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C.R.P. No.2885 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P. No.2885 of 2025

and

CMP No.16294 of 2025

Sivakumar

... Petitioner

Vs.

Kumaresan

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of CPC to set aside the fair and decretal order of the learned II Additional District Munsif, Puducherry passed in E.P.No.153 of 2024 in O.S.No.1366 of 2017 dated 05.02.2025.

For Petitioner : Mr.J.Antony Jesus

For Respondent : No Appearance



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ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the fair and decretal order of the learned II Additional District Munsif, Puducherry passed in E.P.No.153 of 2024 in O.S.No.1366 of 2017 dated 05.02.2025.

2. The learned counsel for the petitioner submitted that the respondent (plaintiff) had filed a suit against the petitioner in O.S.No.1366 of 2017 before the II Additional District Munsif, Puducherry (i) to declare that the plaintiff is the absolute owner of the 'B' Schedule property (ii) and to direct the defendant to deliver the vacant possession of the suit 'B' schedule property after removing the superstructure there and also for permanent injunction and for costs. The petitioner had engaged a counsel and due to by-pass surgery of the said Counsel, he was unable to follow the matter and meanwhile, the petitioner was set ex-parte and an ex-parte decree was passed on 02.02.2019 declaring the



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respondent/plaintiff is the absolute owner of the 'B' Schedule property and

directed the petitioner to remove the constructions over the 'B' Schedule mentioned property and to hand over the possession to the plaintiff within two months and also granted permanent injunction. Subsequently, the respondent/plaintiff filed an Execution Petition in E.No.153 of 2024 and only after receipt of the notice in the Execution Petition, the petitioner/defendant came to know about the ex-parte decree. Immediately, the petitioner filed an application for setting aside the ex-parte decree along with an application to condone the delay in filing the said application and the same was numbered as I.A.No.1 of 2025 and pending application, the learned II Additional District Munsif, Puducherry, passed an order on 05.02.2025, ordering delivery of possession in E.P. No.153 of 2024 which is contrary to law and vitiated by error of jurisdiction. Further, the learned District Munsif erred in law in not advertng to the fact that the decree that had been sought to be executed, is an ex-parte decree and that the petitions to set aside the ex-parte decree and



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condone the delay in filing the petition to set aside the ex-parte decree were

pending. Further, the respondent/plaintiff only had encroached 3 f.t. and

therefore, he is not entitled to get the decree for removal of super-structure.

Since the said decree is an ex-parte decree and pending applications, the

Execution Court has passed an order for delivery of possession and thereby, the

Execution Court deprived an opportunity to the petitioner/defendant. Hence,

the order passed by the Execution Court is liable to be set aside.

3. Though Court notice was served on the respondent and name of the respondent also having been printed in the cause list, none appeared for the respondent.

4. A perusal of the records shows that the petitioner had filed the suit in O.S.No.1366 of 2017 before the II Additional District Munsif, Puducherry (i)to declare that the plaintiff is the absolute owner of the 'B' Schedule property (ii)to direct the defendant to deliver the vacant possession of the suit 'B' schedule property after removing the superstructure thereon, (iii) to grant



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permanent injunction (iv) and for costs. The petitioner was arrayed as

defendant in the said suit and though he appeared through a counsel, he did not file any written statement and had not participated in the proceedings.

Therefore, the trial Court passed an ex-parte decree on 02.02.2019. Thereafter, the respondent/plaintiff filed an Execution Petition in E.P.No.153 of 2024 for executing the decree and the Executing Court, after perusal of the records, passed the impugned order dated 05.02.2025, ordering delivery of possession of the suit property. It is further seen that, meanwhile, the petitioner/defendant had filed application to condone the delay in filing the application to set aside the ex-parte decree. However, a perusal of the records shows that the ex-parte decree was passed in the year 2019 itself, i.e. on 02.02.2019, whereas the petitioner/defendant filed the application to set aside the ex-parte decree only in the year 2025 i.e. on 02.01.2025, which is after a period of six years from the date of decree. Though the petitioner was shown as defendant, he did not participate in the suit proceedings and after passing of the decree, he did not



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take steps for six years to set aside the ex-parte decree. After passing of the impugned order in the Execution Petition, he had approached the Court belatedly. Further, without filing any written statement and without even showing any defence/proof regarding the encroachment of 3 ft., the Executing Court cannot go beyond decree.

5. Under the above facts and circumstances, this Court does not find any perversity in the impugned order passed by the Court below and there are no merits in this revision.

6. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

26.08.2025

Index: Yes/no

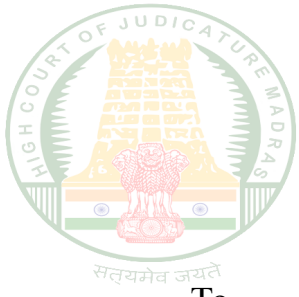
Internet: Yes

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To
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1. The II Additional District Munsif,
Puducherry
2. The Record Keeper,
V.R. Section, High Court, Madras.



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P.VELMURUGAN, J

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