



C.R.P. No.1936 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.1936 of 2021

and

C.M.P.Nos.15015 of 2021 & 19729 of 2022

Alleliappa (Deceased)

1.Narayanappa

2.Ramachandrappa(Died)

3.Aswathnarayana

4.Venkatesappa

5.Rajappa

6.Susilamma

7.Adharsha

8.Lavanya

9.Sukesh

10.Akshay

(Petitioners 6 to 10 Res.at.Gopasanthiram

Village and Post, Dhenkanikottai Taluk,

Krishnagiri District.

(2nd Petitioner died Petitioners 6 to 10 brought
on record as LR's of the deceased Petitioner-2.viz
Ramachandrappa vide court order dated 10/02/2023
made in CMP Nos.1572, 1579 and 1581
of 2023 in CRP.No.1936 of 2021)

.. Petitioners

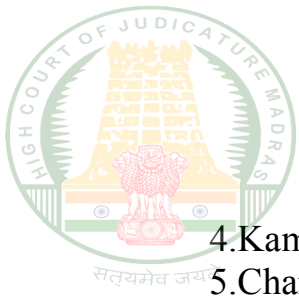
vs.

Kullamma @ Muniyamma (Deceased)

1.Srinivasa Reddy

2.Venkata Reddy

3.Sugunamma



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4.Kamatchiamma

5.Chandrakala

6.Padma

7.Narayana Reddy

.. Respondents

Petition filed under Section 115 of C.P.C., against the Docket order in R.E.P.No.26 of 2014 in O.S.804 of 1993, on the file of the Additional District Munsif (FAC) at Dhenkanikottai, Krishnagiri District dated 23.04.2021.

For Petitioners : Mr.M.Muruganantham

For Respondents : Mrs.Dakshayini Reddy
Senior Counsel
For Mrs.Suneetha
counsel for R1

ORDER

Challenging the impugned order dated 23.04.2021, ordering the delivery of the suit property, the present Civil Revision Petition has been filed by the judgment debtors.

2. As the second petitioner died, his Legal heirs have been brought on record. Pursuant to the orders passed in R.E.P.No.26 of 2014 in O.S.No.804 of 1993, delivery ought not to have been ordered since the property has not been partitioned and Execution Petition was filed



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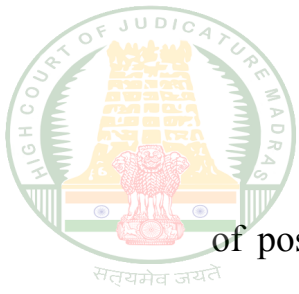
beyond the period of limitation i.e., the Execution Petition was not filed within a period of three years.

3. The learned counsel appearing for the petitioner would submit that though the suit for declaration of title has been decreed, consequential relief of mandatory injunction was granted to enforce the decree. Execution Petition ought to have been filed as per Article 135 of the Limitation Act, whereas the Execution Petition has been filed on 24.07.2014, after 12 years of the decree and judgment. Therefore, the order of the delivery passed by the Executing Court cannot be sustained in the eye of law.

4. The learned counsel for the 1st respondent contended that 1.46 acres has not been partitioned from the larger extent of 2.46 acres without the proper demarcation, delivery cannot be ordered.

5. Heard both sides and perused the entire materials placed before this Court.

6. The suit was originally filed for declaration of title and recovery



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of possession and also the mandatory injunction and damages. Though the declarations sought for in respect of 2.58 acres, the trial Court has granted a decree in respect of 1.46 acres alone in favour of the plaintiffs and held that the remaining 1.12 acres belonging to the defendants and it has also clearly held that the defendants shall hand over the property within a period of three months, failing which, recovery will be ordered as per law.

7. Pursuant to the said decree and judgment, an Execution Petition has been filed and the objection has been taken as if the trial Court has granted only mandatory injunction. Therefore, the Execution Petition ought to have been filed within three months.

8. On careful perusal of the judgment of the trial Court, while declaring the title in favour of the plaintiffs in respect of 1.46 acres, in fact, the trial Court directed the defendants to hand over the possession within a period of three months, failing which, it is clearly stated that possession will be recovered as per law.

9. The above decree and judgment makes it clear that it is not a



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decree of mandatory injunction simplicitor. It is a decree for declaration of title and recovery of possession. Therefore, the contention that Execution Petition ought to have been taken within a period of three years as per Article 135 of the Limitation Act is misconceived. Only to enforce the decree of mandatory injunction simplicitor, execution ought to have been levied within three years as per Article 135 of the Limitation Act. Whereas when the consequential relief of recovery of possession is ordered along with main relief of declaration of title, such decree could be enforced within a period of 12 years as per Article 136 of the Limitation Act, 1963. Therefore, the contention of the learned counsel in this regard has no legs to stand.

10. The contention was that the property has not been divided. Therefore, the delivery cannot be ordered. This contention also has no force for the simple reason that the relief has been sought for in respect of 2.58 acres on the specific boundaries, wherein, the trial Court has clearly held that the plaintiffs are entitled only 1.46 acres. When the larger extent has not been disputed and the trial Court has granted a decree in respect of 1.46 acres and clearly recorded as remaining 1.12 acres were in possession of the defendants and the trial Court has also directed that

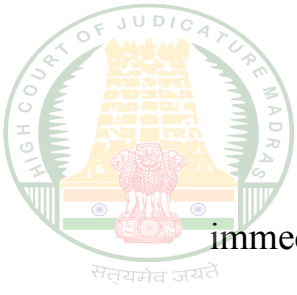


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only southern portion, where any building is within 1.46 acres, that has to be removed and handed over to the decree holders. When the identity itself is not in dispute and clearly clarified by the judgment, it is too late for the judgment debtor to resist the execution on the same ground in the Execution Proceedings. Therefore, their contention in this regard has also no legs to stand.

11. In that view of the matter, I do not find any merits in the revision petition and the decree has been passed as early as on 29.11.2002, the decree holder could not even see the fruits of the decree till the year 2024 and even today. This is the classic example for the saying real litigation starts only when the execution is levied. Therefore, this Court is of the view that this type of litigations in filing revisions, challenging the Execution even after suffering the order and decree, which reached finality is nothing but a clear abuse of process of law to thwart the proceedings or otherwise to deny the decree holder to enjoy the fruits of the decree.

12. The trial Court is directed to issue delivery warrant



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immediately and see to that the property is recovered and delivered. The trial Court shall also see to that necessary police protection is ordered to implement the order for delivery of the property.

13. With this direction, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

21.01.2025

Index: Yes/No
Neutral Citation: Yes/No
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To
The Additional District Munsif (FAC),
Dhenkanikottai, Krishnagiri District.



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N.SATHISH KUMAR, J.

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