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C.R.P(PD)No.1420 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.06.2025

CORAM :

THE HON'BLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD) No.1420 of 2021
and C.M.P.No.11083 of 2021

R.Arulanandham (Died)

2.A.Rajam
W/o.Late R.Arulanandham

3.Nirmala Selvam
W/o.Kumarasamy Selvam
D/o. Late R.Arulanandham

4.A.Ravi
S/o. Late R.Arulanandham

5.S.Kalaiselvi
W/o.A.Suresh
D/o.Late R.Arulanandham

(Sole petitioner died. Petitioners 2 to 5 are brought on record as LR's of the deceased sole petitioner viz. R.Arulanandham vide Court order dated 30.01.2024 made in CMP No.23144, 23145 and 23147 of 2022 in CRP.1420 of 2021 by SSJ)

...
Petitioners

Vs.

S.Indirani
W/o.B.Saravanan

... Respondent



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PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the Fair and Final Order dated 03.03.2021 passed by the learned I Additional District Judge, Salem in REA No.74 of 2018 in REP No.46 of 2016 in [O.S.No.147](#) of 2011.

For Petitioners : Mr.L.Mouli
for Mr.A.Sriram

For Respondent : [M/s.Zeenath Begam](#)

ORDER

The Civil Revision Petitioner is the decree holder. He presented a suit for specific performance of agreement of sale. This suit in [O.S.No.147](#) of 2011 was decreed insofar as the alternate prayer for refund of advance amount alone is concerned. The defendants were directed to refund the advance amount of Rs.54 lakhs together with interest at the rate of 12% p.a. This decree has attained a finality.

2.To put this decree into execution, the Civil Revision Petitioner presented R.E.P.No.46 of 2016 on the file of the learned District Judge at Salem. Notice was served on the respondent / judgment debtor. In the meantime, the judgment debtor presented a suit in [O.S.No.423](#) of 2018, on the file of the I Additional Sub Judge at Salem. In this suit, she pleads that she is



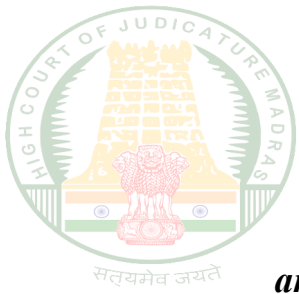
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entitled to redeem an usufructuary mortgage dated 27.05.2009. The defendant, who is the Civil Revision Petitioner is the Decree Holder in [O.S.No.147](#) of 2011. He has also filed his written statement.

3. Thereafter, the judgment debtor filed [R.E.A.No.74](#) of 2018 in R.E.P No.46 of 2016, seeking stay of all further proceedings of R.E.P. No.46 of 2016 till the disposal of [O.S.No.423](#) of 2018. Notice was ordered in this application. The Decree Holder also filed a detailed counter opposing the same. The learned I Additional District Judge at Salem, allowed the application on 03.03.2021. Challenging the same, the Decree Holder is before this Court.

4. Heard [Mr.A.Sriram](#) for Mr.L.Mouli for the petitioner and Mrs.Zeenath Begum for the respondent.

5. A perusal of the order passed by the learned I Additional District Judge, Salem, shows that the learned Judge has exercised the powers under Order XXI Rule 29 of the Code of Civil Procedure, 1908. Order XXI Rule 29 of Code of Civil Procedure, 1908, reads as follows:



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“29.Stay of execution pending suit between decree holder and judgment debtors. - Where a suit is pending in any Court against the holder of a decree of such Court [or of a decree which is being executed by such Court,] on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.”

[Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing]

6.The learned District Judge had failed to appreciate the scope of Order XXI Rule 29 of the Code. This provision requires two proceedings to be simultaneously pending in one Court. One should be a proceeding at the instance of the decree holder against the judgment debtor and the other should be a suit at the instance of the judgment debtor against the decree holder. The words "such Court" assume great importance. This means the suit must not only be pending in that Court, but also one against a holder of a decree of that Court. In the present case, the execution petition is pending on the file of the I Additional District Judge at Salem. The suit in O.S.No.423 of 2018 is pending before the I Additional Sub Judge at Salem. This issue is no longer *res integra*



and has been settled by a judgment of the Supreme Court in ***Shaukat Hussain Vs. Bhuvaneswari Devi, (1972) 2 SCC 731***. Also see, ***Bala Sahib Vs. Anil, (2017) 4 MAH LJ 399***.

7.By virtue of the amendment to the Code of Civil Procedure in the year 1976, the words "*of a decree which is being executed by such Court*" were inserted. It was argued before the Supreme Court that by virtue of the 1976 amendment to the Code of Civil Procedure, any Court can grant an order of injunction. This argument was rejected by the Supreme Court, since the word "such Court" appeared in the amendment too. See, ***Srikrishna Singh Vs. Maihvara Ahir & others, (1981) 4 SCC 421 (para 16 to 18)***.

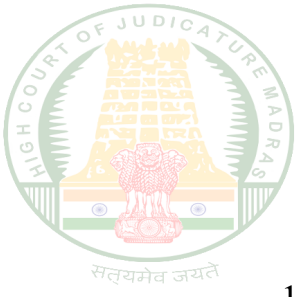
8.Even assuming that Order XXI Rule 29 would be applicable, the learned Executing Judge should have considered the proviso. The proviso states that if the decree is one for payment of money, the Court "shall" record reasons for granting stay. The use of the word "may" in the body of the Section shows that it is a discretionary order. The Rule is not mandatory. The mere fact that a suit and execution proceedings are pending between two parties, the Court need not automatically enter grant a stay of execution.



While considering the application for stay under Order XXI Rule 29, the Court should lean in favour of the person who has obtained a decree. He should not be denied his legal right to execute the decree on casual grounds. The very filing of a suit for specific performance in O.S.No.147 of 2011 implies that the decree holder has conceded the title of the defendant / judgment debtor. Similarly, by filing O.S.No.423 of 2018, the plaintiff asserts that she is the owner of the property and the judgment debtor is a mortgagee.

9. When such being the facts, the Court below should come to a conclusion that granting of stay is essential in the interest of justice. The discretion of granting stay should be exercised judicially and not in a mechanical manner, as a matter of course. The power must be exercised only in exceptional cases where interest of justice requires the grant of stay.

10. The proviso has escaped the notice of the learned trial Judge. Even assuming Order XXI Rule 29 C.P.C. were to apply to the present proceedings with respect to decree for payment of money, Executing Court cannot grant a stay unless and until some security is provided by the Judgment Debtor.



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11.The decree holder's right to execute the decree should not be nipped at in a casual manner. Hence I am constrained to interfere.

12.In the Result, the Civil Revision Petition is allowed with a cost of Rs.10,000/-. The order passed in R.E.A.No.74 of 2018 in R.E.P.No.46 of 2016 in [O.S.No.147](#) of 2011 dated 03.03.2021 is set aside. The learned Executing Court shall proceed with execution of the decree day to day, and ensure that the decree holder reaps the fruits of the decree. In any event, the Execution Petition shall be disposed of on or before **28.08.2025**, and a report shall be submitted to this Court on **29.08.2025**. At the time of submitting the report, the Executing Court shall enclose a copy of the order passed in the Execution Petition. Consequently, connected miscellaneous petition is closed.

13.The learned Executing Judge is directed to strictly adhere to the Circular issued by the Registrar General, pursuant to the directions of the

V.LAKSHMINARAYANAN, J.

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Hon'ble Supreme Court in Civil Appeal Nos.3640 to 3642 of 2025 and the Circular issued by the Registrar General in [R.O.C.No.27923-A/2025/F1](#), in [P.Dis.No.51](#) of 2025 dated 23.04.2025.

19.06.2025
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Index: Yes / No
Neutral Citation

To.
I Additional District Judge
Salem

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[and C.M.P.No.11083 of 2021](#)