In view of the same, I have no hesitation to set aside the order. Accordingly, the order of the Executing Court in E.A.No.27 of 2011 made on 21.10.2011 is set aside. The application in E.A.No.27 of 2011 will stand dismissed. The execution proceedings in E.P.No.26 of 10 will stand restored and there will be a direction to the Executing Court to proceed with the execution petition in accordance with law and dispose of the same within a period of three months from the date of receipt of copy of this order and report such disposal to this Court. In fine, these Civil Revision Petitions are allowed. No costs."

7. Against the said orders, the legal heirs of tenant Ramadass had preferred

S.L.P.Nos.8663-8664 of 2020 and the same was dismissed on 27.02.2020.

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8. In the meanwhile, due to the death of original plaintiff and original, E.A.No. 1 of 2020 was filed in E.P.No.26 of 2010 to implead the legal heirs. But the said petition was dismissed by the executing court since already the legal heirs were impleaded in C.R.P.(MD)No.4274 to 4276 of 2017 and a separate enquiry is not necessary. Aggrieved over the same the legal heirs of tenant Ramadass had filed C.R.P.(MD)No.881 of 2020 and the same was dismissed on 17.03.2022.

9. Having suffered an order in C.R.P.(NPD)(MD)No.2275 of 2011 and C.R.P. (PD)(MD)No.2368 of 2010, the legal heirs of tenant Ramadass had made another attempt by filing W.P.(MD) No.14899 of 2022, to declare the Award dated 31.03.2010 passed by the Lok Adalat as null and void and for consequential direction to not to enforce the Award dated 31.03.2010 by evicting the petitioners and the same was dismissed vide order dated 13.09.2022, wherein it is held as under:

“Conclusion:

41. In view of the above said discussion, the writ petitioner has not established any vitiating factor much less fraud, misrepresentation or coercion to vitiate the compromise memo entered into between the parties on 31.03.2001, which was approved by the Lok Adalat by their award on the said date. The other grounds of attack raised by the writ petitioner though have been dealt with above will not come to the rescue of the writ petitioner for challenging the award. In view of the above said discussion, the writ petition stands dismissed.



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There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed."

10. Having suffered orders in civil revision petition, writ petition and SLP as referred supra, unsatisfied with the same the legal heirs of tenant Mr.Ramadass had filed Review Application in Rev.Aplw.(MD) No.77 of 2022 against the order passed in W.P.(MD)No.14899 of 2022 and the same was dismissed on 30.09.2022, wherein the Court has granted liberty to the legal heirs of tenant Ramadass to challenge the execution proceedings independently on any legal grounds, if it is available to them and the relevant paragraph is extracted hereunder:

"5. After hearing both the sides, order was reserved on 25.08.2022. Thereafter, two applications have been filed by the writ petitioner. Those two applications have not been numbered and returned by the registry after delivery of the order. By way of first application, the review petitioner seeks to include a prayer to challenge the execution proceedings arising out of the Lok Adalat award. This Court, by its order, dated 13.09.2022 has upheld the validity of the Lok Adalat award. Hence, the challenge to the execution proceedings independently may not arise for consideration. The question of considering a review application would arise only if an error apparent on the face of the record is brought to the notice of the Court and the said error if rectified, would change the result of the



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writ petition. In the present case, the inclusion of the prayer challenging execution proceedings would not in any way alter the result of the writ petition and the same could never be considered to be an error apparent on the face of the record. That too, these two applications have been filed after reserving the order. Hence, I do not find that this review application attracts the ingredients under Order 47 Rule 1 of Code of Civil Procedure. 6. Hence, this Review Application stands closed.

The petitioners are always at liberty to challenge the execution proceedings independently on any legal grounds, if it is available to him. No costs. Consequently, connected Miscellaneous Petitions are closed."

11. Another attempt was made by the legal heirs of the tenant Ramadass by filing C.M.P.(MD)No.8875 of 2023 in C.R.P.(MD)No.2275 of 2011 inter alia praying for modifying the order dated 27.02.2020 passed in C.R.P.(MD)No.2275 of 2011 and the same was dismissed on 21.07.2023, wherein it is held as under:

"The prayer in this petition is for modification of the order dated 27.02.2020.

2. Mr.Sricharan Rangarajan, Learned Senior Counsel appearing for the petitioner would concede that an SLP against this order has been dismissed. No



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doubt if is open to this Court to review an order even the SLP has been dismissed, if it had been dismissed without going into the merits.

3. But a review has to be sought within the time frame. I have allowed the revision against an order allowing an application under Section 47 of the Civil Procedure Code made by the Executing Court and I have specifically recorded that the remedy of a tenant, who had suffered an eviction order, who had purchased a portion of the property, **is to surrender possession and seek partition of allotment of a specific portion of the property** to him. He cannot retain possession of the entire property and contend that the decree is inexecutable. The prayer now made seeking a modification requesting that a portion of the property be allotted to him by the executing court is in effect seeking a review of the order. The prayer is beyond the scope of modification and even if it is to be treated as a review, it is barred by time. Hence this petition stands rejected."

12. Thereafter, another attempt was made based on the liberty granted in Rev.Aplw.(MD)No.77 of 2022, legal heirs of tenant Ramadass had filed unnumbered E.A.-- of 2022 in E.P.No.26 of 2010 in O.S.No.10 of 2007 under Section 47 of the Code of Civil Procedure. When already the plea raised in the unnumbered EA was elaborately considered in C.R.P.(MD)No.2275 of 2011, the said E.A. is only to



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drag on the proceedings. The execution court had considered the plea and the said EA was rejected vide order dated 23.11.2022, which was challenged in C.R.P. (MD)No.81 of 2023. The said CRP was dismissed vide order dated 30.06.2023 after elaborately considering the contentions of the legal heirs of the tenant Ramadass.

13. Now, the present C.R.P.(MD)No.1897 of 2023 is filed against the order dated 24.07.2023 passed in E.P.No.26 of 2010. The said E.P. was filed under Order 21 Rule 35 read with Section 151 of C.P.C. by the landlord T.P.Kathiresan (now is prosecuted by the legal heirs of the defendant T.P.Kathiresan) to direct the legal heirs of tenant Ramadass to remove the iron shed and hand over vacant possession of the suit property. After hearing the arguments of both the sides, the Executing Court had directed the legal heirs of tenant Ramadass to remove the iron shed and hand over vacant possession of the suit property. Aggrieved over the same the present CRP is filed.

14. The contention of the revision petitioners is that when they had purchased two shares from the coparceners, hence they are entitled to actual possession of the property. Further when the partition suit is pending, they cannot be directed to remove the iron shed and hand over vacant possession. On the other hand, the learned Counsel appearing for the respondents submitted that only two shares are sold and the other three shares are still with the landlord/respondents. Further after



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the demise of the said T.P.Kathiresan, his daughters had filed suit claiming share in the suit property. If at all the revision petitioners are entitled to share, it is only 2/10th share, since the remaining shares 8/10th share belongs to other legal heirs of the landlord T.P.Kathiresan. Therefore, the revision petitioners are not entitled to possession of the land in entirety. Further, it is an admitted fact that a decree was passed based on the compromise between the parties, which was recorded in Lok Adalat and an award was also passed. In the award, the said Ramadaoss was directed to hand over the entire property. Further, the said Ramadaoss and his legal heirs have not filed any separate partition suit to sub divide the share belonging to the said two sons.

15. After hearing the arguments, this Court had given its anxious consideration. It is seen that the O.S.No.10 of 2007 was filed for evicting the lessee from the suit property. Pending suit the parties had compromised and the same is confirmed through decree. Thereafter the landlord had filed E.P.No.26 of 2010 to execute the decree. In the meanwhile, two sons of the landlord had filed suit for partition, pending the partition suit, the other two sons had sold their shares in favour of the lessee. Based on the sale of undivided two shares, the lessee / revision petitioner are claiming to hold the entire property. It is settled principle of law that the purchaser who had purchased undivided interest from the coparceners are not



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entitled to claim possession unless he had filed suit for partition. In the present case the property being undivided, the tenant who had purchased two shares from the coparceners cannot claim possession of the undivided shares, more so cannot claim to hold the entirety property. The remedy as stated supra is to seek partition and get a definite share allotted to him and his right to possession will accrue only from the date, on which he gets the definite share allotted to him. So long as the definite share is not allotted to him, he cannot claim any possession.

16. The learned Counsel appearing for the revision petitioners relied on the judgment rendered in the case of *Ramdas Vs Sitabai and others* in *Civil Appeal No. 6508 of 2005* reported in *2009 (7) SCC 444* and submitted that the purchaser is entitled to possession of the portion purchased through sale deed. This Court is of the considered opinion that even according to the judgment the purchaser cannot have a better title than his vendor and the purchaser cannot claim in respect of the entire property which is illegal and without sanction of law. The subsequent purchaser is entitled to undivided shares if the shares are divided as per decree and not to the entire property. The relevant portion is extracted hereunder:

"14.It could not also be disputed that all the aforesaid 4 plots of land which are the suit property were joint property and therefore, the plaintiff-Sitabai and defendant No. 1-Sudam owned and possessed half undivided share each in all



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the 4 properties. The defendant No.1- Sudam who is the brother of the plaintiff-Sitabai could not have therefore sold the entire Gat No. 19 area admeasuring 2.56H of Mouza Padoli in favour of the defendant No. 3-Ramdas (appellant herein) in as much as the aforesaid land was undivided and the plaintiff-Sitabai and defendant No. 1-Sudam were two co-sharers in the said property. In that view of the matter, the High Court was correct and legally justified in declaring the plaintiff-Sitabai as the owner and holder of half of the shares in all the four aforesaid properties which are undivided. The defendant No.1-Sudam being a co-sharer could not have sold by a registered sale deed more than his share nor could he have delivered possession till the said property is partitioned by the parties amicably or through the intervention of the Court according to their share. It is settled law under the Transfer of Property Act, that a purchaser cannot have a better title than what his vender had. The possession which is claimed by the defendant No. 3-Ramdas (appellant herein) in respect of the entire land bearing Gat No. 19 area admeasuring 2.56H of Mouza Padoli was also illegal and without proper sanction of law. So long as the property is joint and not- partitioned, the defendant no. 3-Ramdas (appellant herein) is not entitled to get possession of the said land. Even otherwise, the appellant herein having purchased the land from defendant No.1- Sudam could be entitled to be



declared at the most to the extent of half share of the said piece of land having stepped into the shoes of his vendor and could not have asked for and claimed ownership and possession over the entire land of Gat No. 19 admeasuring 2.56 H.R.

15. Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in M.V.S. Manikayala Rao Vs. M. Narasimhaswami & Ors. [AIR 1966 SC 470], wherein this Court stated as follows:

"Now, it is well settled that the purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to the share of the co- parcener whose share he had purchased."

16. It may be mentioned herein that the aforesaid findings and the conclusions were recorded by the Supreme Court by placing reliance upon an earlier judgment of this Court in Sidheshwar Mukherjee Vs. Bhubneshwar Prasad

Narain Singh & ors. [AIR 1953 SC 487], wherein this Court held as under:-



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"All that (vendee) purchased at the execution sale, was the undivided interest of co-parcener in the joint property. He did not acquire title to any defined share in the property and was not entitled to joint possession from the date of his purchase. He could work-out his rights only by a suit for partition and his right to possession would date from the period when a specific allotment was made in his favour (Emphasis added)

17. In view of the aforesaid position there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the Court.

18. Our attention was also drawn to the grounds taken by the appellant in his memorandum of appeal before the High Court wherein the appellant himself got framed a question of law to the following extent :-

"Whether the learned First Appellate Court has not committed perversity in holding that registered sale- deed dtd.19-3-1980 (Ex.248) executed without obtaining the permission of Smt. Sitabai, present respondent no.1 (original plaintiff) and thus null and void in its' entirety and not binding on her at least to the extent of the share of executant (Deceased Deft. No.1)?"



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19. Therefore, what the appellant has claimed is only half share of the said property. The said issue has been considered at length by the High Court in its impugned judgment. The High Court has recorded the statement made by the counsel appearing for the defendant No.3- Ramdass (appellant herein) that the action of the Additional District Judge in declaring that the said sale deed as null and void was not proper to the extent of the shares of plaintiff- Sitabai in the Gat No. 19 area admeasuring 2.56H of Mouza Padoli. Therefore, the fact that the plaintiff-Sitabai was entitled to her half share in the aforesaid property is an admitted position and on that basis the consent decree was passed. Even otherwise, we are of the considered opinion that the appellant herein having purchased only undivided share in the aforesaid property could not have purchased, owned and claimed for more than half share in the said property nor the appellant could have claimed possession in respect of the entire property. The appellant herein has further claimed relief on the ground of equity. However, we do not find any reason to hold in favour of the appellant even on the ground of equity as the appellant herein himself is responsible for his act in purchasing undivided share in a part of the suit property without the knowledge and consent of the co- sharer. Besides, indisputably and as held by the Trial Court, the land in Gat No. 19 is extremely valuable and, therefore, the



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question of equity does not arise as we would be doing injustice to one having title and ownership if we accept the prayer of the appellant.

20. Consequently, we find no reason to interfere with the judgment and order passed by the High Court and therefore we are of the considered view that the decrees passed by the first appellate court and the High Court are in accordance with law. The same are affirmed. Accordingly, we issue a direction to appellant herein to handover possession of field Gat No. 19 area admeasuring 2.56H of Mouza Padoli, Tahsil & Distt., Chandrapur to the plaintiff-Sitabai within a period of three months from today failing which the plaintiff-Sitabai would be entitled to initiate appropriate proceedings for execution of the decree in which case possession of the half portion of the aforesaid property shall be made and given in favour of the plaintiff-Sitabai."

The aforesaid judgment categorically states that if the vendee had purchased the undivided shares, possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the Court. In the present case, partition among the legal heirs of the landlord T.P.Kathiresan is still pending. The tenant had not filed any independent suit claiming partition. In such circumstances, the legal heirs of the



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tenant Ramadass cannot claim any possession. Infact the aforesaid case is favouring the landlord/respondents and not the tenant/revision petitioners.

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17. The Learned Counsel appearing for revision petitioners further relied on the judgment rendered in *Jagdish Dutt and another Vs.Dharam Pal and others* reported in (1993) 3 SCC 644 and submitted that the decree holder is entitled to symbolic possession only. The relevant portion of the judgment is extracted hereunder:

“6. We need not examine the scope of Section 111 (d) of the Transfer of Property Act inasmuch as respondent No. 2 is held to be a trespasser and not a lessee. We have to find out the effect of the purchase of undivided interest of some of the coparceners in family of the decree holder in respect of the property which is the subject-matter of execution.

When a decree is passed in favour of a joint family the same has to be treated as a decree in favour of all the members of the joint family in which event it becomes a joint decree. Where a joint decree for actual possession of immovable property is passed and one of the coparceners assigns or transfers his interest in the subject matter of the decree in favour of the judgment debtor, the decree gets extinguished to the extent of the interest so assigned and execution could lie only to the extent of remaining part of the decree. In case where the interest of



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the coparceners is undefined, indeterminate and cannot be specifically stated to be in respect of any one portion of the property, a decree cannot be given effect to before ascertaining the rights of the parties by an appropriate decree in a partition suit. It is no doubt true that the purchaser of the undivided interest of a coparcener in an immovable property cannot claim to be in joint possession of that property with all the other coparceners. However, in case where he is already in possession of the property, unless the rights are appropriately ascertained, he cannot be deprived of the possession thereof for a joint decree holder can seek for execution of a decree in the whole and not in part of the property. A joint decree can be executed as a whole since it is not divisible and it can be executed in part only where the share of the decree holders are defined or those shares can be predicted or the share is not in dispute. Otherwise the executing court cannot find out the shares of the decree holders and dispute between joint decree holders is foreign to the provisions of Section 47, CPC. Order XXI, Rule 15, CPC enables a joint decree holder to execute a decree in its entirety but if whole of the decree cannot be executed, this provision cannot be of any avail. In that event also, the decree holder will have to work out his rights in an appropriate suit for partition and obtain necessary relief thereto.

Various decisions cited by either side to which we have referred to do not



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detract us from the principle stated by us as aforesaid. Therefore, a detailed reference to them is not required."

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The Learned Counsel appearing for revision petitioners relied on the aforesaid judgment and submitted that the aforesaid judgment held that if a person is already in possession he cannot be disturbed. On perusal of the said judgment it is seen that the Hon'ble Supreme Court had held that "in case where he is already in possession of the property, unless the rights are appropriately ascertained, he cannot be deprived of the possession thereof for a joint decree holder can seek for execution of a decree in the whole and not in part of the property". In the present case, firstly, the tenant is not having any decree of partition. It is only two sons (who had not sold their shares) are having decree to divide the share as $1/5^{\text{th}}$, but the same is not executable, since the daughters had filed a separate suit claiming $1/10^{\text{th}}$ share each and the same is pending. As per the suit the legal heirs are (*)**claiming** $8/10^{\text{th}}$ share and the tenant (*) **may have** only $2/10^{\text{th}}$ share, in such circumstances the tenant cannot claim to hold the entire property. Further the Learned Counsel ought to rely on the judgment fully and not a single sentence, since the judgement further states that "a joint decree can be executed as a whole since it is not divisible and it can be executed in part only where the share of the decree holders are defined or those shares can be predicted or the share is not in dispute". When the judgment further



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states that the joint decree can be executed only if the share are defined, in the present case the shares are not defined and the partition suit filed by the daughter are still pending. Therefore, the above cited judgment is not supporting the case of the revision petitioners.

18. The further contention of the revision petitioners / tenant is that they are having physical possession and the same ought to continue and the respondents may be granted symbolic possession. When the legal heirs including the daughters are (*)**claiming** 8/10th share and when the revision petitioners (*)**may have** only 2/10th share, then praying to put them in possession for the entire property is atrocious. As stated supra there is no decree in favour of the revision petitioner for partition. Unless the revision petitioners are getting a definite share allotted to him, he cannot claim any possession of the property. Therefore there is no question of physical possession to the revision petitioners, not even symbolic possession be granted to revision petitioners. If the claim of the revision petitioner is allowed then he would be illegally enjoying the 8/10th and the same cannot be permitted. Infact the revision petitioner is claiming legal sanction for his illegal possession of the 8/10th share. Further this Court is of the considered opinion that the above narrated sequence of events would indicate that the tenant Ramadaoss and his legal heirs are not entitled to any equity relief. In the present case the decree holder is the landlord



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T.P.Kathiresan, wherein the decree dated 31.04.2010 had directed the tenant Ramadass to hand over the property. Had the tenant Ramadass had handed over within reasonable time from the date of decree there would not have been any complication. The tenant is deliberately acting to the prejudice of the landlord.

19. Viewing through any angle, the revision petitioners are not entitled to any relief. The revision petitioners are directed to hand over the possession to the respondents on or before 15.11.2024.

20. The suit is filed in the year 2007 and the execution petition is filed in the year 2010, the lessee had dragged on the execution proceedings for more than 14 years by filing frivolous petitions. Further, the Court in the CRP(MD)No.2275 of 2011 had clearly held that when the lessee who had purchased shares from coparceners, then the lessee is bound to surrender the possession and seek for partition of the property. In spite of the categorical direction, the claim of the revision petitioners to grant symbolic possession to the landlord is abuse of process of law. Hence the revision petition is liable to be dismissed with cost. The revision petitioners are directed to pay Rs.10,000/- as cost to the respondents herein.

(*)21.The share of the parties shall be independently decided by the Trial Court in the suit in O.S.No.38 of 2012 on the file of the Assistant District Court, Srivilliputhur.



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22. With the above said observations, the civil revision petition is dismissed with cost of Rs.3,000/- payable to the respondents or in E.P.No.26 of 2010 in O.S.No.10 of 2007 on the file of the District Munsif Court, Sivakasi. Thereafter, the revision petitioners shall submit a compliance memo before the E.P., Court. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

(*)Corrected as per order of this Court dated 06/12/2024 made in Rev.Aplc(MD)No.151 of 2024 in CRP(MD) No.1897 of 2023

Sd/-

Assistant Registrar (RTI)

(*)Corrected as per the order of this Court dated 19/12/2024

Sd/-

Assistant Registrar ()

// True Copy //

20/12/2024

Sub Assistant Registrar()

Tmg

To be substituted to the order already despatched on 17/12/2024

To

The District Munsif,
Sivakasi.



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The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court. Madurai.(2 Copies).

+1 CC to M/s.S.PARTHASARATHY, Advocate (SR-57553[F] dated 17/10/2024)

+1CC to M/s.A.Sivaji, Advocate(SR-65343[F] dated 15/11/2024)

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15.10.2024

- SI -(12.11.2024) 26P/ 5C

MGJ 16/12/2024 26P/ 5C

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