



C.R.P.Nos.2043 to 2045 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.2043, 2044 & 2045 of 2024

and

C.M.P.No.10910 of 2024

- 1.S.Thiyagarajan
- 2.M.Raman
- 3.T.Vasanthi
- 4.M.Murugesan
- 5.M.S.Velu
- 6.R.Murugan
- 7.K.Durai
- 8.G.Pancha
- 9.V.Soundra Pandiyan
- 10.V.Thirumalai Muthu
- 11.D.Kesavan
- 12.M.Nallathai
- 13.S.Valli
- 14.S.Kumaresan
- 15.M.Lakshmanan
- 16.T.Ponnammal
- 17.S.Karpagam
- 18.Manoharan
- 19.C.Savithiri
- 20.K.Sumathi
- 21.M.Saritha
- 22.R.Chithra
- 23.G.Ranganathan
- 24.Manikandan
- 25.M.Sankara Pandi
- 26.K.Dhanalakshmi
- 27.T.Kalki
- 28.Krishnan
- 29.Nadi Muthu



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- 30.Manikandan
- 31.M.Sivaraman
- 32.T.Selvaraj
- 33.E.Santhi
- 34.L.Radha
- 35.R.Sethupandiyar
- 36.C.Ganesan
- 37.Saraswathi
- 38.Boopathi
- 39.Suresh
- 40.M.N.Kannan
- 41.A.Santhi
- 42.P.Muthu Kumar
- 43.P.Gunasundari
- 44.P.Pandiyar
- 45.P.Velu
- 46.S.Mallika
- 47.C.Manikandan
- 48.Mallika
- 49.V.Anusiya
- 50.N.Venkatesan
- 51.Stella Rani
- 52.R.Alamelu
- 53.Thiruvagasalingam
- 54.V.Muthukrishnan
- 55.M.Ganapathy
- 56.Murugesan
- 57.M.Mohan Babu
- 58.K.Valivittan
- 59.R.Shanmugam
- 60.Sagunthala
- 61.M.Amudha
- 62.Elangovan
- 63.P.Mayavel
- 64.Aadhilingam
- 65.S.Gokula Krishnan
- 66.P.Kuppammal
- 67.V.Kandhan
- 68.M.Selvakumar
- 69.V.Muthalagu
- 70.Pandiyar



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- 71.U.Balamurugan
- 72.G.Vasantha
- 73.T.Ramesh
- 74.M.Sumathi
- 75.M.Samundeeswari
- 76.S.Manickam
- 77.R.Malini
- 78.A.Amudha
- 79.K.Radha
- 80.M.Ramarai Pushpam
- 81.Ramu
- 82.M.Aarumugam
- 83.V.Panchalai
- 84.K.Kedheshwaran
- 85.Savariyar
- 86.N.Seenivasan
- 87.M.Karthick
- 88.Lakshmi
- 89.R.Govindammal
- 90.A.Uma
- 91.K.Ramesh
- 92.T.Venkatesan
- 93.P.Muthusamy
- 94.A.Sekar
- 95.S.Rajangam
- 96.V.Rajaraman
- 97.V.Ramesh
- 98.P.Amul
- 99.A.Velu
- 100.Aarumugam
- 101.B.Gayathiri Bai
- 102.H.Kasthuri
- 103.Mari.Dhanushkodi
- 104.M.Thirumani Samy
- 105.M.Kamaraj
- 106.M.Kamaraj
- 107.R.Thangaraj
- 108.M.Sundravalli
- 109.C.Ramar
- 110.Ravi
- 111.M.Ramaiah



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112.V.Raman
113.R.Manimala
114.S.Manjula
115.N.Seenivasan
116.S.Selvi
117.S.Vilayutham
118.G.Hiyamala
119.V.Elumalai
120.N.Sudalaikannu
121.M.Sudalai
122.M.Andal
123.P.Nalini
124.P.Senhilnathan
125.T.Indira
126.S.Pandiyan

.. Petitioners in all C.R.Ps

vs.

1.Mrs.Hussain Begum
2.Mir Dilwar Hussain
3.Mir Dilber Hussain
4.Mir Dhildher Hussain
5.Mir Mushtak Hussain
6.Mir Imdad Hussain
7.Mir Zahira Begum
8.Amutul Zainab
9.Rokiya Begum
10.Mir Abid Hussain
11.Mir Anwar Hussain
12.Mir Azhar Hussain
13.Mir Azhad Hussain
14.Mohammed Begum
15.Asifa Begum
16.Nasima Begum
17.Salma Begum
Mir Askar Hussain(Deceased)
Tahira Begum (Deceased)
18.DR.Abbasi Begum
19.Mrs.Azra Begum
20.Mrs.Asiya Begum
21.Mrs.Sadikha Begum
22.M.M.Mehdi Hussain



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23.Sirdar Begum @ Khatija Begum

24.Nasreen Zehra

25.Thaseen Zehra

26.A.Afroze

27.Shaheen Zehra

28.Mir Feroze Ali

29.Farhana Fathima

30.P.P.R.Hariharan

31.Bharath Rajiv Gandhi Nagar

Kudisaivazh Pothu Nala Sangam

Rep.by its President,

P.Shanmuga Vadivukkarasi,

No.20, Navalur Nagar,

Thirumangalam Road,

Villivakkam, Chennai – 49.

32.Vadivukarasi

33.Renuka

34.Kanagadurga

35.Mirulalini

36.L.Girija

37.Sathiyararayan Prasad

38.Balaji Prasad

39.Uma Maheswari

40.Sumathi Tiwary

41.Ravi Tiwary

42.Paravathi Tiwary

43.Alagarwamy

44.Meena

45.Krishnamani

46.Sekar

47.Dakshinamoorthy

48.Balu

49.Rukmangathan

50.S.Vasudevan

51.J.Sekar

52.Kannan

53.Dayalan

54.A.Chinnadurai

55.Michael

56.Jamuna

57.Elumalai



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58.A.Sankar

59.Bharat Sevak Samaj

Rep by its Secretary,

Having office at

Government Estate, Chennai – 2.

60.Mrs.Kushkarni

.. Respondents in all C.R.Ps

Prayer in C.R.P.No.2043 of 2024: Petition filed under Article 227 of the Constitution of India, to set aside the order in EA (SR) No.45001/2023 in E.P.No.90/2007 in O.S.No.7335/1996 dated 25.07.2023, which is pending before the learned X Assistant Judge City Civil Court, Chennai and also pass such further or other or orders.

Prayer in C.R.P.No.2044 of 2024: Petition filed under Article 227 of the Constitution of India, to set aside the order in EA (SR) No.13511/2023 in E.P.No.90/2007 in O.S.No.7335/1996 dated 25.07.2023, which is pending before the learned X Assistant Judge City Civil Court, Chennai and also pass such further or other or orders.

Prayer in C.R.P.No.2045 of 2024: Petition filed under Article 227 of the Constitution of India, to set aside the order in EA (SR) No.87529/2022 in E.P.No.90/2007 in O.S.No.7335/1996 dated 25.07.2023, which is pending before the learned X Assistant Judge City Civil Court, Chennai and also pass such further or other or orders.



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For Petitioners : Mr.P.Vijendran
(in all CRPs)

For Respondents : Mr.P.Sidharthan
(For R28)
(in all CRPs)

(For R1 to R27,
R29 to R60) : No appearance
(in all CRPs)

COMMON ORDER

These Civil Revision Petitions challenge the orders passed by the learned X City Civil Court in EA (SR) No.45001/2023, EA (SR) No.13511/2023 and EA (SR) No.87529/2022 in E.P.No.90/2007 in O.S.No.7335/1996.

2. The Civil Revision Petitioners numbering 126 filed the applications in the Execution Petition. They wanted the following directions in

(i) E.A.SR.No.87529 of 2022 to implead them as party to E.P.No.90 of 2007

(ii) E.A.SR.No.13511 of 2023 to cancel the warrant of delivery issued by the Court on 06.02.2023 and

(iii) E.A.SR.No.45001 of 2003 is for stay of all further proceedings in E.P.No.90 of 2007 in O.S.No.7335 of 1996 till the disposal of



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I.A.No.18979 of 2012 in O.S.No.7335 of 1996.

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3. Heard Mr.P.Vijendran, learned counsel for the civil revision petitioners and Mr.P.Sidharthan, learned counsel for the respondents.

4. The narration of the past history of the case is essential. For the sake of convenience, the parties will be referred to as third parties and decree holders.

5. The decree holders had filed a writ petition before this Court in W.P.No.3823 of 1989, seeking a direction to the Police officials to secure their property from the trespass made by one, Mr.P.P.R.Hariharan and his accomplices. As a counter blast to this writ petition, Mr.P.P.R.Hariharan filed W.P.No.4112 of 1989, seeking issuance of writ of Certiorarified Mandamus to quash the proceedings of the Collector of Madras. Both the writ petitions were clubbed together and taken up for disposal. By a common order dated 18.08.1989, both the writ petitions were dismissed. Liberty was granted to the parties to approach the Civil Court. A direction was given in the writ petition filed by the decree holders that the Police should not permit any further invasions by the trespassers into the property situated at Survey Nos.2,15,13 and 14 of Kolathur Village,



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Chennai District.

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6. Subsequent to the dismissal of the writ petitions, suits came to be presented before the City Civil Court and before this Court. Mr.P.P.R.Hariharan presented O.S.No.500 of 1990, seeking permanent injunction, restraining the decree holders from interfering with his possession. He also filed O.S.No.1755 of 1990 for the very same relief. Both the suits came to be dismissed on 07.07.1997.

7. Pursuant to the liberty granted by this Court in W.P.No.3823/1989, the decree holders had presented a suit for declaration of their title, permanent injunction, recovery of possession and for damages on the original side of this Court in C.S.No.475/1991.

8. On account of enhancement of pecuniary jurisdiction of the City Civil Court, this suit stood transferred to the file of that Court and was re-numbered as O.S.No.7335/1996. Summons were served on the defendants. Issues were framed and the suit was taken up for final disposal by the II Additional District and Sessions Judge, Fast Track Court, Chennai. After recording the evidence of the 30th decree holder, the suit came to be decreed as prayed for, on 13.04.2006.



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9. During the course of discussion, the learned Trial Judge came to a conclusion that the sale deeds executed by Mr.P.P.R.Hariharan in favour of the third parties as null and void.

10. Earlier to this suit, the plaintiffs in C.S.No.475 of 1991 had presented C.S.No.140 of 1990 for declaration and injunction. This suit too was transferred to the file of City Civil Court, Chennai and renumbered as O.S.No.693 of 1990. The VII Assistant City Civil Judge, dealt with this suit. After being convinced that the decree holders having title to the property, the suit was decreed as prayed for on 25.10.2004. Invoking the jurisdiction of the City Civil Court, the decree holders filed E.P.No.90/2007, it is thereafter their headache commenced. Delivery was ordered by the Court for the first time on 25.06.2010. Two of the Judgment Debtors, namely, defendants 31 and 32 filed E.A.No.395/2008 under Section 47 of the Code of Civil Procedure, claiming that the Execution Petition is not maintainable.

11. The X Assistant Judge dismissed this Execution Application on 17.08.2009. Just prior to the filing of these applications, the very same judgment debtors preferred E.A.No.6991/2008 for a direction to the

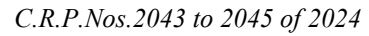


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District Collector, Chennai, to produce records from the office of the Assistant Settlement Officer and for the revenue patta for the suit property. The learned Executing Judge dismissed these petitions on 26.11.2008.

12. Challenging the same, the Civil Revision Petition was filed before this Court in C.R.P.(NPD).No.227/2009. This Court agreed with the Executing Court and dismissed the revisions on 28.01.2009. Aggrieved by the dismissal of their Section 47 application, Civil Revision Petition has been preferred to this Court in C.R.P.No.3463/2009. This revision too came to be dismissed by this Court on 05.03.2010.

13. Having lost in the Executing Court, the defendants, who filed the Section 47 application, preferred an appeal to this Court as against the judgment and decree in O.S.No.7335 of 1996 dated 13.04.2006. As there was a delay in filing the appeal, M.P.No.1 of 2009 was filed to condone the delay of 966 days in preferring the regular appeal. After issuance of notice and hearing the parties, the condone delay application came to be dismissed by this Court on 15.03.2012. Therefore, the attempt to stultify the execution of the decree, attained a finality in March 2012. Yet the decree holder is still knocking on the Court's door to recover possession



14. In order to identify the property to take possession of the same, decree holder filed E.A.No.2504 of 2012. It sought for a direction to the surveyor to identify the property so as to take delivery. This application was allowed by the Executing Court on 26.07.2012. Since the decree holders faced some difficulty, on the site, at the time of taking delivery, they also moved an application for Police aid in E.A.No.2505 of 2012. This application was allowed by the Executing Court on 26.07.2012.

15. The defendants 31 and 33, yet again, wanted to throw a spoke into the Execution proceedings. They filed applications in I.A.No.154 of 2012 to I.A.No.156 of 2012 in O.S.No.7335 of 1996. Those applications were filed to condone the delay in filing the applications to set aside the *exparte* decree, to set aside the *exparte* decree and to stay E.P.No.90 of 2007. These applications were dismissed by the XVI Additional City Civil Court on 17.12.2012. Challenging all the aforesaid orders passed on the execution side and on the original side, four civil revision petitions were presented to this Court in C.R.P.(NDP).Nos.4645 to 4648 of 2012.

The decree holders, questioning the maintainability of the applications,



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preferred three revisions in C.R.P.(NPD).Nos. 4645 to 4648 of 2012.

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16. As the matters arose from the same proceedings, this Court clubbed all the revisions together. By an order dated 25.09.2014, the Civil Revision Petitions preferred by the judgment debtors came to be dismissed and the Civil Revision Petitions filed by the decree holders came to be allowed.

17. Challenging the same, the judgment debtors preferred Special Leave Petitions to the Supreme Court in S.L.P.Nos.33377 to 33383 of 2014. The same were dismissed on 08.01.2015.

18. After the curtains were brought down on the litigation initiated by the judgment debtors; persons, who have purchased the properties from the judgment debtors have started the fourth round of litigations. They presented 90 suits in all before the City Civil Court at Chennai, seeking for the relief of permanent injunction, restraining the decree holder from in any manner executing the decree in O.S.No.7335 of 1996. The suits were not prosecuted and they were dismissed for default.



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19. Subsequently, 126 persons joined together and filed E.A.(SR).No.87529 of 2022 and the other two applications viz., E.A.(SR).No.13511 of 2023 and E.A.(SR).No.45001 of 2003, which is a subject matter of the present civil revision petitions.

20. The learned Executing Judge, taking note of all the aforesaid proceedings, came to a conclusion that this is yet another attempt to prevent the decree holders from executing the decree, which obtained in the year 2006 and dismissed those applications at the threshold.

21. Aggrieved by the same, the present Civil Revision Petitions arise before me.

22. I heard Mr.P.Vijendran and Mr.P.Siddarthan.

23. I have considered the submissions of Mr.P.Vijendran, learned counsel for the civil revision petitioners and have gone through the records.

24. The narration of the facts set forth above shows that the decree holders had been successful in proving their title to the satisfaction of the



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Court as early as on 13.04.2006. The several rounds of litigation that had been launched by the judgment debtors ended in favour of the decree holders. Now third parties, who claim under the first judgment debtor, namely, one Mr.P.P.R.Hariharan are attempting to start yet another litigation. They moved application to implead themselves in the Execution Petition. They are neither legal representatives of the decree holder or the judgment debtor. Therefore, the Executing Court rightly dismissed the application to implead third parties. An Executing Court is bound by the four corners of the decree. It can neither expand nor restrict the scope of the decree. That being the position of law, I do not find any reason to take a different view than that taken by the learned Executing Judge.

25. At this stage, Mr.P.Vijendran points out that the application has been filed under Order XXI Rule 58 of C.P.C., and he pleads that a third party can file such an application. There cannot be a dispute that only a third party can file a claim petition under Order XXI Rule 58 of C.P.C. For filing an application under Order XXI Rule 58 of C.P.C., the condition precedent is that there should be an **“order of attachment”**. This being a decree for delivery of possession, question of attachment of the property does not arise at all. Therefore, the Order XXI Rule 58 of C.P.C., does not come to the rescue of Mr.Vijendran's client.



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26. Immediately he points out that if, Order XXI Rule 58 of C.P.C., is inapplicable, the third parties are entitled to invoke Order XXI Rule 97 of C.P.C. On this too, I am not in a position to agree with Mr.Vijendran.

27. This is for the simple reason, an application under Order XXI Rule 97 of C.P.C., can be filed by a decree holder or by a purchaser of a property in a Court auction sale. It does not contemplate a third party to file an application. The proper procedure as per the Code of Civil Procedure is that having obtained a decree or order for possession, an Execution Petition is filed for delivery. When the decree holder is obstructed at the time of taking the delivery, he is entitled to file an application under Order XXI Rule 97 of C.P.C., seeking for a direction to remove the obstruction, so caused.

28. Order XXI Rule 97 of C.P.C., has a corresponding provision under Article 129 of the Limitation Act. Under Article 129 of the Limitation Act, a decree holder or an auction purchaser is entitled to file an application for removal of obstruction within 30 days from the date of obstruction. The obstruction, as understood by law, occurs the date on which the decree holder attempts to physically take possession of the



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property through the office of the Ameen. It is then that the decree holder or the purchaser gets a right to file an application under Order XXI Rule 97 of C.P.C. It does not contemplate a right for a third party to invoke the said provision. The Code of Civil Procedure is not insensitive to the rights of those who might have been dispossessed by an order of delivery. For such persons, remedy is under Order XXI Rule 99 of C.P.C., Under Order XXI Rule 99 of C.P.C., a third party can file an application, pleading that he has been wrongfully dispossessed. Such an application cannot be filed by the decree holder or by the auction purchaser, but can be filed only by a third party.

29. For the sake of clarity, I have to restate the principle under Order XXI Rule 99 of C.P.C. Application under Order XXI Rule 99 of C.P.C., cannot be filed by a decree holder or auction purchaser, but can only be filed by a third party. As the stage of dispossession has not arisen in the present case, I cannot read the applications filed by the Civil Revision Petitioners as one filed under Order XXI Rule 99 of C.P.C. Therefore, the applications not being maintainable, I have no other option than to confirm the order of the learned Trial Judge impugned before me.

<https://www.mhc.tn.gov.in/judis> 30. At this stage, Mr.P.Vijendran, brought to my notice that



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another suit has been presented, seeking for a declaration that the decree obtained in O.S.No.7335 of 1996 is null and void. He states that this suit has been numbered as O.S.No.2380 of 2023 and it is pending on the file of 19th Assistant City Civil Court, Chennai. He also states an application for injunction in I.A.No.3 of 2023, restraining the defendants/deGREE holders from executing a decree in O.S.No.7336 of 1996 is pending. It is open to Mr.P.Vijendran's client, to agitate any rights that may have accrued to them in the said proceedings.

31. Suffice to state that this Civil Revision Petition is an attempt to re-litigate the issues already settled by the City Civil Court, this Court and by the Supreme Court of India. I am not in a position to agree with the submissions of Mr.P.Vijendran, and hence, the civil revision petitions are dismissed.

32. The Executing Court is reminded of the order passed by this Court in C.R.P.No.4645 of 2012 etc., dated 25.09.2014. The Executing Court shall take all steps necessary to put the decree into execution and ensure that the decree holders sees the fruits of the decree at the earliest. No costs. Consequently, connected miscellaneous petition is closed.



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Neutral Citation: Yes/No
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To
The X Assistant Judge City Civil Court,
Chennai.



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V. LAKSHMINARAYANAN, J.

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22.01.2025