



C.R.P.(MD)No.2215 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2024

CORAM

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

**C.R.P.(MD)No.2215 of 2023**  
**and C.M.P.(MD).No.11326 of 2023**

Palraj

... Petitioner/Respondent/Defendant

Vs.

1.C.Ismayil  
2.C.Mohammed Haneefa  
3.Mamathammal  
4.Sara  
5.Jeenath  
6.Kapipu  
7.Ashara  
8.Raviyatha  
9.Kathar Ismayil  
10.Varusaiaammal  
11.Kametha Parveen  
12.Jakir Hussain  
13.Kameetha Abbas Mathiri ... Respondents/Petitioners/Plaintiffs

**PRAYER :** Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order dated 05.08.2023 passed in E.P.No.20 of 2021 in O.S.No.18 of 2018 on the file of the District Munsif, Uthamapalayam.



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For Petitioners : Mr.K.R.Shivashankari

For Respondents : No Appearance

### **ORDER**

This petition has been filed against the order of execution of the decree in O.S.No.18 of 2018 on the file of the District Munsif, Uthamapalayam.

2.Even though the respondents 1 to 13 served, none appears on behalf of them. Their names were also printed in the cause list. In respect of respondents 4 and 5, notice served through their advocate who appearing for them before the trial Court.

3.The petitioner as a defendant suffered decree in O.S.No.18 of 2018 on the file of the District Munsif, Uthamapalayam, which has been filed for redemption of mortgage. That was decreed by the Judgment and decree dated 05.03.2021 with costs. Against which, this petitioner preferred appeal before the Sub Court, Uthamapalayam, in A.S.No.26 of 2021. Along with the appeal memorandum, he preferred I.A.No.1 of 2022 to stay the operation of the decree and judgment of the trial Court.



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That came to be closed by the appellate Court on 12.04.2023 stating that the appeal itself is ripe for arguments.

4. Pending the appeal process the respondents filed E.P.No.20 of 2021 before the trial Court, seeking execution of the decree. In that proceedings, this petitioner appeared and filed objection in the form of counter statement stating that the appeal proceedings are pending before the appellate Court. So he also filed application to stay the execution of decree. That objection came to be rejected by the trial Court and order of execution has been passed. Against which, this revision petition has been filed.

5. The mistake lies at the hands of the appellate Court. The appellate Court ought not to have closed the stay application filed by the petitioner under Order 41 Rule 5 of C.P.C. to stay the operation of the decree and judgment. Unfortunately, it was closed. But, even after the closure, the appeal was not taken up for hearing. Still it is stated to be pending.



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6.In view of the above, there shall be a direction to the appellate Court namely the Sub Court, Uthamapalayam, to dispose of the appeal in A.S.No.26 of 2021, pending on his file, on its own merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order. Till the disposal of the above said appeal, the order of execution passed by the trial Court in E.P.No.20 of 2021 shall be kept in abeyance.

7.With the above said directions, this civil revision petition stands disposed of. Consequently, connected miscellaneous petition is closed.

**08.01.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
TM

To

1.The District Munsif, Uthamapalayam.

2.The Section Officer,  
E.R.Section/V.R.Section,  
Madurai Bench of Madras High Court, Madurai.



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**G.ILANGO VAN,J.**

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