



CRP.Nos.251 & 3035 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 11.08.2025

Order pronounced on : 12.09.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.Nos.251 & 3035 of 2023
& CMP.Nos.2048, 2049, 18791, 20389 & 20392 of 2023

CRP.No.251 of 2023:

1.R.T.Gurumoorthy
2.T.M.Thilagavathy

..Petitioners

Vs.

1.S.Geetha
2.S.N.Lalitha
3.S.N.Balaji

..Respondents

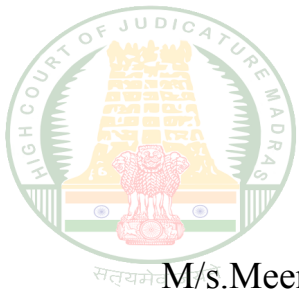
Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India, to strike off the suit in O.S.No.8869 of 2022 on the file of the 18th Additional City Civil Court, Chennai.

For Petitioners : Mr.S.Senthilnathan

For Respondents : Mr.V.Ramamurthy
Mr.K.Myilsamy, Advocate Commissioner

CRP.No.3035 of 2023:

S.v.Nageswaran (since died)



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M/s.Meenakshi Engineering Works,
Rep. by its Substituted partners,
S.N.Lalitha @ S.N.Balaji,
Old No.89, New No.201, Lake View Road,
West Mambalam, Chennai -33.

..Petitioner

Vs.

1.R.T.Gurumoorthy
2.T.M.Thilagavathi

..Respondents

Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside E.A.No.1 of 22 in E.P.No.2324 of 2009 passed by the X Assistant City Civil Court on 07.07.2023.

For Petitioner : Mr.V.Ramamurthy

For Respondents : Mr.S.Senthilnathan for R1
R2 not ready in notice
No appearance for R2

COMMON ORDER

In CRP.No.251 of 2023, the petitioners/defendants 3 and 4, challenging the very filing of the suit in O.S.No.8869 of 2022, are seeking to strike off the same. Insofar as CRP.No.3035 of 2023, it is at the instance of a firm, claiming under judgment debtor No.7, represented by its substituted partners, S.N.Lalitha and S.N.Balaji. In view of the subject matter of both the matters being

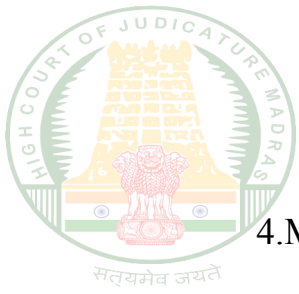


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predominantly one and the same and as between the same parties, the revisions have been heard together.

2.I have heard Mr.S.Senthilnathan, learned counsel for the petitioners in CRP.No.251 of 2023 and respondents in CRP.No.3035 of 2023 and Mr.V.Ramamurthy, learned counsel for the petitioner in CRP.No.3035 of 2023 and the 1st respondent in CRP.No.251 of 2023.

3.It is the case of the revision petitioners that the suit was filed originally in O.S.No.8869 of 2022 by the wife of one, R.Sankaran. The said R.Sankaran was one of the partners of the M/s.Meenakshi Engineering Works. It is the specific contention of the revision petitioners that neither the said wife of R.Sankaran, namely S.Geetha nor her husband R.Sankaran were parties in the execution petition and the said Geetha, the 1st respondent in the CRP.No.251 of 2023 had purchased only 50% of the suit property, which was subject matter of the execution petition. Her husband had not taken any action pending appeal proceedings or also against the final decree proceedings at any point, during his lifetime and therefore, the the suit filed by the plaintiff in O.S.No.8869 of 2022 was not maintainable.



4.Mr.V.Ramamurthy, learned counsel for the petitioners would state that the property, which is sought to be delivered to the decree holder has been in the possession of the legal heirs of S.V.Nageswaran and before him, the vendor, S.V.Pattu Sastri. In this regard he would refer to judgment in O.S.No.2395 of 1966 and contend that when there has been no recovery of possession sought for by the decree holder, the possession cannot be sought to be disturbed. He would therefore contend that the suit filed for partition in O.S.No.8869 of 2022 is very well maintainable and there is no question of striking off the same.

5.Pointing out to the decree passed in O.S.No.2395 of 1966, the learned counsel for the petitioners would also contend that there is no decree for delivery of possession and hence, the execution petition filed for recovery of possession is not maintainable and possession of the property with the revision petitioner in CRP.No.3035 of 2023 cannot be interfered with. He would also state that the partition suit filed by the third party purchaser, without seeking the relief of recovery of possession cannot bind third parties. He would rely on the decision of the Hon'ble Supreme Court in *Trinity Infraventures Limited and others Vs. M.S.Murthy and others*, reported in 2023 SCC Online SC 738 and *Vasantha (Dead) through LR's Vs. Rajalakshmi @ Rajam (Died) through LR's*, reported in (2024) 5 SCC 282.



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6. With regard to CRP.No.3055 of 2023, it is the contention of Mr.Ramamurthy, learned counsel for the petitioner that M/s.Meenakshi Engineering Works is not a party to the decree and the question of impleading S.V.Nageswaran as the partner of the said M/s.Meenakshi Engineering Works was impermissible and the right course of action was to implead the legal heirs of Pattu Sastri alone and therefore, the very execution petition itself was not maintainable. The learned counsel would further contend that when the partnership itself cease to exist, the question of substituting the respondents in CRP.No.3035 of 2023 did not even arise. In any event, it is contended that the decree has not been obtained in the name of a firm and the executing Court erroneously placed reliance on earlier litigation and disputes and went beyond the decree in O.S.No.2395 of 1966, by permitting substitution as prayed for.

7. The learned counsel for the petitioner in CRP.No.3035 of 2023 would further contend that the recourse open to the decree holder was to have filed a suit for partition under the Partition Act and not by way of a regular suit since the property is a dwelling house, as described in the Sale Deed and therefore the suit itself was not maintainable and consequently, the decree obtained also cannot be enforced.



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8. Per contra, Mr.S.Senthilnathan, learned counsel appearing for the 1st respondent would submit that the title of the petitioners in CRP.No.251 of 2023 has already been affirmed in a judgment that attained finality up to the Hon'ble Supreme Court in SLP.No.2086 of 1976. He would invite my attention to the suit filed in O.S.No.2395 of 1966, which came to be decreed on 29.12.1969, though First Appellate Court allowed the appeal in A.S.No.351 of 1970 and set aside the preliminary decree, this Court in S.A.No.523 of 1973, allowed the second appeal and confirmed the decree passed in O.S.No.2395 of 1966. He would also invite my attention to the final decree application which also came to be allowed on 29.09.1984 and the dismissal of the first appeal in AS.No.640 of 1987 and at the same time, cross objection No.30 of 1988 being allowed, setting aside the compensation awarded in the final decree application. The dismissal of the first appeal was unsuccessfully challenged in S.A.No.1442 of 1989 and the Special Leave Petition before the Hon'ble Supreme Court also came to be dismissed on 15.04.2005. Thereafter, the plaintiffs/decreed holders have filed execution petition in EP.No.2324 of 2009. The judgment debtors filed an application under Section 47 of CPC, alleging that the LR's had not been impleaded and the decree is not executable. The said Section 47 application was however dismissed by the executing Court, the same was



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challenged in CRP.No.2711 of 2013 and this Court dismissed the civil revision petition on 24.01.2022, holding that it was a clear case of abuse of process by the judgment debtor. A civil suit came to be filed in C.S.No.689 of 2010 for declaration that the preliminary decree obtained in O.S.No.2395 of 1966 is null and void. An application was taken out by the petitioners in CRP.No.251 of 2023 for rejection of the plaint and the same came to be allowed, as against the same, the firm represented by its partners, namely the revision petitioners in CRP.No.3035 of 2023 filed OSA.No.49 of 2021. The said OSA was dismissed on 24.08.2022, affirming the rejection of the plaint.

9.It is thereafter that the petition was filed for substitution of the deceased partner was sought for and despite the objection by the judgment debtors that all the legal heirs of the deceased had to be impleaded, the petition for substitution came to be allowed. It is this order permitting substitution as prayed for which is under challenge in the present revision petition in CRP.No.3035 of 2023.

10.First, dealing with the revision for striking off the plaint, the suit in C.S.No.689 of 2019 has been filed by M/s.Mennakshi Engineering Works represented by its partners, S.N.Lalitha and S.N.Balaji, for a declaration that



they are the owners of the suit property, by tracing title to the grandfather Sri Pattu Vathiar under registered Sale Deed dated 16.11.1957 and for a declaration that the decree and judgment in O.S.No.2395 of 1966 is void, inoperative and not binding on the plaintiff and for a consequential relief of permanent injunction to restrain the defendants from interfering with the possession of the plaintiffs. O.S.No.8869 of 2022, which is sought to be struck off, has been filed by one S.Geetha, claiming that her husband R.Sankaran was the owner of the property, having purchased the same under a registered Sale Deed dated 29.10.1986 in Doc.No.3872 of 1986. According to the plaintiff, S.Geetha, the said property was purchased in the name of M/s.Meenakshi Engineering works, a registered partnership firm, which came into existence in the year 1982 and the plaintiff's husband was one of the partners along with S.V.Nageswaran and minor daughter of S.V.Nageswarn, S.N.Lalitha.

11.It is the case of the plaintiff that the firm commenced its business in the suit property which was taken on lease by the plaintiff's husband and the other partners of M/s.Meenakshi Engineering Works. It is the further case of the plaintiff that the property was purchased by way of two Sale Deeds, namely Sale Deed dated 29.10.1986 and 03.03.1988 and the firm was in absolute possession and enjoyment of the said property. According to the plaintiffs, the



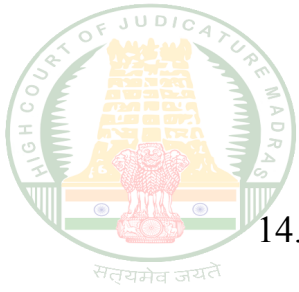
firm became defunct in the year 2003 and the partnership was dissolved in or about 2003 and the property in the name of the firm was agreed to be divided amongst the plaintiff's husband, R.Sankaran and S.V.Nageswaran. According to the plaintiff, her husband was entitled to 50% of the suit property and the partners had constructed an old age home and the plaintiff and the 2nd defendant spent substantial sums of money for the construction of the old age home and they are running the same. Subsequently, the plaintiff's husband died on 18.09.2015 and the plaintiff had moved to Chidambaram and she had authorized her nephew, the 2nd defendant, to look after the old age home. Contending that the plaintiff, being the only surviving legal heir of her husband R.Sankaran, the plaintiff has filed the suit for partition and separate possession.

12.Even in the plaint, the plaintiff has dealt with the decree in O.S.No.2395 of 1966 as well as in EP.No.2324 of 2009 filed for delivery of possession of the suit property. It is the contention of the plaintiff that M/s.Meenakshi Engineering Works never suffered a decree or faced any litigation and therefore, the decree in O.S.No.2395 of 1966 would not bind the plaintiff or the firm. It is also contended that Order XXX of CPC mandates that the suit against the firm will have to be filed against all the partners with the addresses and without impleading all the partners, the execution petition filed



against M/s.Meenakshi Engineering Works alone, who was not even a party to the suit, cannot be maintained and the plaintiff proceeds to seek for partition and separate possession of her alleged half share in the suit property. The said suit is now attacked by the revision petitioners in C.S.No.251 of 2023, as being a sheer abuse of process and clear re-litigation, warranting striking off the plaint.

13.In fact, a suit was filed as early as 1958 in O.S.No.1369 of 1958. The said suit came to be dismissed and in A.S.No.123 of 1964, the Appellate Court dismissed the appeal, but granted liberty to file a suit for partition. Subsequently, O.S.No.2395 of 1966 came to be filed by R.V.Thirunavukarasu Mudaliar against Nagammal and five others. The 6th defendant in the said suit is S.V.Pattu Sastri. The suit has been filed for partition, possession, mesne profits and costs. The said suit was decreed and a preliminary decree for partition of a plot of land measuring 18 ft East -West x 25 ft North-South at the south western corner of the suit property. The said decree has become final, as already discussed herein above. Therefore, the execution petition was filed in E.P.No.2324 of 2009 to execute the decree passed in O.S.No.2395 of 1966, after the decree attained finality up to the Hon'ble Supreme Court.



14.The plaintiffs, R.T.Gurumoorthy and T.M.Thilagavathy had filed EP against S.V.Nageswaran, one of the partners of M/s.Meenakshi Engineering Works. On his demise, E.A.No.1 of 2022 was filed. In the said application, it was contended that the legal heirs of the deceased partner of the firm, S.N.Lalitha and S.N.Balaji claiming to be partners of M/s.Meenakshi Engineering Works had filed a suit in C.S.No.689 of 2019 before this Court to declare the judgment and decree in O.S.No.2395 of 1966 as null and void and the said claim came to be rejected, on the application, the decree holders/the plaintiffs filed OSA challenging the rejection of the plaint and the same also came to be dismissed by the Division Bench of this Court. In view of the subsequent proceedings, the decree holder sought for substitution of the present partners, who claimed under M/s.Meenakshi Engineering Works in C.S.No.689 of 2019 as judgment debtors in the EP proceedings. The said application was allowed by the Trial Court, as against which, one of the present revisions is filed.

15.It is already seen that the decree in O.S.No.2395 of 1966 went up to the Hon'ble Supreme Court and even a faint attempt to declare the said judgment and decree as null and void by the revision petitioner in CRP.No.3035 of 2023 was unsuccessful with their plaint being rejected and the



same was also challenged in OSA proceedings and the said OSA was also dismissed. Therefore, the attempt of the decree holders to implead the plaintiff in C.S.No.689 of 2019 in the execution proceedings cannot be found fault with. Even in the plaint in C.S.No.689 of 2019, the plaintiff only claimed that they are the partners of M/s.Meenakshi Engineering Works, being son and daughter of S.V.Nageswaran.

16.It was not their case that the present plaintiff, S.Geetha was a partner and that she was entitled to 50% of the suit property. All the contentions that were raised by the revision petitioner in CRP.No.3035 of 2023 have already been canvassed up to the Hon'ble Supreme Court and now it is apparent that they have set up the wife of the other partner, R.Sankaran to institute the suit, as if she is entitled to 50% of the suit property. In the earlier proceedings, it was only S.V.Nageswaran, who represented M/s.Meenakshi Engineering Works and at no point of time, the separate interest of R.Sankaran was canvassed. The said R.Sankaran also, during his lifetime, never took any steps to get himself impleaded, claiming any share in the suit property or interest in the firm. After having lost the battle up to the Hon'ble Supreme Court and in order to thwart the execution proceedings filed by the decree holder, the wife of the other deceased partner, claiming share in the suit property, has apparently been



instigated to file the present suit in O.S.No.8869 of 2022. All the issues, that are canvassed by the plaintiff, have already been elaborately discussed and decided up to the Hon'ble Supreme Court and the firm was very much a party to S.A.No.1442 of 1989 as 3rd appellant and therefore, the plaintiff in the present suit is clearly bound by the judgment and decree passed in the earlier round of litigation and she cannot maintain an independent suit, re-agitating the very same issues, which have already attained finality.

17. Therefore, as rightly contended by Mr.Senthilnathan, there is absolute no merit or bonafides in the present suit that has been filed by S.Geetha, wife of the one of the deceased partners of the firm. It is a clear case of re-litigation and abuse, which has to be nipped in the bud. The litigation has been going on from 1958 onwards and the present suit is only yet another attempt to defeat the rights that have accrued to the decree holders. Therefore, I find force in the submissions of the learned counsel for the petitioner that the suit is clearly amounting to re-litigation and is liable to be struck off, as being a clear abuse of process.

18. The Hon'ble Supreme Court, right from *K.K.Modi's case*, have frowned upon re-agitation of matters that have attained finality and attempts at



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re-litigation, as being abuse of process. In view of the above, I am inclined to

allow CRP.No.269 of 2023.

19.Coming to the other revision in CRP.No.3035 of 2023, the executing Court permitting the substitution as prayed for, is under challenge on the grounds that the learned counsel, Mr.V.Ramamurthy, challenges the order of the executing Court on the primary grounds that the firm, M/s.Meenakshi Engineering Works was not a party to the suit firstly and secondly, the said firm had already become defunct. However, the very same issues have already been decided in the earlier round of litigation and the revision petitioners themselves have filed a suit in their capacity of being partners in M/s.Meenakshi Engineering Works in C.S.No.689 of 2019 and therefore, it does not lie in their mouth to contend that the firm has become defunct and therefore, the substitution as permitted by the executing Court is not legally sustainable.

20.The Trial court has found that the execution petition has been filed only to deliver possession of the property that has been declared to be the property of the decree holders. The executing Court also taken note of the fact that in the cause title, S.V.Nageswaran has been arrayed as a party only in his capacity as being the Managing Director of M/s.Meenakshi Engineering



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Works. The executing Court has rightly taken note of the earlier proceedings

right from A.S.No.351 of 1970 up to dismissal of SLP on 15.04.2005. The Court has also taken note of the fact that even the vakalat filed on behalf of S.V.Nageswaran was only in his capacity as partner of M/s.Meenakshi Engineering Works and even in the revision petition challenging the decree, by filing CRP.No.2711 of 2013 against the order, dismissing the Section 47 of CPC petition as well, the said S.V.Nageswaran has only represented M/s.Meenakshi Engineering Works and has not filed any of the proceedings in his individual capacity.

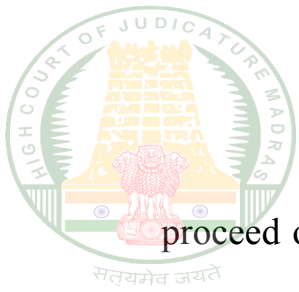
21. Therefore, the executing Court also took note of the suit filed by the revision petitioner in C.S.No.3035 of 2023 and its consequent rejection under Order VII Rule 11 of CPC and the unsuccessful challenge to the said rejection of the plaint as well, and has rightly found that when the revision petitioner in CRP.No.3035 of 2023 had filed C.S.No.689 of 2019 as partners of M/s.Meenakshi Engineering Works and challenged the decree in O.S.No.2395 of 1966, they cannot now object to the substitution to include them as judgment debtors in the place of S.V.Nageswaran. I do not find any infirmity, illegality or perversity in the findings arrived at by the executing Court, by permitting the substitution. The revision petitioners themselves having claimed to be partners



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of M/s.Meenakshi Engineering Works cannot now turn around and state that the EP is not maintainable for non-impleading the legal heirs of the another deceased partner or on the ground that the firm was not a party to the earlier proceedings. All these objections have been dealt with rightly by the executing Court and on proper reference to the long and chequered history of litigation between the parties. Therefore, I do not find any valid grounds made out to interfere with the order passed by the executing Court.

22.The execution petition has been filed only to execute the preliminary decree passed, earmarking the specific property in favour of the decree holders. Despite the decree having been passed in 1969, the decree holder have not been able to enjoy the fruits of the decree till date. In fact, an attempt was made, even pending these revisions to enable the parties to amicably settle the disputes, considering that the proceedings have been pending for several decades and an Advocate Commissioner was also appointed to demarcate the extent of 2000 sq.ft, to which the decree holders are entitled to. The Advocate Commissioner has also visited the property and demarcated the said 2000 sq.ft and the Commissioner has also filed a report on 21.07.2025, demarcating the extent of 2000 sq.ft as per the decree. However, even to the said report, the revision petitioners/judgment debtors had objections and therefore, I do not wish to



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proceed on the basis of the report filed by the Advocate Commissioner, which

was only an attempt to enable the parties to resolve the disputes amicably. In view of the above, I do not find any merits or bonafides in the objections taken by the revision petitioner in CRP.No.3035 of 2023 which are clearly untenable and malafide. In view of the above, I am not inclined to allow CRP.No.3035 of 2023.

23. In the light of the above, CRP.No.251 of 2023 is allowed and the suit in O.S.No.8869 of 2022 on the file of the XVIII Additional City Civil Court, Chennai, is struck off. CRP.No.3035 of 2023 is dismissed. The executing Court shall proceed with the execution process and ensure that the proceedings are finally concluded within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Connected Civil Miscellaneous Petitions, if any, are closed.

12.09.2025

Speaking/Non-speaking order

Index : Yes/No

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To

1. The XVIII Additional City Civil Court, Chennai.
2. The X Assistant City Civil Court, Chennai.



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P.B.BALAJI.J.

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Pre-delivery order made in
CRP.Nos.251 & 3035 of 2023
& CMP.Nos. 2048, 2049, 18791, 20389 & 20392 of 2023

12.09.2025