



CRP.No.1848 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated 18.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.No.1848 of 2025
and CMP.No.10678 of 2025

Kalaiselvi

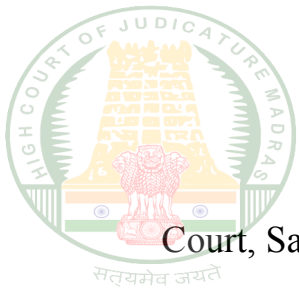
.. Petitioner

Versus

Muthu (Died)
Arumugam (Died)
1.Vellaiyammal
2.Ayyandurai
3.Kuppusamy
4.Chinna Appu
5.Thangamani
6.Ayithal
7.Ayyandurai
8.Selvi
9.Palanisamy
Ayyankutti (Died)
10.Alamelu
11.Tamilselvi
12.Sakthivel
13.Senthilkumar

.. Respondents

Prayer: Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and final order dated 13.12.2024 passed in R.W.A.No.6 of 2024 in REP.No.67 of 2005 in O.S.No.74 of 1997 on the file of the learned Subordinate



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Court, Sankari, Salem District.

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For petitioner : Mr.S.Kaithamalai Kumaran
For respondents : Mr.A.Saravanan for R1 to R9
R10- Unclaimed
R11 – Insufficient address
R12 – Deceased
R14 0- No appearance

ORDER

Challenging the impugned order dismissing the application filed under Section 47 read with Order 21 Rule 99 of CPC, the present revision has been filed.

2. The petitioner is a third party in the execution petition. The property was originally the subject matter of the partition suit in O.S.No.74 of 1997. The said suit has been filed by Muthu and Arumugam against one Ayyankutti, who is said to be the vendor of the revision petitioner. Preliminary decree was passed on 07.10.1999 allotting certain properties to each of the co-owner and final decree was passed on 04.01.2005. The said suit has reached finality. It is the contention of the revision petitioner that he has purchased an extent of 91 cents from one of the co-owner namely Ayyankutti. According to him, the said Ayyankutti has entered into a sale agreement dated 22.01.1997 in respect of 91 cents. Thereafter, for enforcing the sale agreement, the petitioner has filed a suit in O.S.No.177 of

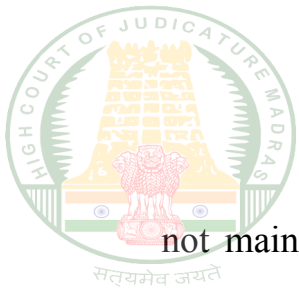


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1997 on the file of the District Munsif, Sankari and the same was decreed on 21.02.2023. Based on that decree and the sale agreement in his favour, the revision petitioner resisted the delivery of possession. The learned Trial Judge has rightly rejected the application filed under Section 47 read with Order 21 Rule 99 of CPC. Hence, the revision.

3. The learned counsel for the revision petitioner submitted that the revision petitioner has purchased an extent of 91 cents on the basis of sale agreement dated 22.01.2007 and for enforcing the abovesaid sale agreement, the suit has been filed in O.S.No.177 of 1997 and the same was decreed in favour of the revision petitioner on 21.02.2023. Thus, the revision petitioner's right is to be protected. In support of his submission, he placed reliance on the order of this Court in the case of Thanupilli vs. V.Lakshmi and others reported in 2018 (2) MWN (Civil) 602.

4. Whereas, the learned counsel for the respondent submitted that the similar application is already filed by the revision petition in E.A.No.13 of 2007, wherein, the Executing Court after detailed discussion dismissed the application and that application has already reached finality, thus, the present application is



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not maintainable and the order of the Trial Court does not require interference.

WEB COPY Hence, seeks for dismissal of the revision.

5. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents 1 to 9 and perused the materials placed on record.

6. The revision petitioner resists the execution proceedings mainly on the basis of sale agreement said to be executed by one of the co-owner and he is possession of the entire extent purchased by him. This Court is of the view that co-owner/vendor is certainly entitled to deal with his share alone not in respect of the entire property. Section 44 of the Transfer of Property Act deals with sale of undivided share by the co-owner. Though, there is no bar for the co-owner to sell the undivided share. The only restriction on the purchaser is that he cannot claim possession, at the most he is entitled to seek for partition, whereas, in this case, the final decree is passed in the partition suit, properties are allotted among the co-owners and the final decree has also reached finality.

7. It is also relevant to note that in earlier application in E.A.No.13 of 2007,



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the revision petitioner was examined and given oral evidence, wherein, he has specifically admitted that in agreement, there was no recital to show that he was given possession of the property, therefore, a person claiming title on the basis of purchase from one of the co-owner, cannot seek for separate possession particularly in respect of undivided interest. The partition suit filed by one of the co-owner has reached finality and allotment is also made. The vendor of the revision petitioner has been allotted with 37 cents in the same survey number. Therefore, once the allotment is completed, the purchaser will step into the shoes of his vendor, the revision petitioner can take property allotted to his vendor and he cannot claim separate possession. The petitioner is at liberty to work out his remedy/right against his vendor in respect of the remaining extents.

8. In view of the above, I do not find any merits in the revision. Accordingly, this revision stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

18.06.2025

Index : Yes / No
Speaking/non speaking order
dhk

N. SATHISH KUMAR, J.



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dhk

To,

1.The Sub Judge
Sub Court, Sankari

2. The Section Officer
VR Section, Madras High Court

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