



C.M.A.No.2383 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.11.2025**

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.2383 of 2025

and C.M.P.No.20201 of 2025

1. Vignesh
2. Priyanka

... Appellants

Vs.

1. Pe Pe Firm
represented by its Managing Partner,
C.V.Arulvelavan,
5/312, Rajaji Nagar,
Opp: Teachers Colony,
Mohanur Road,
Namakkal District.

2. Priyanka Poultry Farm
represented by its Proprietor
Murugan,
Maniyaram Pudur,
Vallipuram Post,
Namakkal Taluk,
Namakkal District.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of Code of Civil Procedure, 1908, to set aside the Order dated 29.07.2025 made in REA No.10 of 2025 in REA No.5 of 2025 in REP No.42 of 2016 in O.S.No.166 of 2014 on the file of the learned Sessions Judge of Special Court of Trial of Cases under SC / ST (PoA) Act, Namakkal by allowing this Civil Miscellaneous Appeal.

For Appellant	: Mr.N.Manoharan
For R1	: Mr.R.Vivek



C.M.A.No.2383 of 2025

For R2

: Not ready in notice

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JUDGMENT

The third parties, who are the petitioners in E.A.No.5 of 2025 in E.A. No.10 of 2025 in E.P.No.42 of 2016 in O.S.No.166 of 2014 on the file of the learned Sessions Judge of Special Court for Trial of Cases under SC/ST (PoA) Act, Namakkal, have preferred this Civil Miscellaneous Appeal.

2. Parties are indicated herein as per their litigative status and ranking before the Executing Court.

3. Originally, the plaintiff had filed a suit against M/s.Priyanka Poultry Farm by its Proprietor, Murugan for recovery of money of Rs.48,73,157/- together with interest at the rate of 18% p.a. and for costs. According to the plaintiff, the defendant used to buy eggs from the plaintiff on loan basis and based on the said purchase, the defendant had to pay a sum of Rs.48,73,157/- to the plaintiff as on 19.07.2014 as per the statement of accounts. Upon the demand made by the plaintiff, the defendant did not repay the said amount. Hence, a lawyer notice was caused to be issued to the defendant on 05.08.2014 and the same was returned by the defendant. Hence the suit.



C.M.A.No.2383 of 2025

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4. When the case came up on 28.11.2014, on behalf of the defendant, a memo was filed to the effect that he had no objection to decree the suit as prayed for by the plaintiff and sought for two months time to pay the amount.

5. Upon consideration of the entire case records, the trial Court based on the admission of the defendant decreed the suit, directing the defendant to pay a sum of Rs.48,73,157/- together with future interest at the rate of 18% p.a. on the principal sum from the date of the suit, by judgment dated 15.06.2015 (Principal District Judge, Namakkal).

6. Based upon the said judgment and decree, E.P.No.42 of 2016 was filed under Order XX1 Rule 66 and 82 of Code of Civil Procedure, 1908 (*hereinafter referred to as C.P.C*) for attachment of the property and for sale of the execution petition mentioned property of the defendant. After hearing both sides, it is ordered for the sale of the petition mentioned property on 22.01.2019. Settlement of proclamation was ordered (by 18.02.2019).

7. Further, on 10.01.2025, the petitioners No.1 and 2 took out an



C.M.A.No.2383 of 2025

Execution Petition under Order XX1 Rule 58 of C.P.C stating that the execution petition property was purchased from and out of the joint family property. It was further contended that though the property was purchased in the name of defendant Murugan, it was treated as joint family property. The petitioners have 1/3rd share each in the execution petition property. To that effect, it was requested to record their objection and to set aside the order of attachment. The said petition was taken on file on 10.01.2025 and it was posted for counter on 20.01.2025, 22.01.2025, 27.01.2025, 13.02.2025, 05.04.2025 and 07.04.2025. On 07.04.2025, when the matter came up for counter, counter of the 1st respondent (plaintiff) was filed. Since the sole defendant did not file his objections, he was set ex-parte and the matter was posted for enquiry on 29.04.2025. When the matter came up on 29.04.2025, on behalf of the petitioners, petition under Order XVII Rule 1 of C.P.C was filed and the Executing Court held that execution petition is of the year 2016 and after a period of nine years, this application is filed and it was dismissed for default.

8. Against the said Order, another execution application in E.A.No.10 of 2025 was filed to restore E.A.No.5 of 2025 and the said execution application was taken on file on 04.06.2025. After hearing both sides, the following order was passed by the executing Court. "This Court perused all the records.



C.M.A.No.2383 of 2025

E.A.No.5 of 2016 is filed by the legal heirs of judgment debtor claiming that the suit property is ancestral property and the petitioners have 1/3rd share in the said property. On perusal of document, it is clear that the suit property is a self-acquired property of the second respondent (defendant). Hence, in order to attain the benefits of money suit in O.S.No.166 of 2014, the main E.P. was filed by the decree holder. The present petitioners after ten years of filing execution petition has filed E.A.No.5 of 2025 and that too was not proceeded by the petitioners. Hence, this Court dismissed the said E.A.No.5 of 2025 for not proceeding the same. The reasons stated in the petition to restore the execution application is totally false. However, on perusal of records and on hearing both sides, this Court found no reasonable justice for not proceeding E.A.No.5 of 2025. Hence, this Petition is dismissed.”

9. On a careful perusal of the entire case records, it appears that the plaintiff filed a money suit for recovery of money in O.S.No.166 of 2014, for a sum of Rs.48,73,157/- as the defendant purchased eggs from the plaintiff's farm on loan basis. As the defendant admitted the liability, the suit was decreed granting two month time to pay the amount as prayed for on 15.06.2015.

10. Execution petition was taken out by the plaintiff based upon the



C.M.A.No.2383 of 2025

decreetal order to recover the money due from the defendant for attachment and sale of the property purchased by the defendant. After almost 10 years, the son and daughter of defendant took out an application under Order XXI Rule 58 of C.P.C to record their objection to the effect that they have 1/3rd share in EP mentioned property and to raise the order of attachment. As the E.A.5 of 2025 was after granting so many opportunities till 29.04.2025, the said application was dismissed for default.

11. To restore the E.A.No.5 of 2025, E.A.10 of 2025 was filed by the children of the defendant (son and daughter) and the same is under challenge. In the said application, the Executing Court after hearing both sides, and after elaborate discussions dismissed the application by Order dated 29.07.2025. The property mentioned in the execution petition stands in the name of the defendant / father of the appellants herein. In such circumstances, the execution application taken out by the claimants by stating that they have 1/3rd share each is not sustainable in law and therefore, Order passed by the Executing Court does not warrant any interference by this Court. This Court does not find any infirmity or perversity in the finding of the executing court. This Court also does not find good reason to upset the finding of the Executing Court.



C.M.A.No.2383 of 2025

12. In view of the above said narrative, this Civil Miscellaneous Appeal stands dismissed. Sequel to this, Order passed in E.A.No.10 of 2025 in E.P.No.5 of 2025 in O.S.No.166 of 2014 on the file of the learned Sessions Judge, Special Court of Trial of Cases under SC / ST (PoA) Act, Namakkal, stands confirmed. Consequently, connected Civil Miscellaneous Petition stands closed.

13. It is learnt that the suit for recovery of money was laid in the year 2014 and based on the defendant's admission, the suit was decreed in the year 2015. The execution proceedings was initiated in the year 2016 for attachment and sale of the execution petition mentioned property. The Executing Court shall dispose of the petition preferably within a period of four [4] months from the date of receipt of a copy of this judgment.

21.11.2025

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case: Yes/No

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Page no.7/8



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C.M.A.No.2383 of 2025

R.KALAIMATHI, J.

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Copy to

1. The Sessions Judge – Special Court of Trial of Cases under SC / ST (PoA) Act, Namakkal.
2. The Section Officer,
VR Section,
High Court, Madras.

C.M.A.No.2383 of 2025

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21.11.2025