



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-07-2025

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THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

**CRP No. 680 of 2022
and CMP 3472 of 2022**

1.Thangammal (Died)
2. K.Ramachandran (Died)

3.Smt. R.Chandra,
W/o. Late. Ramachandran
2.R.Kalidass
S/o. Late Ramachandran.

Petitioners

Vs

Mr. V. Ramasamy (Died)

1.C. Mayilsamy,
S/o. Chinnasamy.

2.Tulasimani,
D/o.Late Thangammal.

Respondents

PRAYER

Petition filed under Section 115 of Civil Procedure Code, 1908, to set aside the fair and decreetal order passed in EP.NO. 15 of 2019 in OS.NO. 1828 of 1989 dated 06.01.2022 pending on the file of the I Additional District Munsif of Coimbatore.

For Petitioners: Mr. C. Deepak Kumar

For Respondents: Mr. Siddharth Sridhar



ORDER

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This Civil Revision Petition challenges the order of the First Additional District Munsif at Coimbatore in E.P.No.15 of 2019 in O.S.No.1828 of 1989 dated 06.01.2022.

2. I have heard Mr. C. Deepak Kumar, learned counsel for the petitioners and Mr. Siddharth Sridhar, learned counsel appearing for the respondents.

3. O.S.No.1828 of 1989 was a suit presented for declaration of title and for delivery of possession. The suit came to be decreed on 08.01.1991. Aggrieved by the same, a regular appeal was preferred to the file of the learned Principal Subordinate Judge, Coimbatore in A.S.No.95 of 1991. The said first appeal came to be dismissed on 22.07.1993. Aggrieved by the concurrent decrees, a second appeal came to be presented before this Court in S.A.No.321 of 1995. The second appeal came to be allowed by this Court on 10.01.2006.



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4. Aggrieved by the reversal of the decrees by this Court, a Special Leave Petition was preferred to the Supreme Court in SLP(Civil) No.9614 of 2006. The Special Leave Petition was converted to a Civil Appeal and the appeal was allowed and remanded by that Court on 17.04.2009. The Supreme Court held that as substantial questions of law as required by Section 100 of Civil Procedure Code, had not been framed, the appeal should be restored to the file of this Court and disposed off after framing of the appropriate questions of law.

5. On remand, the second appeal was restored on its original number. In the meantime, when the appeal was pending before the Supreme Court, Mr. V. Ramasamy, the original plaintiff and the appellant before the Supreme Court, had passed away on 22.01.2008. The said V. Ramasamy had sold the suit property in favour of one Mr. Mayilsamy. The said Mr. Mayilsamy filed an application in CMP.No.338 of 2011 to implead himself as a legal representative of the deceased, Mr. V. Ramasami. Being the subsequent purchaser, his application came to be ordered by this Court on 24.06.2014.



6. When the second appeal was called on 31.01.2017, the appellant sought time to bring on record the legal heirs of the deceased, Mr. V. Ramasami.

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This Court acceded to the request and granted time. When it was called again on 01.02.2017, the appellant represented that they proposed to take out an application under Order XXII Rule 4A of C.P.C. This Court taking note of the fact that Mr. Mayilsamy was already on record, rejected the submissions of the appellant. As this Court did not find any further reason to keep the second appeal pending, the appeal was dismissed on 01.02.2017.

7. The dismissal of the second appeal amounted to confirmation of the judgement and decree in O.S.No.1828 of 1989 dated 08.01.1991 and A.S.No.95 of 1991 dated 22.07.1993. As there was a decree for recovery of possession, the purchaser, Mr. Mayilsamy presented E.P.No.15 of 2019, seeking the assistance of the Court to take delivery of possession.

8. Notice was ordered in the application. A counter was presented by the Judgment Debtors. The plea of the judgment debtor was that, the said

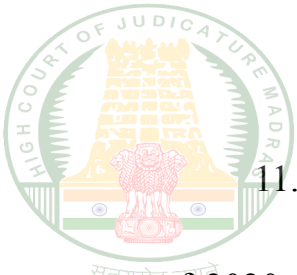


Mr. Mayilsamy had not been authorized by this Court to proceed further and that

since the legal heirs of the deceased/Decree holder- Mr. V. Ramasamy were alive, they alone could proceed further with the execution. They also pointed out that the petition filed to restore the second appeal was pending before this Court, which was dismissed on 01.02.2017. Therefore, delivery of possession should not be ordered.

9. The learned Executing Court took up the application for disposal. The learned Judge took note of the fact that Mr. Mayilsamy had been impleaded as a party in the second appeal and therefore, rejected the submissions of the Judgment debtors that he was not entitled to execute the decree.

10. On a plea regarding the restoration application being pending, he pointed out that as there was no stay of operation of the decree, and he was duty bound to execute the judgment and decree as it stood. Consequently, the learned Judge ordered for delivery of possession. Aggrieved by the same, the present Civil Revision Petition has come up before this Court.



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11. At the time of admission, this Court noted that CMP. SR.No.28163 of 2020, C.M.P. SR.No.28164 of 2020 and C.M.P. SR.No.28165 of 2020, for restoration of the second appeal were pending. Therefore, in order to give breathing time to the judgment debtors to get the second appeal restored, this Court admitted this revision and granted stay of the further proceedings in the execution.

12. When the matter was taken up for final disposal today, the learned counsel for the civil revision petitioner submitted that the second appeal has not yet been restored. Both the learned counsels reiterated their contentions that were placed before the Executing Court.

13. I have carefully considered the submissions made on both sides, and I have been gone through the records.

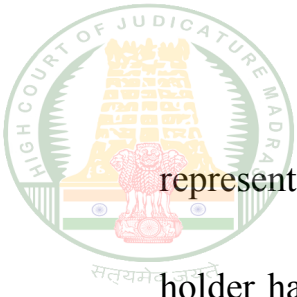
14. I have already narrated the facts of the case in detail in the preceding paragraphs. The decree for delivery of possession, as on today, has



not been interfered with by this Court. In fact, the second appeal that had been preferred, has been dismissed again on 01.02.2017. That being the position, there is no bar for the decree holder to put the decree into an execution.

15. The plea that Mr.Mayilsamy, is not a legal heir of the deceased Mr. V. Ramasamy, and therefore, he cannot proceed further with the execution, does not appeal to me. It is well-settled, that all legal heirs are legal representatives, but all legal representatives need not be a legal heirs. The purchaser of a property from the decree holder, by virtue of Section 2(11) read with Order 22 Rule 10 of C.P.C., is entitled to come on record as a legal representative.

16. This Court, taking note of the said fact, has allowed the application filed by the purchaser on 24.06.2014, and that order has not been challenged by the revision petitioner. It has attained finality. When the purchaser, Mr.Mayilsamy, was arrayed as a respondent in the second appeal, and when the second appeal has been dismissed, he can certainly present an execution petition on his own strength. It is not necessary to implead the legal heirs when a legal



representative is already on record. Whatever interest, the deceased/ decree holder had over the property, had been transferred in favour of Mr. Mayilsamy, the purchaser. The owner, having sold the property in favour of a third party, the legal heirs obviously would not have any interest in pursuing the litigation anymore.

17. Despite five years having been granted to the petitioners, they have not taken any steps, even to get the restoration application numbered. The Decree holder cannot be awaiting *ad infinitum* for the judgment debtor to move this Court for restoration. On the dismissal of the second appeal, the clock has started running. The decree holder is entitled to execute the decree. In case, he waits for a long period of time, he would be giving a defence to the Judgment Debtor, that the decree has become barred by limitation. It is in this perspective that the Executing Court has held that there is no stay of execution, and he is duty bound to execute the decree.



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18. At this stage, learned counsel for the petitioner pleaded that when the Supreme Court allowed the Civil Appeal and remanded the matter to this Court, the original plaintiff / Appellant had passed away. The plea is that the Supreme Court has passed an order in favour of the dead person, the same is a nullity and therefore, the said order cannot be taken cognizance of by the Executing Court. Superficially, this argument seems fascinating. However, a deeper scrutiny shows, how it is totally untenable.

19. Law reports reveal such kind of objections had been raised years, nay, decades ago. It is here that I will refer to a judgment of the Privy Council which bore sway in the country. The Privy Council pointed out in ***Lachmi Narain Marwari v. Bal Mukund Marwari (1924) 20 LW 491***. The board had opined :-

“After a decree has once been made in a suit, the suit cannot be dismissed unless the decree is reversed on appeal. The parties have, on the making of the decree, acquired rights or incurred liabilities which are fixed, unless or until the decree is varied or set aside. After a decree any party can (as already stated) apply to have it enforced.”



That being the position of law, the plea, before the Executing Court that the judgment of Supreme Court is inexecutable, is absolutely untenable.

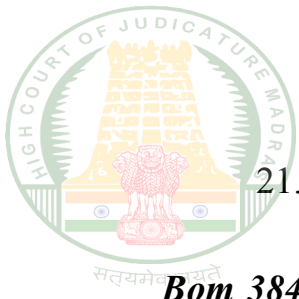
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20. Furthermore, in ***Abdul Azeez Sahib v. Dhanabagiammal***, AIR 1983

Mad 5, Mr. Justice Venugopal held as follows:

“Where the Court proceeds with the case in ignorance of the fact of death of a person and passes a decree, that decree cannot be treated as a nullity. It may, no doubt, be a wrong decree, but it will have to be set aside by taking appropriate proceedings like appeal, revision or review. Generally speaking, a decree passed in favour of a dead person is not a nullity, though a decree passed against a dead person can be construed as a nullity. Even if there is abatement of the suit, that would not make the decree passed in the suit as one without jurisdiction and the Executing Court is not entitled to refuse to execute the decree on the ground, that the plaintiff was not alive on the date when the decree was passed in his favour.”

This is not an isolated view of this Court.



21. In ***Raddulal Bhurmal v. Mahabirprasad Bisesar Kalwar, AIR 1959***

Bom 384, A Division Bench speaking through Mr. J. R. Mudholkar, J. [As his

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Lordship then was] held as follows:

“If in such a case, the Court proceeds with the case in ignorance of the fact of the death of a person and passes a decree, that decree cannot be treated as a nullity. It may be a wrong decree but it will have to be set aside by taking appropriate proceedings as would have been the case had the points been raised but wrongly decided by the Court. It cannot be simply ignored nor can the Court refuse to make it final. As already pointed out, where a decree is passed by a Court certain rights accrue to the party in whose favour the decree has been passed and those rights cannot be set at naught except by following the procedure which is by way of an appeal or a review.”

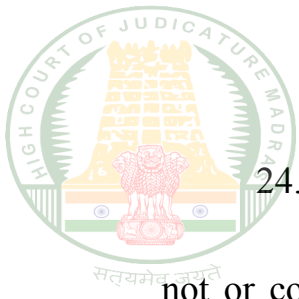
22. No materials have been placed before this court to point out that the civil revision petitioners have sought for the judgment of the Supreme Court to be reviewed, pointing out that the appeal had been allowed in favour of the dead person. When no steps had been taken, they cannot be permitted to raise the



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plea before the Executing Court. This position prevails because an Executing Court cannot go behind a decree and is barred by entertaining any objection that the decree is incorrect in law or on fact. (See, *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman*, AIR 1970 SC 1475.)

23. The reason, why the difference has been made between a decree in favour of a dead person and a decree against a dead person, is founded on principles of natural justice. The Code of Civil Procedure is a Code which has incorporated into itself, not only the manner in which a Civil Court must proceed, but has also codified the principles of natural justice, fairness, justice and conscience in itself. A decree against a dead person is considered as a nullity, because every person is entitled to an opportunity of representing his case. While exercising this opportunity, he is also entitled to be heard in the said proceedings. It is for this reason, that the legislations, of which the Code of Civil Procedure is no exception, demands the court to issue notice to a party or any other persons who would be affected by the proceedings, hear the said person and pass orders.



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24. A decree against a dead person shows that such an opportunity had not or could not have been given in favour of the dead person. This position does not prevail when the decree is passed in favour of a dead person. When the order has been passed in his favour, he is not prejudiced by the said decree. That would not be the case if it is passed against a dead person. That being the position of law, the plea that has been raised by the civil revision petitioners, even on merits, does not deserve any consideration.

25. In the light of the above discussion, I do not find error in the impugned order passed by the First Additional District Munsif at Coimbatore in E.P. No.15 of 2019 in O.S.No.1828 of 1989 dated 06.01.2022, and the same is upheld by this Court, and the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

26. The learned Executing Judge shall strictly adhere to the order passed by the Supreme Court, in ***Periyammal v. V.Rajamani, 2025 SCC Online SC 507*** and the Circular issued by this Court in R.O.C.No.27923-A/2025/F1 dated



23.04.2025. It is imperative for the Executing Court to ensure that the Decree holder enjoys the fruits of the decree without any further delay. Therefore, the

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Executing Court shall do the needful and pass orders in the E.P.No.15 of 2019 in O.S.No.1828 of 1989, by 28.08.2025 and shall send a report to this Court by 29.08.2025.

27. Post the matter for reporting compliance on 29.08.2025.

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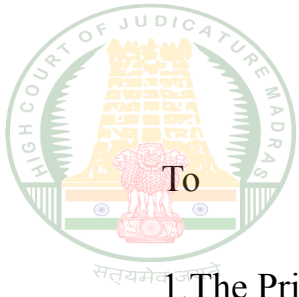
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

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1. The Principal Subordinate Judge, Coimbatore.
2. The I-Additional District Munsif, Coimbatore.
3. The Section Officer, V.R. Section, High Court, Madras.
4. The Section Officer, Supreme Court Section, High Court, Madras.



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V. LAKSHMINARAYANAN, J.

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