



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 13.10.2025

Order pronounced on : 14.11.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJICRP.No.1008 of 2025& CMP.No.5744 of 2025

Subbathal (Died)

- 1.M.Duraisamy
- 2.M.Subramaniam
- 3.Balamani
- 4.Muthulakshmi @ Pushpathal

... Petitioners

Vs.

- 1.Narayanasamy
- 2.Mahalakshmi
- 3.Mehala
- 4.Aruna
- 5.Kaleeswari
- 6.Brindha
- 7.Lavanya
- 8.S.Viswanathan
- 9.K.N.Venkatachalam
- 10.R.Muthukumar

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and final order dated 16.10.2024 made in E.A.No.20 of 2012 in E.P.No.41 of 2011 on the file of the Principal Subordinate Judge, Tiruppur.



For Petitioners : Mr.Sharath Chandran
for Mr.K.S.Karthik Raja

For Respondents : Mr.B.Vijayakumar
& Mr.R.Babu for R1
No appearance for RR2 to 10
R9 Died

ORDER

The third parties, who filed an execution application under Order XXI Rule 101, Sections 47 and 151 of CPC, which came to be dismissed by the executing Court, are the revision petitioners.

2.I have heard Mr.Sharath Chandran, for Mr.K.S.Karthik Raja, learned counsel for the revision petitioners and Mr.B.Vijayakumar and Mr.R.Babu, learned counsel for the 1st respondent.

3.It is the case of the revision petitioners that the husband and father of the petitioners, by name, Murugasamy Gounder had purchased one half share of 10.52 acres in S.F.No.289 situate at Kalipalayam village, under a registered sale deed dated 20.10.1978. The said half share was in common enjoyment, out of the total extent of 10.52 acres. The said Murugasamy



Gounder, during his lifetime and effected mutation of revenue records in his favour and subsequent to his demise, the petitioners claim to be in absolute possession and enjoyment of the said property, which is one half of 10.52 acres, situate on the eastern side.

4.It is the further case of the petitioners that the property was subdivided by the revenue and S.F.No.289/1 was mutated in the names of the revision petitioners. According to Mr.Sharath Chandran, the eastern half being in possession and enjoyment of the predecessor in title, Murugasamy Gounder and thereafter, the petitioners are referring to S.F.No.289/1 alone, which has been in their possession and enjoyment, right from 1978.

5.Mr.Sharath Chandran, learned counsel would further contend that the other half, namely the western portion belongs to one Kuruppa Gounder originally and the same was purchased by one P.Sivakumar, son of Ponnusamy Gounder. However, confusion arose when patta for the western side in the enjoyment of P.Sivakumar was mutated in the name of the petitioners' family instead of P.Sivakumar and in respect of the eastern side, subdivision was effected in the name of P.Sivakumar, instead of the



petitioners. It is the further contention of the Mr.Shartah Chandran that both the families of P.Sivakumar as well as the petitioners were under the bonafide impression that the mutation of S.F.No.289/1 and S.F.No.289/2 were provided to their respective western and eastern portions of S.F.No.289 respectively, especially when there was no dispute amongst the parties with regard to the exclusive possession of the two halves.

6.It is the specific argument of Mr.Sharath Chandran that the inadvertent error committed by wrong mutation of records, would not confer ownership and when the entire cause of action for filing the suit originally in O.S.No.487 of 2008 was only in respect of the property that was originally belonging to Karupa Gounder, even though a decree was obtained collusively and by playing fraud upon Court, according to Mr.Sharath Chandran, the said decree cannot be put into execution against the petitioners who have been in settled possession of the eastern half of 10.52 acres in SF.No.289. He would also invite my attention to a suit filed by the father of the respondents 4th respondent, Swaminathan and the father of the respondents 5 to 7, Vellingiri in E.A.No.20 of 2012. The said plaintiffs had admitted that they were not in possession of the suit property and in fact, the



Court fee was paid, valuing the suit under Section 25(a) and a relief of recovery of possession, besides declaration of title had also been sought for.

7.A detailed written statement was filed by the petitioners in the said suit and pending the suit, both the plaintiffs Swaminathan and Vellingiri had settled their respective properties in favour of their wife and daughters, who are respondents 2 to 7 in respect of S.F.No.289/2. Based on the settlement deed, the respondents filed a suit in O.S.No.228 of 2008 for partition and separate possession on S.F.No.289/2. However, the Sub-Court, Tiruppur, dismissed the suit on 05.12.2012. Mr.Sharath Chandran, learned counsel would invite my attention to the mischief committed by Swaminathan and Vellingiri by fraudulently overwriting S.F.No.289/1 as S.F.No.289/2 in the original plaint in O.S.No.340 of 2005.

8.According to Mr.Sharath Chandran, the suit was filed originally only in respect of S.F.No.289/1, but pending the suit, Court records were fraudulently manipulated to change S.F.No.289/1 as S.F.No.289/2. Once the fraud played was exposed, P.W.1, namely Vellingiri, did not appear before the Court subsequently and the counsel on record reported no instructions



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and the suit was dismissed. On 26.06.2012, after the petitioners herein filed a memo, requesting the Court to pass a decree under XVII Rule 3 of CPC.

Suppressing the earlier suit and its dismissal, according to Mr.Sharath Chandran, yet another collusive action was initiated in O.S.No.487 of 2008, as if there was an agreement between the respondents 2 to 7 and the 8th respondent. An ex-parte decree was obtained and E.P.No.41 of 2011 was filed for delivery of possession, at which point of time, the petitioners became aware of the decree for specific performance and they have immediately filed the application in E.A.No.20 of 2012.

9.Mr.Sharath Chandran, learned counsel would also state that it is a classic case of fraud, because, after the execution petition came to be filed, pursuant to the collusive decree obtained, the judgment debtor expressed no objection in the EP for recovery of possession and in fact, the EP was proceeded against the petitioners alone and therefore, taking advantage of the incorrect mutation of records, especially with regard to subdivision, the petitioners are sought to be dispossessed. He would also state that the decree passed is also not confirming to Order XX Rule 4 of CPC and he would contend that this Court has repeatedly held that such a decree is a



nullity in the eye of law and in any event, it cannot be enforced.

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10.Mr.Shartah Chandran, learned counsel for the petitioners would place reliance on the decision of the Hon'ble Supreme Court in *Odisha State Financial Corporation Vs. Vigyan Chemical Industries and others*, reported in (2025) 5 MLJ 253, where the Hon'ble Supreme Court held that a decree passed without jurisdiction is null and void and if the Court lacks jurisdiction by not having territorial jurisdiction or pecuniary jurisdiction or if the jurisdiction over the subject matter is circumscribed by any law whether substantive or procedural by express or implication taking away the jurisdiction of a Court to deal with the matter, then there is no room for any judicial discretion and there is a total bar on the Court from dealing with the matter. The Hon'ble Supreme Court also held that a judgment which is defined under section 2(9) of CPC to be valid must satisfy the requirements of Order XX Rule 4(2) CPC and once the issue of maintainability is raised or the facts pleaded by themselves create a cloud over the jurisdiction of the Court or the maintainability of the proceedings, then the same will have to be addressed, failing which the judgment will be unsustainable and nullity.



11. In *Asma Lateef and another Vs. Shabbir Ahmad and others*, reported in (2024) 1 MLJ 563, the Hon'ble Supreme Court held that all civil Courts in India have to regulate the judicial work in accordance with the provision of CPC and any egregious breach or violation of such provisions would be ultra vires and if the decree drawn up is not a formal expression of an adjudication/determination so as to conform to the requirements of a decree within the meaning of Section 2(2), then there is no decree in the eye of law and consequently, a decree that follows the judgment or an order would also be inexecutable. The Hon'ble Supreme Court would further held that it would be open to objection in an application under Section 47 of CPC.

12. In *Jugalkishore Vs. Raw Cotton Co. Ltd*, reported in 1954 SCC Online Bom 52, the Division Bench of the Bombay High Court held that an assignee of a decree has to obtain leave under Order XXI Rule 16 of CPC to execute the decree and only when leave is given, the assignee can step into the shoes of the decree holder, in order to enable him to execute decree in a light manner and to the same extent as the decree holder himself.

13. In *Ayyasamy Vs. Shanmugam*, reported in (2023) 6 MLJ 164, this



Court held that even an ex-parte judgment should answer the requirements of a reasoned order and particularly in a case of specific performance of sale, it is the duty of the plaintiff to aver and prove he was ready and willing and the mandate of Section 16(c) stood complied before the plaintiff can be granted a decree and when the judgment does not answer or meet the requirement of Order XX of CPC, then such a judgment and decree is a nullity and is exfacie illegal.

14.In *Hyravathy Vs. R.Raju* in *CRP.No.1660 of 2019* dated 19.07.2023, this Court held that when the judgment creditor claims assignment of the decree in favour of the third party, then the Court would have to necessarily apply its mind under Order XXI Rule 16 of CPC and grant leave before the execution petition can be taken on file.

15.In *Dhani Ram Gupta and others Vs. Lala Sri Ram and another*, reported in (1980) 2 SCC 162, as well, the Hon'ble Supreme Court held that once a decree holder transfers his interest in the decree, then the Court has to be noticed of application for the transfer to the transferor and judgment debtor, before enabling the transferee to move for execution of the decree,



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approving the Full Bench decision of the Andhra Pradesh High Court in *Arvapalli Ramrao Vs. Kanumarlapudi Ranganayakulu and others*, reported in *AIR 1964 AP 1*, where the Full Bench of of Andhra Pradesh High Court held that when a decree was transferred, an assignee in right, though the property passed to the transferee and recognition of the Court was not necessary to complete the transaction, but such recognition was required to enable the assignee to proceed with the execution.

16.Per contra, Mr.B.Vijayakumar, assisted by Mr.R.Babu, learned counsel for the 3rd respondent would submit that the petitioners are bound by the mutation of revenue records and the subdivision assigned to their property and when it was not the case of the petitioners regarding S.F.No.289/2, but only S.F.No.289/1, there is nothing brought on record by the petitioners to substantiate their unilateral and fanciful claims. He would further state that the respondents have already taken possession in the EP and he would also point out to the cross examination of P.W.1, who has admitted that in the reply notice dated 29.04.2003, marked as Ex.B18 in O.S.No.340 of 2005, the father of the petitioners has not referred to the subdivision or mutation of patta in his name and he has admitted that he is



not aware of such subdivision.

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17.The learned counsel for the 3rd respondent would also refer to the evidence of the 3rd petitioner, who was examined as P.W.3 and invite my attention to his admissions that in all the documents, reference is only to S.F.No.289/1. Pointing out to cross examination of P.W.4, P.Sivakumar, the learned counsel for the 3rd respondent would contend that P.W.4 is only an interested witness, who clearly admitted to the fact that he knew about the case details only from the petitioners. It is therefore contended by the learned counsel for the 3rd respondent that the petitioners are not in any way aggrieved by the decree passed for the specific performance which was not relating to their property and they cannot be allowed to object to the execution of the decree against the defendants in the suit for specific performance. He would therefore pray for the revision being dismissed.

18.I have carefully considered the submissions advanced by the learned counsel for the parties. I have also gone through the decisions that have been relied on by the counsel for the petitioners.



19. Admittedly, an extent of 10.52 acres was comprised in S.F.No.289, before subdivision. It was owned by two persons, namely Rangasamy and Karuppusamy. Rangasamy sold his entitlement, namely half share to Murugasamy Gounder, under whom, the present revision petitioners claim. The revenue records were mutated and patta was also issued in favour of Murugasamy Gounder in respect of S.F.No.289/1. The plaintiffs in O.S.No.340 of 2005, namely Swaminathan and Vellingiri sent a lawyer's notice to the purchaser, Murugasamy Gounder on 16.04.2003, claiming that the subject lands belong to their grandfather, Marappa Gounder and Kuttiya Gounder. Murugasamy Gounder sent a reply on 29.04.2023, stating that he alone was the true owner of the property, having validly purchased Rangasamy's half share.

20. In the meantime, one P.Sivakumar purchased the remaining 5.26 acres comprised in S.F.No.189/2. A rectification deed came to be executed unilaterally, correcting the survey number as S.F.No.289/1, without notice to Murugasamy Gounder. Thereafter, Swaminathan and Vellingiri filed O.S.No.340 of 2005 before the District Munsif Court, Tiruppur, against Murugasamy Gounder, for declaration of title and injunction. It is seen from



the records that originally the suit was filed in respect of S.F.No.289/1, but, pending the suit, there has been fabrication of the plaint and S.F.No.289/1 has been altered as S.F.No.289/2.

21.Admittedly, pending the said suit, both the plaintiffs executed settlement deeds in favour of the their legal heirs, namely wife and daughters, who are respondents 2 to 7 herein and after the death of Vellingiri, his legal heirs have filed a suit in O.S.No.228 of 2008 for partition of S.F.No.289/2. The petitioners herein were arrayed as defendants in the said suit and they immediately pointed out to the fraud played upon the Court. However, notwithstanding the objection raised by the petitioners, the Sub-Court, Tiruppur, dismissed the suit, as settled out of Court on 05.12.2012.

22.Even pending O.S.No.228 of 2008, the respondents 2 to 7 herein entered into an agreement of sale with 8th respondent, S.Viswanathan on 11.09.2008 and in December 2008, the 8th respondent filed O.S.No.487 of 2008 for specific performance of the agreement of sale dated 11.09.2008. The respondents 2 to 7 remained ex-parte and the trial Court decreed the



suit on 10.12.2009. A perusal of the judgment in the said suit, on the face of it evidences that it is not in conformity to Order XX Rule 4(2) of CPC.

23.As already discussed, the Hon'ble Supreme Court as well as this Court have repeatedly held that such decrees are exfacie illegal and also inexecutable. However, armed with the ex-parte decree, the 8th respondent has made over the decree to the 1st respondent in this revision, who has filed E.P.No.98 of 2010. The executing Court allowed the said EP and the sale deed was executed in favour of the 1st respondent on 29.03.2011 and the EP itself came to be closed on 28.04.2011. Thereafter, the 1st respondent filed EP.No.41 of 2011, for recovery of possession against the respondents 2 to 7 and all of them did not choose to contest the execution petition.

24.The 1st respondent filed E.A.No.113 of 2011, seeking police protection and the judgment debtors did not even object to the said application and they made an endorsement that they have no objection and consequently, police protection was granted by order dated 16.11.2011. Thereafter, another application in E.A.No.128 of 2011 was filed, seeking amendment of the particulars in the suit schedule in O.S.No.487 of 2008.



This was also not objected by any of the defendants/judgment debtors and the amendment application also came to be allowed and at that juncture, when possession was attempted to be taken from the petitioners, they have immediately rushed to Court and filed E.A.No.20 of 2012.

25.As already discussed though Swaminathan and Vellingiri, under whom the respondents 2 to 7 claim, had filed a suit in O.S.No.385 of 2005, the said suit came to be dismissed for non-prosecution and the suit for partition in O.S.No.228 of 2008 also was closed on the false pretext made by the respondents that the parties had settled the disputes out of Court. It is relevant at this juncture to examine the case of the respondents. The father of the respondents 2 to 7, who allowed an ex-parte decree to be passed in the suit for specific performance, chose to issue a notice to Murugasamy Gounder on 16.04.2003.

26.In the said notice, Swaminathan and Vellingiri had specifically claimed that Murugasamy Gounder had purchased a half share from Rangasamy, who was entitled to only to 1/4th share and therefore, Murugasamy Gounder should not encumber the rights of Swaminathan and



Vellingiri, who had issued the said notice. Murugasamy Gounder sent a reply on 29.04.2003, stating that Rangasamy Gounder and Karuppasamy Gounder alone were entitled to the entire 10.52 acres and the rightful and lawful entitlement of Rangasamy Gounder had been purchased by Murugasamy Gounder, in and by a sale deed dated 20.10.1978 and that the properties that have already been subdivided as S.F.No.289/1 and revenue records have also been mutated in SF.No.289/1 in favour of Murugasamy Gounder even in 1983. Thereafter, the said Swaminathan and Vellingiri filed a suit in O.S.No.340 of 2005, reiterating that Rangasamy Gounder had only 1/4th share and not half share, but however, in the suit, they had categorically admitted that Murugasamy Gounder was in in possession of the suit property and the suit itself was valued under Section 25(a) of the Tamil Nadu Court Fees and Suits Valuation Act and the relief of vacant possession was also sought for.

27.Murugasamy Gounder defended the suit, by filing a written statement, stating that he was entitled to a half share, namely 5.26 acres out of 10.52 acres and subdivided S.F.No.289/1 belongs to him and he has been in enjoyment and possession right from 1978 onwards. In the schedule



portion, strangely, survey number is reflected as S.F.No.289/2, however, it is visible to the naked eye that S.F.No.289/1 has been corrected as S.F.No.289/2.

28.It was never the case of the plaintiffs that Murugasamy Gounder was claiming rights in respect of S.F.No.289/2. All the claim of Murugasamy Gounder was always pertaining to S.F.No.289/1 and not S.F.No.289/2, but however, for reasons best known to the plaintiffs, namely Swaminathan and Vellingiri, under whom the respondents 2 to 7 are claiming, the survey number has been fabricated and corrected as S.F.No.289/2.

29.It is also seen that the interpolation was brought to the notice of the Court and thereafter, the plaintiffs did not choose to prosecute the said suit and the suit came to be dismissed for default. It is not the case of the petitioners that they are claiming right in respect of a property purchased by P.Sivakumar. On the contrary, it is the specific case of the respondents that they claimed right only under the other branch, namely Karuppasamy Gounder from whom one P.Sivakumar purchased the remaining 5.26 acres.



The sale deed clearly reflects that the said 5.26 acres which was purchased by P.Sivakumar on 10.06.2003 pertains only to S.F.No.289/2. However, on 17.07.2003, a rectification deed has been registered and executed, as if the survey number has been wrongly mentioned as S.F.No.289/2 and it should be S.F.No.289/1. Murugasamy Gounder was not put on notice about the rectification deed, despite his specific claim by way of reply dated 29.04.2003 that he is the absolute owner of 5.26 acres situate in S.F.No.289/1.

30.Having given up the challenge to the rights of Murugasamy Gounder, with the dismissal of O.S.No.340 of 2005 and also O.S.No.228 of 2008 filed by the legal heirs of Swaminathan and Vellingiri being dismissed as settled out of Court, Murugasamy Gounder's right to S.F.No.289/1 remained unchallenged. It is thereafter that the respondents 2 to 7 have entered into an agreement of sale with the 8th respondent and in order to specifically perform the said agreement, the 8th respondent also filed O.S.No.487 of 2008. The respondents 2 to 7 have not chosen to contest the said suit and allowed an ex-parte decree to be passed and they have taken no steps to even object to the execution of sale deed in favour of the 8th



respondent, pursuant to the decree for specific performance and even in the second execution petition filed for recovery of possession as well, they have not contested and in fact, they have even expressed no objection for police protection to be granted to recover possession of the property.

31. Strangely, all this has happened behind the back of the petitioners. The respondents 2 to 7 were fully conscious of the fact that they have not been in physical possession of one half of S.F.No.289 and it is only the petitioners, who are the legal representatives of Murugasamy Gounder who are in possession. Possession of Murugasamy Gounder has been admitted even by the fathers of the respondents 2 to 7 herein by filing a suit as early as in 2005 for recovery of possession and the said suit also came to be dismissed for non-prosecution. Therefore, it is a clear case where the respondents 2 to 7, in collusion with the 8th respondent, have created an agreement of sale only in order to dispossess the revision petitioners of the subject lands. That is the reason why the respondents 2 to 7 never contested any of the proceedings, including the execution proceedings, which were instituted against them, for not only execution of sale deed but also recovery of possession.



32.Further, as rightly pointed out by Mr.Sharath Chandran, the 8th respondent has assigned the decree in favour of the 1st respondent and it is the 1st respondent who has filed the execution petition to recover possession of the property from the judgment debtors, behind the back of the revision petitioners.

33.Order XXI Rule 16 of CPC, as held by the Hon'ble Supreme Court as well as this Court, is mandatory and without the leave of the Court, the execution petition itself ought not to have been entertained. Therefore, there is also material irregularity in even numbering the execution petition filed by the 1st respondent, who is only an assignee of the plaintiff/decreed holder, namely the 8th respondent herein.

34.Further, as rightly pointed out by the learned counsel for the petitioners, the decree passed in the suit for specific performance in O.S.No.487 of 2008 is also illegal and a nullity in the eye of law.

35.The Hon'ble Supreme Court as well as this Court, in the decisions



that have been discussed herein above, clearly hold that even in ex-parte decree has to be reasoned judgment and more so, in a suit for specific performance, since Section 16(c) has to be examined in the light of the case put forth by the plaintiffs/agreement holder. I have already seen the decree passed in the suit for specific performance and there has been no application of mind by the trial Court and in a summary manner, the decree has been passed. The Sub-Court, Tiruppur, has passed the following judgment:

“P.W.1 chief proof affidavit filed and examined. Ex.A1 to A3 marked. Claim proved. Suit is decreed as prayed for with costs. Time for payment of sale consideration one month. Time for the execution of sale deed 2 months from to-day.”

36.In the light of the settled legal position, as expanded by the Hon'ble Supreme Court as well as this Court, the said judgment is exfacie illegal and inexecutable and it is open to be challenged even in a petition under Section 47 of CPC which has rightly been done by the revision petitioners in the present case. Unfortunately, the trial Court has not adverted and focussed its attention to the core dispute involved in the present case and has erroneously proceeded to dismiss the application filed by the revision petitioners, instead of allowing the same. For all the above



reasons, I am inclined to allow the Civil Revision Petition.

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37.In fine, the Civil Revision Petition is allowed. The order dated 16.10.2024 made in E.A.No.20 of 2012 in E.P.No.41 of 2011 on the file of the Principal Subordinate Judge, Tiruppur, is set aside. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

14.11.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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The Principal Subordinate Judge, Tiruppur.



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P.B. BALAJI,J.

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Pre-delivery order made in
CRP.No.1008 of 2025
& CMP.No.5744 of 2025

14.11.2025