



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

C.R.P.No.1713 of 2023 and
CMP No.11147 of 2023

Thiru Ponnusamy (Died)

1. Puspathal
2. Sumathi
3. Anandhakumar

... Petitioners

Vs.

1. Govindammal
2. Subramaniam @ Duraisamy

... Respondents

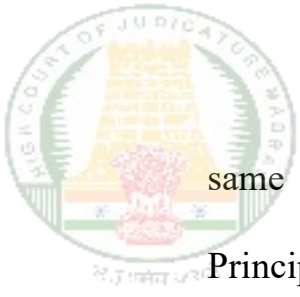
PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., praying to set aside the fair and decretal order, dated 30.03.2023 passed in E.A.No.34 of 2023 in E.P.No.46 of 2018 in O.S.No.78 of 2004 on the file of the Principal District Munsif (FAC) at Tiruppur.

For Petitioners : Mr.K.Myilsamy

For Respondents : Mr.S.S.Swaminathan

ORDER

The Revision Petitioner is the plaintiff in a suit for partition. The plaintiff's half share has been declared and thereafter the defendants in the suit have taken out Execution Petition in E.P.No.46 of 2018. Final decree has been passed and the same has been challenged by the plaintiffs and the



same is pending in first appeal in A.S.No.1 of 2023 on the file of the Principal Sub Judge, Tiruppur. In the meanwhile, the defendants have filed the Execution Petition taking advantage of the final decree passed in the suit to put them in physical possession of the share that has been demarcated in the final decree. In the said Execution Petition, the petitioners / Decree holders were set exparte and within a period of 30 days, an application was filed under Order XXI Rule 106 C.P.C., to set aside the exparte order passed in the Execution Petition. However, the Executing Court has dismissed the said application in E.A.No.34 of 2023 only on the ground that the Execution Petition is pending from 2018 and the suit itself has filed in 2004.

2. The learned counsel for the petitioner would submit that the first appeal is ripe for arguments and since the final decree is under challenge in the first Appeal, any final orders in the Execution petition would seriously prejudice to the rights of the petitioners, who are in fact the plaintiffs in the original suit.

3. Per contra, the learned counsel for the respondents / decree holders would submit that despite having a decree in their favour, the revision



petitioners have not taken any steps to have the final decree executed and it was only the defendants / Judgment Debtors who were constrained to file Execution Petition in order to give effect to the final decree proceedings and demarcate the properties made under the final decree. He would further state that the petitioners have not taken any steps to expedite the disposal of the appeal which is pending from 2023 onwards and more over there is also no interim stay granted by the first appellate Court and hence there is no impediment for the Executing Court to go ahead with the Execution Petition.

4. I have carefully considered the submissions advanced by the learned counsel on either side and perused the materials available on record.

5. Admittedly the revision petitioners are entitled to half share in the suit property by way of Judgment and decree, dated 31.01.2012 and final decree has been passed on 02.03.2018 demarcating half share belonging to the petitioners. Since the petitioners did not take any steps to obtain physical position in terms of the final decree, the respondents / defendants have filed the Execution Petition to give effect to the final decree



proceeding. In the said Execution Petition, the petitioners have been set
exparte.

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6. I have carefully gone through the order impugned in this revision. Excepting for stating that the suit was filed in the year 2004 and despite opportunity to file counter, the petitioners did not contest the Execution petition, I do not find any consideration of the pendency of the appeal as against the final decree. Further, the application has not been delayed and has been filed within the statutory period of limitation viz., 30 days. While so, the Executing Court ought to have set aside the exparte order passed against the petitioners and given them an opportunity to contest the Execution petition.

7. Considering the above, I am inclined to dispose of this present Civil Revision Petition, directing the learned Sub Judge, Tiruppur to dispose of A.S.No.1 of 2023 on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. Subject to the decision in the first Appeal A.S.No.1 of 2023, the Executing



CRP.No.1713 of 2

Court namely, the Principal District Court (FAC), Tiruppur shall proceed with the Execution Petition in E.P.No.46 of 2018 and dispose of the same, within a period of one month thereafter.

8. With the above direction, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

27.10.2025

Speaking Order/Non-speaking Order

Index : Yes / No

Neutral Citation : Yes/No

vum

To

The Principal District Munsif (FAC) at Tiruppur.



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CRP.No.1713 of 2

P.B. BALAJI,J.,

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