



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 07.11.2025

Order pronounced on : .11.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.2716 of 2023

& CMP.Nos.16760 & 26106 of 2025

1.M.Usharani

2.V.Mohan

... Petitioners

Vs.

K.Balan (Deceased)

1.B.Nagarathinam

2.B.Loganathan

3.M.Latha

4.M.Meena

5.B.Selva Kumar

6.B.Karthikeyan

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair order and decreetal order dated 03.07.2023 passed in E.P.No.1612 of 2009 in O.S.No.8363 of 1992 on the file of the X Assistant City Civil Court at Chennai.

For Petitioners : Ms.G.Sumithra

For Respondents : Mr.K.V.Ananthakrushnan



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ORDER

The judgment debtors are the revision petitioners, challenging the order passed in the Execution Petition No.1612 of 2009, on the file of the X Assistant City Civil Court, Chennai.

2.I have heard Ms.G.Sumithra, learned counsel for the revision petitioners and Mr.K.V.Ananthakrushnan, learned counsel for the respondents. I have also gone through the records placed before me by way of typedset.

3.The learned counsel for the petitioners, Ms.G.Sumithra, would submit that though the plaintiff (since deceased) came to Court, with a case that he is entitled to right over 3454 sq.ft of land, the Trial Court found that the plaintiff was entitled only 2968 sq.ft of land. The decree was challenged upto this Court in Second Appeal and the decree passed in respect of 2968 sq.ft was not interfered with even in the appeals. The learned counsel would therefore state that what the respondents/decreed holders could not achieve in



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the trial and the appeal, they are now attempting to mischievously include in the Execution Petition.

4.It is the specific arguments of Ms.G.Sumithra, learned counsel for the petitioners that insofar as the difference in extent, there was also a suit filed in O.S.No.11979 of 1996 by the judgment debtors and the same is now pending in S.A.No.130 of 2011. The learned counsel would therefore state that the decree, which is passed in favour of the respondents and confirmed up to this Court, cannot be executed in excess and the executing Court has erroneously proceeded to allow the application, without even the respondents pleading as to what is the nature of the encroachment and to what extent a relief was necessitated in favour of the respondents. She would therefore pray for the revision being allowed and the execution petition to be dismissed.

5.Per contra, Mr.K.V.Ananthakrushnan, learned counsel for the respondents would submit that the suit was filed by the plaintiff way back in the year 1992 and after elaborate trial, a decree was passed in 2002 and the judgment and decree of the Trial Court clearly mentioned the area in respect



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of which the rights of the plaintiff were established and proceeded to grant a decree. He would therefore state that it is only to execute the decree passed in favour of the respondents that the execution petition has been filed. He would further state that the Execution Petition was kept pending from 2009, on account of the First Appeal and the Second Appeal pending before this Court and the petitioners cannot take advantage of trespassing into the suit property, pending the proceedings and even though the decree is only for injunction, the plaintiff is entitled to execute the decree to restore the status quo as on the date of the filing of the suit.

6.The learned counsel for the respondents would further state that even in the execution petition, elaborate evidence was adduced by the parties and the Executing Court has rightly allowed the execution petition, warranting no interference. In support of his contentions, the learned counsel for the respondents would place reliance on the decision of the Hon'ble Supreme Court in *Jai Dayal and others vs. Krishan Lal Garg and another*, reported in *AIR 1997 SC 3765*, the decision of this Court in *S.P.Dhandapani Vs. Prema*, reported in *2004-2-L.W 142* and also the decision of this Court in *Lakshmi Vs. Raman*, reported in *2017 (2) CTC 166*.



WEB COPY 7.I have carefully considered the submissions advanced by the learned counsel on either side.

8.The only grievance of the petitioners is that even though the decree passed by the Trial Court declaring the right of the respondent was limited to an extent of 2968 sq.ft, the respondents are now trying to execute the decree in respect of the disallowed portion which was originally claimed in the suit. However, on going through the Execution Petition, the evidence adduced by the parties and also the grievance of the respondents, I find that the case of the respondents is only that the judgment debtors have trespassed into even 2968 sq.ft and the judgment debtors have also not complied with the mandatory directions granted in the decree.

9.Even though the Execution Petition does not lend any clarity by itself, the decree holders have adduced oral evidence in the Execution Petition and have substantially established that what they seek to execute is only the decree passed in their favour and nothing more. The Trial Court has also rightly assessed the evidence adduced before it and come to a right



conclusion that the decree holders are entitled to favourable orders in the Execution Petition. I do not find that the pendency of Second Appeal No.130 of 2011 is having any bearing on the present Execution Petition. In fact, even in the suit filed by the petitioners, they have suffered adverse findings before the Courts below and it is pending in Second Appeal.

10.The decree passed by the Trial Court in O.S.No.8363 of 1992, is as follows:

“1) The defendants be and are hereby restrained from disturbing the possession and enjoyment of the plaintiff over 2968 sq.ft of land marked in RED shade in the Commissioners sketch in Ex.C.4.

2) That the defendants be and are hereby restrained from creating nuisance by throwing wastes or letting sewerage materials over the portion marked in GREEN share in Ex.C.4, which is the subject matter in dispute in O.S.No.11976/96 on the file fo the 1st Assistant Judge, City Civil Court, Chennai.

3) Pending disposal of O.S.No.11976/1996 the defendants be and are restrained from closing the portion noted as “Door” in Ex.C.4 and preventing the plaintiff to use the portion noted as “Passage” in Ex.C.4 for having access to the Electric meter box fitted in his wall;

4) The Commissioner's sketch in Ex.C.4 is appended herewith”



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11.From the above, it is clear that the Trial Court has gone by the report of the Advocate Commissioner in restricting the relief in favour of the plaintiff-decree holder and has clearly granted the reliefs of injunction, which are alone sought to be executed in the Execution Petition. In order to ensure that there is no excessive execution which causes any prejudice to the petitioners, while confirming the order of the Executing Court, I direct the Execution Court to appoint an Advocate Commissioner, at the cost of the revision petitioners, to be present alongwith the bailiff at the time of the execution of the warrant to ensure that the warrant is executed strictly in terms of the decree passed in O.S. No.8363 of 1992 dated 29.11.2002.

12.The Civil Revision Petition is dismissed with the above directions. The Execution Petition is pending from the year 2009, the Court below is directed to conclude the entire proceedings, within a period of one month from the date of receipt of the copy of the order. There shall be no order as to costs. Connected Civil Miscellaneous Petitions are closed.

14.11.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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P.B. BALAJI,J.

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To

The X Assistant City Civil Court, Chennai.

Pre-delivery order made in

CRP.No.2716 of 2023

& CMP.Nos.16760 & 26106 of 2025

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