



CRP.No.1797 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.1797 of 2025
and CMP.No.10375 of 2025

1. R.Malliga
2. I.Saroja

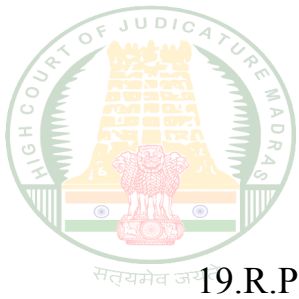
P.Valliammal (Died)
3. N.Vishalatchi

- Ammaniyammal (Died)
- 4.R.Kannamma
 - 5.V.Vijaya
 - 6.B. Amudha
 - 7.D.Paravthy
 - 8.A. Arukkani
 - 9.R.Valliyammal
 - 10.T.Thangamani
 - 11.V.Easwari
 - 12.M.Vasanthamani
 - 13.M. Papathi
 - 14.A.Santhi
 - 15.S.Kannamma

Nachammal (Died)
Muthuammal (Died)

- 16.V.Papammal
- 17.P.Kuppai
- 18.S.Palaniammal

K.Suppai (Died)



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19.R.Pappal

20.R.Pazhanal

21. R.Shanthi

23.P. Arukkuni

23.R. Selvi

24.C.Kanniammal

25.M. Selvi

26. R.Ponnammal

K.Palanathal (Died)

N.Lakshmi (Died)

27.K. Karuppal

28.M.Velammal

29. A.Saraswathi

30. C.Thangal

31.R. Pushpal

32.P. Jeya

33. M.Veerammal

34. K.Chellammal

35.M. Cavery

36.P.Mayeelal

Rangammal (Died)

37. P.Arukkani

38.S.Santhal

39.N. Lakshmi

40.P.Muthal

41.M. Santhamani

42.M.Kamalam

Versus

.. Petitioners

Murugesan (Died)

1.Dhanalakshmi

2.R.Thanasamy

.. Respondents



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Prayer:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 14.03.2025 made in E.A.No.75 of 2017 in EP.No.91 of 1997 in O.S.No.193 of 1996 on the file of the Principal District Munsif, Tiruppur.

For Petitioners : Mr.N.Manokaran
for Mr.B.Mohan

For Respondents : Mr.B.Mohan and
Mr.P.Sidharthan for R2

ORDER

Challenge has been made to the order rejecting the application filed under Section 47 of Code of Civil Procedure, the present revision has been filed by the unsuccessful judgment debtor.

2. This revision has a chequered history as under:-

2.a. The suit in O.S.No.193 of 1996 has been filed originally by R.Murugesan represented by his power agent S.Subramaniam as against 163 defendants for declaration, recovery of possession and mandatory injunction. The suit was filed contending inter-alia that the land was originally allotted to the plaintiff under the III 5 year plan, a scheme sponsored by the Central Government through the State Government for the permanent settlement of the landless agricultural labourers in specified

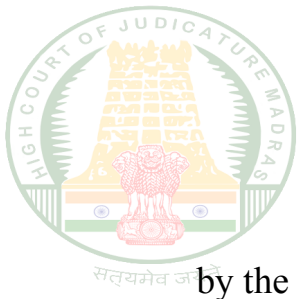


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villages. Accordingly, the suit property to an extent of 4.52 acres have been assigned to the plaintiff and the defendants are encroachers of the area. The suit has been decreed on 17.07.1997 in favour of the plaintiff. Therefore, the plaintiff filed Execution Petition in EP.No.91 of 1997 for delivery of possession. Subsequently, during the pendency of the execution petition, the plaintiff died on 24.06.2014, the respondents herein has come on record by the order of the Executing Court in E.A.No.21 of 2015 in the above EP by order dated 28.03.2016 based on the registered will said to have been executed by the plaintiff dated 17.05.2014. Thereafter, the petitioners were set exparte in the execution proceedings on 02.12.1997 and in the meanwhile, the respondents herein has filed an application in E.A.No.8 of 2017 seeking police protection to execute the decree and the said application was allowed on 07.02.2017.

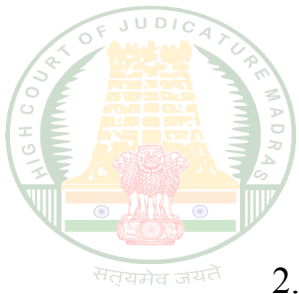
2.b. Aggrieved by the exparte order dated 02.12.1997, the revision petitioners have filed an application in E.A.No.14 of 2017 to condone the delay of 6981 days in filing the petition to set aside the exparte decree. Similarly, they have also filed an un-numbered E.A in R.No.2432 of 2017 under Section 47 of Code of Civil Procedure alleging that the order passed



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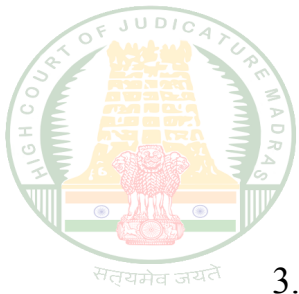
by the Court is unsustainable in law. The Executing Court below dismissed the application in E.A.No.14 of 2017 and the un-numbered application under Section 47 of CPC by orders dated 26.04.2017 and 08.06.2017 respectively. Challenging the dismissal of the applications and granting police protection, revisions have been filed before this Court in CRP(NPS).Nos.1757, 1941 & 2673 of 2017. This Court by common order dated 09.10.2017 dismissed the revisions filed challenging the dismissal of application filed to condone the delay of 6981 days in filing petition to set aside the exparte order, whereas, allowed the revisions filed challenging the dismissal of unnumbered Section 47 application and granting police protection. This Court while allowing the revision by setting aside the police protection has granted liberty to the respondents to file fresh application, if necessary. Further, while allowing the revision setting aside the order of the Executing Court dismissing the unnumbered Section 47 application had remanded the matter back to the Executing Court to number the application and determine the question raised by the petitioners on merits and in accordance with law, after providing opportunities to the parties concerned.



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2.c. Based on such direction, the Executing Court had taken out Section 47 application in E.A.No.75 of 2017. In Section 47 application, it is the contention of the revision petitioners that the property is a Government land and pattas have been issued to the revision petitioner, further, the respondents 1 and 2 have come on record based on the fabricated will said to have been executed by the plaintiff. The said application has been challenged by the respondents on the ground that Murugesan/plaintiff has executed a will in favour of the respondents. The suit property was originally assigned to Murugesan and the suit is also decreed in his favour. This application has been filed after a period of 20 years of the exparte order in EP. Based on the pleadings and submissions, the Executing Court has dismissed the application on the ground that exparte order as against the petitioners has not been set aside and as far as the contention of the petitioners with regard to the patta issued in their name is already decided in the earlier suit, therefore, dismissed the application vide order dated 14.03.2025. Challenging the said order, the present revision has been filed.



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3. Mr.N.Manokaran, the learned counsel for the petitioners submitted that the suit properties are the government land, though assigned to the plaintiff, later, it was cancelled and pattas have been given to various landless poor. The appeal filed by the Government in A.S.No.20 of 2000 stands dismissed for default and application for restoration of the appeal in I.A.No.1 of 2025 is pending on the file of the Sub Judge, Tiruppur. Further, this Court while allowing the revision had directed the Executing Court to determine the question raised by the petitioners on merits afresh in Section 47 application. According to him, now, the respondents have come on record as the legal representatives of the decree holder on the basis of a will. While allowing the application to implead them as legal representative after the death of the decree holder, the will has not seen the light of the day and the minimum requirement as contemplated under Order XXII Rule 5 has not done by the Executing court, therefore, when the will without being proved as required under law, the respondents 1 and 2 cannot be recognised as the legal representatives. Hence, the same goes to the very root of the matters. The Executing Court has not even gone into this issue. Hence, seeks for allowing this revision.



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4. In support of his submissions, he placed reliance on the following judgments:

- a. Varadarajan vs. Kanakavalli and others reported in (2020) 11 SCC 598
- b. Suresh Kumar Bansal vs. Krishna Bansal and another reported in (2010) 2 SCC 162
- c. S. Rajeshwari Ammal (died) A. Gowrishankar vs. Sathish Vasan made in CRP.NPD.No.5290 of 2024

5. Whereas, the learned counsel for the respondents submitted that the title of the plaintiff has been clearly decided in the suit and the defendants contention with regard to the issuance of patta and all other aspects have been decided by the Civil Court, though, appeal has been filed in A.S.No.20 of 2000 by the Government, that appeal has been let to be dismissed for default and still with long delay applications for restoring the appeal has been filed and the application in I.A.No.1 of 2025 is pending before the learned Sub Judge, Tiruppur. He also brought to the notice of this Court about the issue framed by the Trial Court and discussion with regard to the respective parties case and has clearly recorded the finding that the property absolutely belongs to the plaintiff and also held that the



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defendants namely the revision petitioners are encroachers and made encroachment deliberately. Therefore, when the finality has been reached, now, Section 47 application cannot be maintained.

6. Further, the revision petitioners remained exparte in the executing proceedings and the exparte order has been passed against them on 02.12.1997 in EP.No.91 of 1997 and the application filed to condone the delay of exorbitant delay of 6981 days in filing the petition to set aside the exparte order is also dismissed by the Trial Court, besides, the Trial Court has ordered police protection. On revision, this Court has confirmed the dismissal orders of the Trial Court, therefore, it is contention that exparte order passed against the revision petitioner still holds good and therefore, when the exparte order has not been set aside against them, they cannot maintain the application under Section 47 of CPC.

7. It is further contention that the respondents have come on record on the basis of a registered will executed by the plaintiff. The Trial Court also allowed the application recognising them as the legal representative to continue the proceedings. Therefore, now, the revision petitioner cannot



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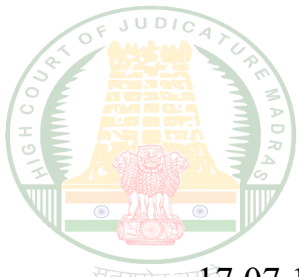
challenge the validity of the will after a lapse of many years. Since, the exparte order is not set aside, the revision petitioners cannot question the validity of the will. Hence, seeks for dismissal of this revision.

8. In support of his submission, he relied on the following judgments:

- a. Dr.Jamuna vs. Karmegam reported in 2013 6 CTC 745
- b. K.Duraisamy vs. E.Kuppusamy and another made in CRP.(NPD).No.1370 of 2017 dated 14.11.2017

9. Heard both sides and perused the materials placed on record.

10. No doubt, the suit has been decreed in favour of the plaintiff for declaration, recovery of possession and also for mandatory injunction. The suit is proceeded on the basis of assignment granted to the plaintiff by the Government. Later, the assignment is said to have been cancelled and pattas have been issued to the revision petitioners and others, the fact remains that specific issues were framed by the Trial Court and the contentions of the defendants including the Government side has been negatived. The suit has been decreed in favour of the plaintiff on



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11. Though, it appears that two appeals have been filed by the revision petitioners and others; and the Government in A.S.No.34 of 2002 and A.S.No.20 of 2000 respectively, both the appeals were dismissed for default on 27.07.2012. It is brought to the notice of this Court that the private parties and the Government have filed interlocutory applications to condone delay in filing the application to restore the appeal and the same are pending before the Sub Judge, Tiruppur. These facts are not in dispute, but the fact remains as on today, no order of stay is passed by the appellate court whatsoever. It is also an admitted fact that the exparte order is already passed against the revision petitioners in the Execution Petition on 02.12.1997 itself. An attempt is also made by the revision petitioners to set aside the exparte order with huge delay of 6981 days, that application has been taken out by the revision petitioner in E.A.No.14 of 2017 and the application was dismissed by the Trial Court and on revision, the dismissal order was confirmed. Similarly, the Executing Court has granted police protection to enforce the decree dated 17.07.1997, that order was challenged in revision. This Court allowed the revision setting aside the

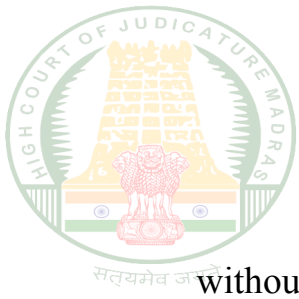


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order granting police protection to enforce the decree with a liberty to file fresh application, if necessary. Further, the subject matter in issue, as against the dismissal of Section 47 application by the revision petitioners, revision was filed in CRP.No.2673 of 2017, wherein, this Court remanded the matter back to the Executing Court to number the application and determine the question raised by the petitioners on merits and in accordance with law, after providing opportunities to the parties concerned. Based on that, application was numbered and the application was taken up before the Executing Court.

12. In this regard, the learned counsel for the respondents vehemently contended that the very exparte order passed against the petitioners has not been set aside and they are not entitled to file any application under Section 47 of CPC and placed reliance on the judgment of this Court in the case of *Dr.Jamuna vs. Karmegam* reported in 2013 6 CTC 745, wherein, this Court has held that the petitioners having been set exparte and not taken any steps to set aside the exparte order is not justified in filing an application under Section 47 of CPC. This court emphasized that a person set exparte cannot be treated as a party entitled to continue the proceedings



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without getting the exparte order set aside.

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13. Absolutely, there is no dispute with regard to the above proposition. Normally all the questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree has to be determined under the pending execution proceedings by the Executing Court. To maintain such application, the parties should continue in the execution proceedings, there should not be any exparte order passed against them. Whereas, the fact remains that in this case, this Court has directed the Executing Court to re-hear the Section 47 application, despite, exparte order passed against the revision petitioners not being set aside. Therefore, once this Court has directed for re-hearing the application under Section 47 of CPC on merits and decide the issue afresh, now, it cannot be contended by the learned counsel for the respondents that as long as the exparte order has not been set aside against the revision petitioners, they have no right to continue the proceedings under Section 47 of CPC. Despite, they having been set exparte, this Court had directed the Executing Court to re-hear the Section 47 application on merits. Such view of the matter, this Court is of the view



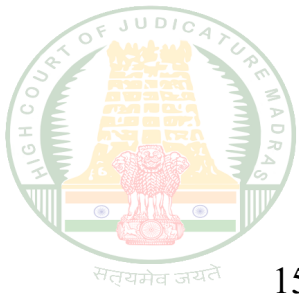
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that Section 47 has to be decided only on merits, despite the fact they have been set exparte.

14. Now, with regard to the contention raised in application under Section 47 of CPC as to the title, in this regard, this Court is of the view that as long as the finding recorded as against the defendants has not been set aside, the same cannot be re-agitated once again in Section 47 Application. Therefore, the contention with regard to the title and issuance of patta cannot be re-agitated in Section 47 application. With regard to the contention of the continuance of the execution proceedings by the respondents, it is relevant to note that the decree holder has died during the pendency of the Execution Petition. An application was taken out by the respondents in E.A.No.21 of 2015 in execution petition to implead themselves as parties. The Executing Court by order dated 28.03.2016 has passed the following order:

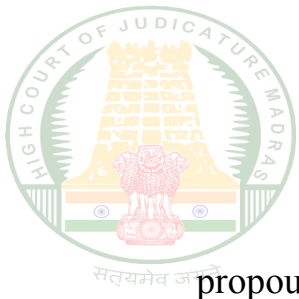
On perusal of records this court notice that this application is died of the legal heirs of the decree-holder U/s.50 CPC to recognise them a legal representative of decree-holder. Considering the facts of the case and scope of the application this court is by were notice is not necessary to Respondents and this court in view to allow this application in interest of justice no cost.



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15. On perusal of the above, it would make it clear that the Executing Court has allowed application as if it is the case of death of the judgment debtor. Section 50 of CPC deals with legal representative of the judgment debtor, where, a judgment debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased. Therefore, Section 50 of CPC is only with regard to the enforcement of the decree as against the legal representative of the judgment debtor. The very procedure adopted by the Executing Court in allowing the application is not in accordance with law. It is relevant to note that the proper procedure to implead or bring on any person as a legal representative is only in consonance with Order XXII Rule 5 of CPC. When a person seeks to continue the pending proceedings as legal representative solely based on any testament, the minimum enquiry contemplated under Order XXII Rule 5 of CPC is required. Though the question of genuineness of the will cannot be conclusively gone into by the Executing Court in a proceedings for substitution in eviction suit, but the fact remains that the recognising the right as a legatee, the will ought to have been admitted as an evidence. For that purpose, at least, the Executing Court should have necessitated the



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propounder of the will to examine at-least one of the attesting witnesss as required under law to make the will admissible in evidence. Unless one of the attesting witnesses who are alive has been examined, the will cannot be received as evidence in any proceedings, there is a clear bar under law. Therefore, without even conducting the minimum enquiry to find out whether the will has been validly executed and its validity has been proved, the Executing Court ought not to have recognised the respondents as the legal representatives.

16. Though the validity or genuineness of the will cannot be gone into at this stage, while substitution of any person as a legal representative, the minimum basic requirement is to prove the will as per law to make the document admissible in evidence, whereas, such a procedure has not been done by the Executing Court before allowing the application. Therefore, this Court is of the view that failure to follow the procedure, it will in fact lead to grave injustice. In all fairness, the Executing Court at-least could have made an attempt to implead the legal heirs of the decree holder, because, they are the best person to challenge to the very genuinity of the will. Though a stranger to the family normally may not be a fit person to

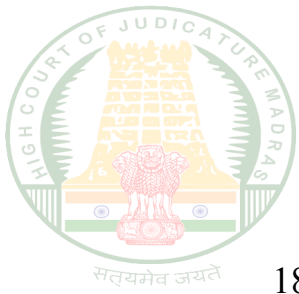


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challenge the will considering the nature of the dispute, whereas, the property originally assigned by the Government to the plaintiff and later said to have been cancelled, now, unconnected persons are brought on record based on the will said to have been executed by the plaintiff, the Trial Court should have impleaded the natural legal heirs of the deceased so that the validity of the will and the rights of the respondents also could have been decided property, unfortunately, such procedure has not been done so.

17. Such view of the matter, the order of the Trial Court stands set aside and the matter is remanded back to the Executing Court only for the limited purpose of making enquiry under Order XXII Rule 5 of CPC for substitution to continue the execution proceedings and further for re-hearing the matter in respect of will as the will requires compliance under Section 67 of Bharatiya Sakshya Adhiniyam, 2023. It is made clear that till the right of the legal representative has been decided, the Executing Court cannot proceed further.



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18. Further, taking note of the nature of the allegations and the Government as well as the private parties are also lethargic in prosecuting the appeals, the Appellate Court is directed to dispose of all the interlocutory applications pending on its file on its own merits, if the at all the applications are allowed and the appeals are restored, the learned Sub Judge, Tiruppur shall dispose of the appeals jointly taking note of the overall consideration not only the reasons but also other aspects of the matters, since the entire area originally is a Government land which was assigned to the plaintiff; later cancelled and pattas were issued to around 163 people, therefore, the appeals have to be decided on merits expeditiously preferably within a period of three months from the date of receipt of a copy of this order. This direction is issued in the interest of justice.

19. Accordingly, this revision stands partly allowed. No costs. Consequently, connected miscellaneous petition stands closed.

10.07.2025

Index : Yes/No
Internet : Yes/No
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To,

1. The Principal District Munsif
Principal District Munsif, Tiruppur

2. The Sub Judge
Tiruppur

2. The Section Officer
VR Section, Madras High Court



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N.SATHISH KUMAR, J.

This Civil Revision Petition is posted before this under the caption 'for being mention' at the instance of the learned counsel appearing for the petitioner.

Heard the learned counsel appearing for the petitioner.

Considering the submissions of the petitioner, the following has to be incorporated in the Order of this Court in CRP.No.1797 of 2025 dated 10.07.2025. :

[i] In page No.11, in para No.11, in the fifth line 'the private parties and' has to be deleted.

[2] In page No.17, in para No.16, in the seventh line, instead of 'property', it has to read as 'properly'

[3] In page 17, in para 17, in the first line after the trial Court, 'in E.A.No.21 of 2025' has to be inserted.



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[4] At the end of the para 17, the following sentence has to be incorporated :

“While doing exercise to decide the legal representative on the basis of the Will, only the natural heirs of the executor alone to be heard by the trial Court, since a stranger to the family is not competent to challenge the Will.

[5] As it is stated by the learned counsel appearing the petitioner, the observations made by this Court in para 18 will have serious impact on the appeal itself, instead of the 18th paragraph, the following shall be read as 18th paragraph :

18. Further, taking note of the nature of the allegations and the Government as well as the private parties are also lethargic in prosecuting the appeals, the Appellate Court is directed to dispose of all the interlocutory applications pending on its file on its own merits, if the at all the applications are allowed and the appeals are restored, the learned Sub Judge, Tiruppur



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shall dispose of the appeals jointly within a period of three months from the date of receipt of a copy of this order. This direction is issued in the interest of justice.”

The registry is directed to incorporate the above in the Order and issue fresh Order copy to the parties concerned.

17.07.2025

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N.SATHISH KUMAR, J.

VRC

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