



C.R.P.No.670 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-09-2025

CORAM

**THE HONOURABLE MR.JUSTICE P.B. BALAJI**

**C.R.P.No.670 of 2025 and CMP Nos.3807 and 3805 of 2025**

Mrs.B.Saradhamani

.... Petitioner

Vs

1.M,Govindasamy  
Marrakkal (died)

2.Balakrishnan  
3.Umavathi

.... Respondents

Revision filed under Section 115 of Civil Procedure Code to set aside the impugned order dated 30.01.2025 made in EP No.79 of 2024 on the file of Principal District Munsif, Coimbatore.

For Petitioner: Mr.P.V.Balasubramanian  
Senior Counsel  
For Mr.B.Ramachandran

For Respondents: Mr.N.Ponraj  
For R.1

### **ORDER**

Heard Mr.P.V.Balasubramanian, learned Senior Counsel appearing for the revision petitioner and Mr.N.Ponraj, learned counsel for the first



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respondent.

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2. The present revision is directed against the order in E.P.No.79 of 2024 in and by which, the Executing Court has ordered delivery in the execution petition. Challenging the said, order, the fourth respondent has filed the present revision.

3. Learned Senior Counsel inviting my attention to the fact that the revision petitioner has already filed an application to set aside the final decree passed exparte and that even in the execution petition, counter has been filed and an application to set aside the exparte order has also been filed and without considering the same, the Executing Court has proceeded to order delivery. Learned Senior Counsel further states that the petitioner was never served with notice in the execution petition and on coming to know about the pending proceedings, the petitioner has voluntarily entered appearance and since he is not in possession of any of the related papers, he was not able to file counter. Learned Senior Counsel invites my attention to the E-filing Register, which indicates that on 30.01.2025, an application to set aside along with condone delay petition as well as the counter in the



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main execution petition have been filed and re-open petition has also been filed on the same day and even earlier on 23.01.2025 itself, the petitioner has filed an application to set aside the exparte order in the execution petition dated 19.12.2024 along with an application to condone the delay. However, it appears that the said application was returned since the counter did not accompany the said application. Therefore, on 30.01.2025, on which date, execution petition came to be ordered, the petitioner has refiled the condone delay application along with the set aside application and also filed a counter statement, apart from filing two applications for re-opening.

4. It is therefore the contention of the learned Senior Counsel that a fair opportunity ought to have been given by the executing court to enable the revision petitioner to seek relief in the applications taken out to set aside the exparte orders, not only in the execution petition but also before the trial court where application has been filed to set aside the final decree as well. Therefore, learned Senior Counsel prays for the revision being allowed.

5. Per contra, learned counsel appearing for the first respondent would submit that the petitioner has sworn to a false affidavit and he does not



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deserve any indulgence and he would invite my attention to the memo filed by the revision petitioner through his counsel on 23.10.2024, where the counsel admits that summons have been served in the execution petition and the counsel has undertaken to file vakalat and sought for an adjournment for filing counter. He also invited my attention to various hearing dates subsequent to 23.10.2024, before the final orders came to be passed on 30.01.2025. Therefore, he states that it is as not as if the execution petition was heard only on 23.10.2024 and 19.12.2024 as projected by the petitioner. That part, the learned counsel would also state that the petitioner is not the owner of the remaining 3/4th share in the suit property and in order to establish the same, the learned counsel relies on the Encumbrance Certificate dated 23.04.2025 which reflects that the petitioner has already disposed of 2 shares in favour of third parties.

6. In this regard it is contended by the learned Senior Counsel that alienation are within the family and referring to the lay of the property in the photographs and allotment in the terms of the Advocate Commissioner's Report which now forms part of the final decree, it is contended that virtually 1/4th of the property would have to be given up only for the purposes of



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establishing a pathway and only in such circumstances, on equity, the petitioner prays for the revision being allowed and opportunity being given to contest the execution petition as well as final decree application.

7. The learned counsel for the respondent also relied on the decision of the Hon'ble Supreme Court in *Kusha Duruka vs The State of Odisha* reported in *2024 INSC 46 (Crl.Appeal No.303 of 2024 dated 19.01.2024)*, where the Hon'ble Supreme Court has held that the litigant who comes to Court suppressing material facts or makes false representations is not entitled for any reliefs from the Court. Therefore, relying on the said decision, learned counsel for the respondent would contend that no equity can be shown to the petitioner and the execution has to be proceeded with, as ordered by the executing court.

8. I have carefully considered the submissions made by the learned Senior Counsel for the petitioner as well as the learned counsel for the respondents.

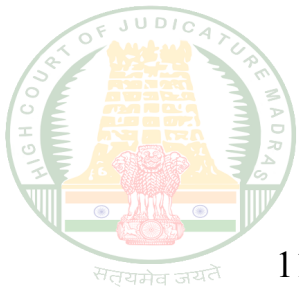
9. As rightly contended by the learned counsel for the respondent, it is



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not as if the petitioner was not served in the execution petition and he entered appearance voluntarily. The Memo filed by the learned counsel for the petitioner before the executing Court establishes the fact that the petitioner was in fact served with notice in the execution petition and only thereafter, he has chosen to enter appearance and not as contended in the affidavit filed in support of application to set aside the exparte order.

10. It is also seen that the petitioner, despite several opportunities granted by the executing court, did not choose to file counter and after granting more than sufficient opportunities alone, the executing court has passed the exparte order on 19.12.2024. No doubt, in order to set aside the order dated 19.12.2024, the petitioner has taken out an application on 23.01.2025 along with an application to condone the delay. Admittedly, the said application was returned and thereafter, it has been re-presented on 30.01.2025 and the same is yet to be taken on file. In the mean time, on the very same day i.e., on 30.01.2025, the execution petition has been enquired into and execution petition has been ordered directing the petitioner to hand over possession of the 1/4th shares of the respondent.



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11. It is also seen that the petitioner has taken out an application to set aside the final decree passed and an application to condone the delay has also been taken out and the said applications are pending. In view of the fact that the property is measuring a total extent of 2178 sq.ft having a frontage of 22 feet and running length of 99 feet and the learned Commissioner has suggested a division, allotting one portion in the front side, facing road, to the respondent (11x49.6 feet) and such division may cause inconvenience to the petitioner and considering the fact that the applications are also taken out for setting aside the exparte orders, I am inclined to dispose of the revision in the manner following.

(i) I do not find any infirmity in the order passed by the Executing Court, directing the petitioner to hand over the possession of 1/4th shares which is the entitlement of the respondents, in terms of final decree.

(ii) However, the said order of delivery shall be kept in abeyance for a period of twelve (12) weeks.



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**P.B.BALAJI.,J**

sr

(iii) It is open to the revision petitioner to work out his rights in the pending setting aside applications and condone delay application in the meantime.

No costs. Consequently, connected miscellaneous petitions are closed.

22.09.2025

Index: Yes/No

Website:yes/no

Speaking Order/Non-speaking Order

sr

To

The Principal District Munsif, Coimbatore

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