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C.R.P. (NPD) .No.2890 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 02.06.2025**

**CORAM:**

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**C.R.P.(NPD).No.2890 of 2017**  
**and C.M.P.No.13618 of 2017**

Pongiyammal

.. Petitioner

**Vs.**

1.V.Kamalam

S.Thangavel (Deceased)

2.Gomathy

3.T.Bhoopathy

4.Pavayammal

5.Kolandaswamy

6.Jayanthi

.. Respondents

**Prayer:** This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, praying to allow the CRP setting aside the Fair and Decretal Order of the Learned I Additional Subordinate Judge, Erode, Erode District dated 23.09.2016 in E.A.No.455 of 2012 in E.P.No.333 of 2002 in O.S.No.305 of 1998 and to order the said E.A as prayed for.



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For Petitioner : Mr.K.Sivasubramanian  
For RR 1 to 4 : Mr.Roobanchakravarthy  
for Mr.S.Kaithamalai Kumaran  
For R5 : No appearance

### **ORDER**

This civil revision petition arises against the order of the learned I Additional Subordinate Judge, Erode, Erode District, dated 23.09.2016 in E.A.No.455 of 2012 in E.P.No.333 of 2002 in O.S.No.305 of 1998.

2.I heard Mr.K.Sivasubramanian for the petitioner and Mr.Roobanchakravarthy for respondents 1 to 4.

3.The civil revision petitioner is a third party to E.P.No.333 of 2002 in O.S.No.305 of 1998. She presented an application under Section 47, challenging the execution of the decree for specific performance in O.S.No.305 of 1998. That application came to be dismissed by the learned First Additional Subordinate Judge at Erode, in E.A.No.455 of 2012 on 23.09.2016. Challenging the same, the present civil revision petition.

4.The civil revision petitioner had obtained a maintenance and a charge decree against her husband Kolandaswamy, the 5<sup>th</sup> respondent herein. The



contesting 1<sup>st</sup> respondent had obtained a decree for specific performance against the very same Kolandaswamy in O.S.No.305 of 1998. When respondents 1 & 2 attempted to execute the decree for specific performance, the said application came to be filed. The plea of the civil revision petitioner is that she and her daughter have already obtained a maintenance and charge decree and also for partition, and therefore, the specific performance cannot be executed.

5.I am afraid, a third party can not maintain an application under Section 47 of Code of Civil Procedure. Section 47 is maintainable only at the instance of the judgment debtor or a legal representative of a judgment debtor. As long as Kolandaswamy is alive, his wife cannot be treated as his legal representative. The appropriate remedy for the civil revision petitioner is not to obstruct the execution of decree in O.S.No.305 of 1998, but to execute her maintenance charge decree against her husband and any person claiming through him.

6.Furthermore, Mr.Roobanchakravarthy brings to my notice that E.P.No.333 of 2002 was ordered on 24.08.2017, and the sale deed was also



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executed in favour of the respondents 1 & 2 on 24.08.2017, and the EP has also been closed. That being the situation, leaving it open to the civil revision petitioner to workout her rights, as is open to her, this revision is dismissed.

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7.In the result, this Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

**02.06.2025**

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Index : Yes / No  
Internet : Yes / No  
Neutral Citation : Yes / No

To

The I Additional Subordinate Judge,  
Erode, Erode District.



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**V.LAKSHMINARAYANAN, J.**

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