IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:07.11.2025	Pronounced on:05.12.2025

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

CRP. Nos.4238 & 4239 of 2025
and CMP. Nos. 21804 & 21806 of 2025

I. Mohammed Farook

Petitioner in both CRP

Vs

1.P.Dineshkumar
2.G.Sivakumar
3.Thilagavathi

Respondents in both CRP

<u>COMMON PRAYER:</u> This Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the decreetal order dated 08.08.2025 passed by the X Assistant City Civil Court, Chennai in E.A. SR. Nos.44239 & 44236 of 2025 in E.P. No.464 of 2025.

For Petitioner : Mr.S.Ramesh in both CRPs

For Respondents : Ms.G.Pavithra for R1 in both CRPs
No Appearance for R2 and R3
in both CRPs

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<u>COMMON ORDER</u>

The revision petitioner in these revision petitions is the proposed judgment debtor No.3. The revision petitioner filed E.A.SR.Nos.44236 and 44239 of 2025. Both the applications came to be dismissed by common order dated 08.08.2025 and challenging the same, the present revision petitions have been filed.

2. I have heard Mr.S.Ramesh, learned counsel for the revision petitioner in both the revision petitions and Ms.G.Pavithra, the contesting first respondent in both these revisions.

3. The Applications have been filed under Order XXI, Rule 55 CPC, seeking to suspend the order of attachment dated 27.03.2025 and to implead the revision petitioner as a judgment debtor in the Execution Petition. The learned counsel for the petitioner Mr.S.Ramesh, would submit that the first respondent as plaintiff had filed a suit in O.S. No. 4355 of 2021 for recovery of a sum of Rs.16 lakhs, together with interest at 24% per annum, the liability arising out of a mortgage deed in and whereby, the suit property had been mortgaged.

4. It is the case of the plaintiff that the second respondent executed a promissory note and a letter of undertaking to repay the borrowed sum of Rs.16 lakhs within a period of 36 months. It is the further case of the plaintiff that the mortgage deed was not registered by the Sub Registrar

and at that juncture, the second respondent, the defendant No.1 handed over certified copies of the title deeds and undertaking to handover the original title deeds later. It is the further case of the plaintiff that possession was given to him. In the meantime, the second respondent had borrowed a sum of Rs.8 lakhs from East West Benefit Fund Limited on 18.03.2021 in respect of which, a registered mortgage deed came to be executed. Despite the said mortgage, the second respondent settled the property in favour of his wife, the third respondent in and by settlement deed dated 20.01.2021. The plaintiff has given a police complaint against the second respondent and the second respondent has undertaken to settle the amounts due to the plaintiff and since there has been a default, the suit was filed.

5. The defendants, husband and wife, contested the claim on the ground that they never intended to mortgage the property in favour of the plaintiff and possession was also not given to the plaintiff as claimed in the plaint. However, they admitted execution of a promissory note for Rs.7 lakhs towards receipt of lease amount for the suit property, in addition to a lease agreement which was given in favour of the plaintiff. The Trial Court decreed the suit on 25.04.2024.

6. E.P. No.464 of 2025, was filed to recover the decree amount. The Executing Court, by order dated 27.03.2025, attached the suit property. It is at this juncture, that the revision petitioner filed applications to implead himself as one of the judgment debtors and also to suspend the order of attachment. The said applications, on enquiry came to be dismissed by the Executing Court, necessitating the present revision petitions.

7. The learned counsel for the revision petitioner, Mr.S.Ramesh would submit that the Executing Court has proceeded to order attachment of the property despite the fact that the revision petitioner had a registered sale agreement dated 21.10.2024, in his favour in respect of which, huge advance of Rs.30 lakhs has been paid by the revision petitioner. The learned counsel would further state that from and out of the advance paid by the revision petitioner, the respondents 2 and 3 have proceeded to clear the mortgage of East West Benefit Fund Limited and in such circumstances, the valuable rights of the revision petitioner would be seriously jeopardized, if the order of attachment continues and the revision petitioner is not impleaded as one of the judgment debtor/respondent in the Execution Petition.

8. The learned counsel for the petitioner would also state that the plaintiff is now colluding with the defendants since the mortgage of East West Benefit Funds has been cleared, taking advantage of the advance paid by the revision petitioner and property which is worth more than 50 lakhs is now attached and sought to be sold for recovering a sum of Rs. 21 lakhs alone. The learned counsel would therefore pray for the revisions being allowed.

9. Per contra, the learned counsel for the first respondent/plaintiff Ms.G.Pavithra, would contend that the revision petitioner is only an agreement holder and there is no right created in his favour in respect of the suit property. The learned counsel would also deny the allegations of collusion and in fact would state that the respondents 2 and 3 are absconding and even before this Court, they have not entered appearance. The learned counsel would further state that no motives can be attributed against the decree holder, since there is a valid judgment and decree in favour of the first respondent, which alone is put into execution. The learned counsel would therefore pray for dismissal of the revision petition.

10. I have carefully considered the submissions advanced by the

learned counsel on either side.

11. Admittedly, the revision petitioner is only an agreement holder. Even assuming the revision petitioner has a registered agreement of sale with the respondents 2 and 3 and he has paid a sum of Rs.30 lakhs as against a total sale consideration of Rs.34 lakhs, in the event of the vendors viz., the respondents 2 and 3 not coming forward to honour the said agreement, the only remedy available to the revision petitioner is to enforce the said agreement of sale that the petitioner has with the respondent No.3, the petitioner cannot claim right to seek suspension of the order of attachment which has been passed in order to protect the rights of the decree holder who has sought for execution of the money decree in his favour.

12. It is also an admitted fact that the revision petitioner cannot deny the fact that on the date of the order of attachment having been passed by the Executing Court, the defendants were alone having valid title over the suit property and in such circumstances, the attachment would certainly bind the revision petitioner, who is only an agreement holder. Therefore, any right that would accrue to the revision petitioner arising under the agreement of sale will only be subject to the attachment

that has already been effected over the suit property in execution of the decree passed in the suit. Based on the registered agreement of sale, the revision petitioner cannot seek any priority either over the suit property or in respect of the monies advanced by him. The revision petitioner admittedly, has not filed any suit for specific performance or for refund of the amounts advanced by him under the registered agreement of sale, as on date. In such view of the matter, the revision petitioner is neither a proper nor necessary party in the execution petition which is filed only for realising money due and payable to the first respondent under the decree in O.S. No.4355 of 2021.

13. The Executing Court has rightly found that the revision petitioner has no cause of action to seek for a rising the order of attachment or to obstruct the execution of the decree in any other manner. The Executing Court has also rightly held that no sale is concluded in favour of the revision petitioner and based on the registered agreement of sale, the petitioner cannot seek any audience in the Execution Petition. In fact, the agreement of sale itself has come into existence only post the decree passed in the suit and therefore, the revision petitioner cannot even claim to be a bonafide agreement holder and in such circumstances, the agreement of sale, if any, in favour of the first petitioner and executed

by the third respondent/second judgment debtor will not in any manner bind or affect the rights of the first respondent/decree holder.

14. I do not find any perversity or illegality in the findings arrived at by the Executing Court, dismissing the Application, warranting interference in revision.

15. In fine, these Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. No costs.

05.12.2025

rkp
Index : Yes / No
Internet : Yes / No

To:

The X Assistant City Civil Court, Chennai.

P.B.BALAJI, J.,

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Pre-delivery order in
CRP. Nos.4238 & 4239 of 2025
and CMP. Nos. 21804 & 21806 of 2025

05.12.2025