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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 14.11.2025

Order pronounced on : 21.11.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.3602 of 2025

& CMP.No.28643 of 2025

& CMP.No.19412 of 2025

CRP.No.3602 of 2025:

Noor Mohammed Ismail

... Petitioner

Vs.

K.Sakunthala Ammal (Died)

K.Jeyaraman (Died)

1.J.Banumathi

2.K.J.Parthasarathy

3.V.Mohana

4.M.Yasodha

5.J.Nirmal Kumar

6.Meera Bai

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decreetal order dated 05.04.2025 in E.A.SR.No.75716 of 2025 in E.P.No.1251 of 1987 in O.S.No.2559 of 1982 on the file of the X Assistant City Civil Court, Chennai.



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For Petitioner : Mr.M.Venkatesh

For Respondents : Mr.R.Ravindran for RR1 to 5
Mr.P.V.Balasubramaniam
Senior Counsel for Mr.S.M.Muralidharan
for third parties
R6 not ready in notice

CMP.No.28643 of 2025:

1.G.Surya
2.K.Gopala Krishnan
3.K.Sampathkumar

K.Ravi Kumar (Deceased)

4.L.Uma Maheshwari
5.R.Murali
6.K.Usha Rani

... Petitioners

Vs.

1.Noor Mohammed Ismail

K.Sakunthala Ammal (Died)
K.Jeyaraman (Died)

1.J.Banumathi
2.K.J.Parthasarathy
3.V.Mohana
4.M.Yasodha
5.J.Nirmal Kumar
6.Meera Bai

... Respondents



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Prayer: Civil Miscellaneous Petition filed under Section 151 of CPC, to clarify the order dated 12.08.2025 passed in CMP.No.19412 of 2025 in CRP.No.3602 of 2025 is only in respect of the Eastern Portion of the property in R.S.No.22, Fort-Tondiarpet Taluk, Chennai District and that it has no bearing insofar as our property viz., Western Portion of the property in R.S.No.21, Fort – Tondiarpet Taluk, Chennai District is concerned.

For Petitioners : Mr.Mr.P.V.Balasubramaniam
Senior Counsel for Mr.S.M.Muralidharan
for third parties

For Respondents : Mr.M.Venkatesh for R1
Mr.R.Ravindran for RR2 to 5
R6 not ready in notice

COMMON ORDER

The revision is at the instance of a third party, who filed an application under Order XXI Rule 99 of CPC to protect him from being dispossessed in execution of a decree in O.S.No.2559 of 1982 in E.P.No.1251 of 1987.

2.Pending the revision, CMP.No.28643 of 2025 has been filed by the third parties, seeking to clarify the order passed by this Court on 12.08.2025 in CMP.No.19412 of 2025 in the above revision.



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3.I have heard Mr.M.Venkatesh, learned counsel for the revision petitioner in CRP.No.3602 of 2025 and 1st respondent in CMP.No.28643 of 2025, Mr.R.Ravindran, learned counsel for the respondents 1 to 5 in CRP.No.3602 of 2025 and respondents 2 to 5 in CMP.No.28643 of 2025 and Mr.P.V.Balasubramaniam, learned Senior Counsel for Mr.S.M.Muralidharan, learned counsel for the petitioners in CMP.No.28643 of 2025.

4.The summary of the arguments of Mr.M.Venkatesh, learned counsel for the revision petitioner, are as follows:

a) The property originally belonging to Kumaraswamy Chettiar and Krishnappa Chettiar.

b) They had mortgaged the property in favour of one Sunderlal.

c) After mortgage, Krishnappa Chettiar filed a suit for partition against Kumaraswamy Chettiar in C.S.No.338 of 1951.

d) Under the partition decree, Krishnappa Chettiar was allotted Old Door Nos.53, 54, 55 and 56 and Kumaraswamy



Chettiar was allowed Old Door Nos.58, 59, 60, 61, 62 and 63.

e) Krishnappa Chettiar filed O.S.No.9038 of 1979 for redemption of the mortgage on 23.11.1979.

f) Similarly, the legal heir of Kumaraswamy Chettiar, one Jeyaraman filed suit for redemption in O.S.No.2559 of 1982 on 2.04.1982.

g) Final decree came to be passed in both the suits on 17.03.1986 (O.S.No.9038 of 1979) and 16.01.1996 (O.S.No.2559 of 1982) respectively.

h) The decree holders in O.S.No.2599 of 1982 filed an execution petition in E.P.No.1251 of 1987 and the decree holders in O.S.No.9038 of 1979 filed E.P.No.3536 of 1991.

i) On 19.03.2008, the decree holders in both the execution petitions executed a Memorandum of Understanding with one Shanmugam, authorising Shanmugam to take possession of the properties comprised in R.S.Nos.21 and 22/2 (Items 2 and 3 of the suit property).

j) On 19.03.2008, the decree holders in O.S.No.2599 of 1982 and their counsel authorised the said Shanmugam for taking possession in the execution proceedings.

k) On 22.04.2008, possession was taken with reference to both Survey Nos.21 and 22/2.

l) On 28.04.2008, the said Shanmugam, representing the decree holders, filed a report, stating that possession of Items 2



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and 3 had been delivered.

m) On 30.04.2008, the Bailiff filed a report, confirming that Items 2 and 3 were delivered. However, Old Door No.55 New Door No.59 could not be proceeded against, in view of an interim injunction passed by this Court.

n) On 05.05.2008, the authorised representative, Shanmugam entered into an agreement with the revision petitioner for a total sale consideration of Rs.71,40,000/- and an advance of Rs.35,00,000/- had been given.

o) On 16.10.2008, Sampathkumar issued a lawyer's notice to the said Shanmugam, acknowledging the MoU as well as authorization to take possession of Item Nos.2 and 3.

p) On 02.09.2009, the revision petitioner lodged a police complaint in Crime.No.427 of 2009.

q) Pending the enquiry before the Police authorities, the said Shanmugam entered into a fresh agreement of sale on 29.01.2010, with the revision petitioner.

r) On 03.02.2010, in the application moved by the petitioner for anticipatory bail in CrI.O.P.No.2313 of 2010, this Court recorded factum of petitioner being in possession and granted anticipatory bail.



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5.Relying on the above facts and circumstances, Mr.M.Venkatesh, learned counsel for the petitioner would contend that notwithstanding that the decree holders in both the suits had taken possession of Items 2 and 3, even as early as on 22.04.2008, they once again attempted to take possession of the properties. He would however submit that in respect of the western portion, the petitioners in CMP.No.28643 of 2025 had already taken possession on 20.12.2023. However, insofar as the eastern side, the decree holders in E.P.No.1251 of 1987 attempted to take possession of the properties, notwithstanding the fact that the Court has already recorded the factum of delivery being given, even as early as on 22.04.2008. He would therefore submit that when the petitioner was admittedly in possession of the eastern portion, he was entitled to seek protection by invoking provisions of Order XXI Rule 99 of CPC. He would further state that the executing Court ought to have numbered the application and disposed of the same on merits instead of summarily dismissing the same, is not maintainable, even at the institution stage itself.



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6.Insofar as CMP.No.28643 of 2025, Mr.M.Venkatesh, learned counsel for the revision petitioners would state that no doubt the revision petitioner has been dispossessed of the western portion on 20.12.2023 and he would therefore seek for liberty to proceed against the petitioners in CMP.No.28643 of 2025, in accordance with law.

7.Per contra, Mr.R.Ravindran, learned counsel for the respondents 1 to 4 would submit that the decree, which is sought to be executed, is only in respect of the entitlement of the decree holders and it is not as argued by the counsel for the revision petitioner that after having taken possession, the decree holders are attempting to once again take possession. In this regard, he would take me through the decree passed in the partition suit, crystallizing the rights of the two original owners, namely Krishnappa Chettiar and Kumaraswamy Chettiar.

8.Referring to the decree, Mr.R.Ravindran would state that the eastern half and western halves have been allotted in each of the door numbers and therefore, the respondents were well within the right to execute the decree in



their favour to recover possession of the eastern portion in each of the door numbers belonging to the respondents. He would further contend that the very application filed by the revision petitioner is not maintainable in law, since the language of Order XXI Rule 97 of CPC is very clear as it stands and can be invoked only by the decree holder and not by anybody else. He would further submit that insofar as possession having been taken by the petitioners in CMP.No.28643 of 2025, he seeks liberty to proceed against them separately for recovering the respondents' entitlement of eastern half in each of the door numbers.

9.Mr.R.Ravindran would rely on the decision of the Hon'ble Supreme Court in *Sriram Housing Finance and Investment India Limited Vs. Omesh Mishra Memorial Charitable Trust*, reported in 2022 15 SCC 176, where the Hon'ble Supreme Court held that under Order XXI Rule 99 of CPC, dispossession of the application who seeks to invoke Order XXI Rule 99 is a necessary condition.



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10.Mr.P.V.Balasubramaniam, learned Senior Counsel in CMP.No.28643 of 2025, seeks clarification of the interim order passed by this Court, which has resulted in preventing the petitioners in CMP.No.28643 of 2025 from enjoying the properties which they have lawfully taken possession of through Court process. He would submit that the properties, which have been allotted originally to Krishnappa Chettiar and Kumaraswamy Chettiar are falling on either side of a Corporation Road and it is not as if in each property, the respondents 1 to 4 are entitled to eastern half and the petitioners in CMP.No.28643 of 2025 are entitled to the western half.

11.Mr.P.V.Balasubramaniam, learned Senior Counsel would further state that the petitioners in CMP.No.28643 of 2025 have already moved the Court and taken possession of their entitlement of the western half in R.S.No.21 and the miscellaneous petitioners are not necessary parties in the revision, but however, since the revision petitioner is preventing lawful enjoyment of the properties belonging to the miscellaneous petitioners, it has become necessary for them to approach this Court and seek clarification.

10/20



12.I have carefully considered the submissions advanced by the learned counsel on either side.

13.This Court, by order dated 12.08.2025, had granted interim stay at the time when the revision petition was moved by the revision petitioner, as a third party to the execution proceedings. It is the grievance of the petitioners in CMP.No.28643 of 2025 that taking advantage of the interim stay, the revision petitioner is even trying to prevent the petitioners in CMP.No.28643 of 2025 from enjoying the properties which are admittedly in their possession. Hence, it has necessitated them to come forward with the said CMP to clarify the interim order. The said application is taken up for hearing along with the CRP, since the result in the CRP would also have bearing on the miscellaneous petition.

14.The facts are not in dispute, excepting for the interpretation regarding the allotment of eastern and western portions to Kumaraswamy Chettiar and Krishnappa Chettiar. It is also not in dispute that Items 2 and 3



have been delivered through Court even in April 2008. In respect of the Item No.1, namely Old No.55 and new No.59 there was an injunction order passed by this Court in civil proceedings and consequently, EP could not be proceeded with insofar as the said item of property.

15.It is also not in dispute that one Shanmugam was given the task of taking possession, representing the decree holders. A MoU has been entered into between the decree holders and the said Shanmugam on 19.03.2008. As rightly contended by Mr.R.Ravindran, learned counsel for the respondents 1 to 4, the decree holders have agreed to sell their respective properties to Shanmugam and the said Shanmugam has been authorised to proceed with the pending execution petitions to take possession of the property, pursuant to decree in O.S.No.2559 of 1982. The MoU is more or less in the nature of an agreement of sale.

16.As rightly contended by Mr.Ravindran, learned counsel for the respondents 1 to 4, the said MoU does not give any right to Shanmugam to enter into any further sale agreement to third parties, much less the revision



petitioner. However, taking advantage of the said MoU, the said Shanmugam has entered into an agreement of sale with the revision petitioner on 05.05.2008 and has also received substantial advance amount from the revision petitioner.

17.The respondents have lodged a complaint against Shanmugam and apprehending arrest, the said Shanmugam has moved this Court for anticipatory bail in CrI.O.P.No.2313 of 2010. This Court, by order dated 03.02.2010, directed the petitioner to be released on bail, in the event of the arrest on executing a bond of Rs.15,000/-, with two sureties. In the said order, it is recorded that possession has been handed over to the revision petitioner and that the revision petitioner has not come forward to execute the sale deed. It is also recorded in the said order that it was the specific case of Shanmugam, the agent of the decree holders that he had handed over possession to the revision petitioner. It is entirely a different aspect altogether, as to whether Shanmugam had any authority to hand over possession of the property, post being put into possession through execution proceedings to any third party and whether he had the right to even execute



any sale agreement when no such authority was given to said Shanmugam.

The fact remains that today physical possession is admittedly with the revision petitioner. In such circumstances, the revision petitioner has approached the executing Court with an application under Order XXI rule 99 of CPC.

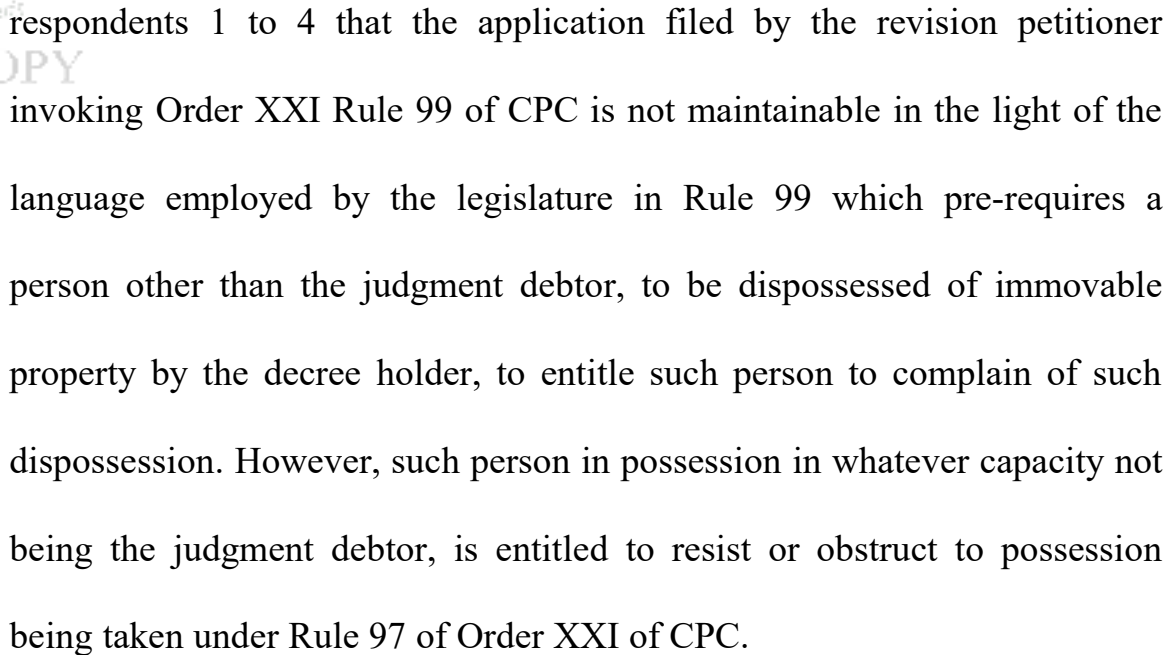
18. Order XXI Rule 99 of CPC is extracted hereunder for easy reference.

“99. Dispossession by decree-holder or purchaser.- (1)
Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

19. The Hon'ble Supreme Court, interpreting Order XXI Rule 99 of CPC, has held that the petitioner who invokes Rule 99 of Order XXI of CPC has to be first dispossessed and without being dispossessed, an application under Order XXI Rule 99 of CPC is not maintainable.

20. As rightly contended by Mr. R. Ravindran, learned counsel for the



21. In a recent pronouncement, the Hon'ble Supreme Court in *Periyammal (Dead) through LRs and others Vs. V.Rajamani and another*, reported in 2025 INSC 329, interpreting Rule 97 of Order XXI of CPC, relying on *Shreenath and another Vs. Rajesh and others*, reported in 1998 4 SCC 543, the Hon'ble Supreme Court held that the executing Court has power to determine questions related to title, right and interest in the decreetal property under Order XXI Rules 97, 98 and 101 of CPC and that it is not limited to the parties to the original suit but also extends to third parties who may be in possession of the decreetal property. The Hon'ble



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Supreme Court further held that an application under Order XXI Rule 97 may be made in respect of obstructions raised by any person in obtaining possession of the decreetal property and that any person facing dispossession can seek the relief under Order XXI Rule 97 of CPC and the provision cannot be restricted to the decree holder or auction purchasers alone.

22. Even though the application of the revision petitioner invoking Order XXI Rule 99 of CPC may not have been maintainable, the executing Court ought to have treated the application as one under Order XXI Rule 97 and proceeded to decide the same in accordance with law. In such view of the matter, I am inclined to set aside the order of the executing Court and direct the executing Court to number the application, treating it as one under Order XXI Rule 97 of CPC and after hearing the parties concerned, the executing Court shall decide the said application on merits and as expeditiously as possible, and at any rate, within a period of three months from the date of receipt of a copy of this order.



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23. Coming to CMP.No.28643 of 2025, it is an admitted position that through Court the petitioners in CMP have already taken possession of the western portion of the property in R.S.No.21 and the revision petitioner has no right to obstruct the lawful enjoyment of the said portions, possession of which has been taken over by the miscellaneous petitioners. Insofar as the respondents 1 to 4, though it is their contention that they are entitled to easter half in each of the door numbers, it is for them to workout their right independently against the petitioners in CMP, in accordance with law and cannot have any objection with regard to clarification of the order sought for by the miscellaneous petitioners.

24. In fine, the Civil Revision Petition is allowed. The order dated 05.04.2025 in E.A.SR.No.75716 of 2025 in E.P.No.1251 of 1987 in O.S.No.2559 of 1982 on the file of the X Assistant City Civil Court, Chennai, is set aside. The X Assistant City Civil Court, Chennai, is directed to treat E.A.SR.No.75716 of 2025 as an application under Order XXI Rule 97 of CPC and dispose of the same on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this



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order. CMP.No.28643 of 2025 is allowed, clarifying that the revision petitioner has no right over the western portion and his application under Order XXI Rule 97 of CPC is restricted to the eastern portion alone, which is under the occupation of the revision petitioner and not in respect of the western portion. There shall be no order as to costs. Connected CMP.No.19412 of 2025 is closed.

21.11.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To
The X Assistant City Civil Court, Chennai.



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P.B. BALAJI,J.

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Pre-delivery order made in

CRP.No.3602 of 2025

& CMP.No.28643 of 2025

& CMP.No.19412 of 2025

21.11.2025