



CRP.No.5029 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:06.11.2025

Pronounced on: .12.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.5029 of 2025
and CMP. No.25394 of 2025**

M/s.Assirathul Musthaqem,
Madarasa Wakf
(Under the Control Wakf Board)
Madharasa Road, Perambalur,
represented by its
Joint Secretary, Abdul Sather

Petitioner(s)

Vs

Lavangammal (Deceased)
Abinaya

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order passed in E.A. No.12 of 2025 in E.P. No.26 of 2010 dated 09.06.2025 on the file of Principal District Munsif Court at Perambalur and allow the E.A. No.12 of 2025 in E.P. No.26 of 2010 on the file of Principal District Munsif Court at Perambalur.

For Petitioner : Mr.V.Prakash,
Senior Counsel for
M/s.Devadason & Sagar

For Respondent : Mr.P.Arasaprabhu



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ORDER

The revision petitioner is a third party who filed an application in E.A. No.12 of 2025 under Section 47 of the Code of Civil Procedure, 1908 (in short 'CPC') to declare the decree obtained by the plaintiff as void, non-est and non executable. The said Section 47 CPC petition came to be dismissed. As against the said order, the present revision has been filed.

2. I have heard Mr.V.Prakash, learned Senior Counsel for Mr.Devadason and Sagar, counsel for the petitioner and Mr.P.Arasaprabu, learned counsel for the respondent.

3. The learned Senior Counsel Mr.V.Prakash would submit that the suit was filed in O.S. No.467 of 1981 on the file of the Subordinate Court, Virudhachalam, as against 10 defendants, One Mohammed Bin Alvi Sahib was arrayed as the 10th defendant and it was only the 10th defendant who contested the suit and admittedly, the contest was only in respect of Item No.18 of the suit property. A decree was passed in the said suit declaring that the plaintiff is entitled to a declaration over the



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western half of the suit item 18 and for permanent injunction in respect of the western half. The suit in respect of eastern half of Item 18 and other reliefs were dismissed. The plaintiff preferred an Appeal in A.S. No.342 of 1983. Pending the said appeal, the 10th defendant Mohammed Bin Alafee Sahib, who alone contested the suit died and respondents 2, 3, 5 and 6 were brought on record as his LR's, in and by order dated 23.04.1998 in CMP. No.3633 of 1989. Ultimately, the appeal came to be allowed and the findings insofar as the eastern half of Item No.18 were set aside and the Trial Court's decree was modified to include the eastern half of Item No.18 also. The First Appeal was disposed of on 16.10.1998. It is thereafter that the plaintiff has filed an Execution Petition in EP. No.26 of 2010. Pending the EP, the revision petitioner has filed the Section 47 CPC petition questioning the executability of the decree.

4. The case of the revision petitioner is that the petitioner is a Waqf represented by its Joint Secretary and the property has been purchased by the 10th defendant Mohammed Bin Alafee Sahib, founder of the petitioner Waqf, in and by sale deed dated 23.12.1971. According to the petitioner, the property was purchased for the Madarasa Waqf and not by the 10th



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defendant in his individual capacity.

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5.It is contended by the petitioner in the Section 47 CPC petition that pending A.S. No.342 of 1983, one SMN.Aminuddin alone was impleaded as the 13th respondent and subsequently, exonerated along with respondents 12 and 14. But however, the respondent has not brought it to the notice of this Court that during the pendency of A.S. No.342 of 1983, the said SMN.Aminuddin had died. Further, the other legal heirs have not been impleaded and the petitioner is admittedly running an orphanage in the Eastern half of Item 18 property and in such circumstances, in the absence of any decree for possession, it is contended by the petitioner that the decree is inexecutable.

6. Mr.V.Prakash, learned Senior Counsel inviting my attention to the relief sought for in the suit would contend that the plaintiff has only sought for declaration and permanent injunction as if the plaintiff is in possession of the suit properties, including the entirety of Item 18. However, the Trial Court had granted decree only in respect of the western half, finding the respondent/plaintiff to be in possession of western half. The said decree was challenged by the respondent in A.S.



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No.342 of 1983, before this Court. Inviting my attention to the grounds of appeal and Court fee paid thereon. Mr.V.Prakash, learned Senior Counsel would submit that what was challenged is only the dismissal of the suit in respect of declaration pertaining to the Eastern half of 18th item of property and no relief of possession has been sought for and no Court fee has also been paid for such relief. He would therefore submit that taking advantage of this Court in appeal, modifying the decree of the Trial Court, the respondents cannot assume a decree for recovery of possession and seek to dispossess the revision petitioner from the Eastern half of the Item No.18. He would further contend that the only remedy open was to file a fresh suit for recovery of possession from the respondents and not attempt to take advantage of the modification of the decree of the Trial Court made by this Court in A.S. No.342 of 1983.

7. Per contra, Mr.P.Arasaprabu, learned counsel for the respondent would submit that the petitioner has no locus to file an application under Section 47 CPC. The property was purchased by the 10th defendant only in his individual capacity and not for the Waqf, which alone would entitle the petitioner to claim under the 10th defendant and file the application under Section 47 CPC. He would further state that the only contesting



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defendant viz., 10th defendant died on 22.11.1998, leaving behind no issues and respondents 2 to 6 were impleaded pending the appeal and they have been impleaded only in their individual capacity. It was not the case of the respondents that the property belongs to the Waqf and that the Waqf is a necessary party. The learned counsel would therefore state that there is no merit in the contentions now putforth by the petitioner that the property belonged to the Waqf and therefore they are not entitled to challenge the executability of the decree.

8. Referring to the decree passed by this Court in A.S. 342 of 1983, the learned counsel for the respondent would submit that when the decree pertaining to the Eastern half has been included by way of modification of the decree passed by the Trial Court, then the consequential relief of injunction which has been granted in favour of the respondent pertaining to the western half would also consequently be available to the respondent in respect of the eastern half as well.

9. The learned counsel would also rely on the decision of the *Punjab and Haryana High Court in CR. No.235 of 2020 dated 14.01.2020 in Dilbagh Singh and others Vs. Harpal Singh @ Harpal*



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Singh Chela and others, where similar argument regarding decree for injunction being sought to be executed by way of seeking relief of possession was the subject matter before the Punjab and Haryana Court. The Punjab and Haryana High Court held that the provisions of Sub Rule (5) Rule 32 of Order XXI CPC does not prescribe any condition that there must be sufficient pleading regarding the decree holder who was granted a decree for permanent injunction being dispossessed as to when and how and only under such circumstances, he could seek for restoration of possession.

10. Relying on ratio laid down by the Hon'ble Supreme Court in *Samee Khan vs Bindu Khan*, reported in, 1998(4) RCR (Civil) 125 SC, where the Hon'ble Supreme Court held that in Execution Proceedings of a decree for injunction, if it is found that the decree holder has been dispossessed after the date of decree, then restoration possession can also be ordered by the Executing Court, even though the decree is for injunction only. The learned counsel for the respondent would therefore pray for dismissal of the revision.

11. I have carefully considered the submissions advanced by the



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learned counsel on either side.

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12. Firstly, it is not in dispute that the 10th defendant has purchased the property in his individual capacity and he was also successful in getting the suit dismissed in respect of Eastern half of suit property Item No.18. The plaintiff has preferred an Appeal in A.S. No.342 of 1983, even pending the appeal in A.S. No.342 of 1983, the respondents 2, 3, 5 and 6 viz., Abu Bakkar, Abdullah, S.M.N.Aminuddin and Allah Pitchai were impleaded as the LR's of the 10th defendant/first respondent in A.S. No.342 of 1983. Therefore, as rightly contended by the learned counsel for the respondent, even though the 10th defendant had died as a bachelor without any issues, certain individual persons alone been impleaded as his legal representatives. It was nobody's case that the property was purchased by the 10th defendant on behalf of the Waqf and that it was not his separate property. Even the LR's who have been brought on record did not object to their impleadment or raise a contention that the Waqf had to be necessarily impleaded as the property was not purchased by the 10th defendant in his individual capacity. Therefore, I do not find the arguments of Mr.V.Prakash, learned Senior Counsel meriting any consideration in this regard.



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13. Coming to the present request of the respondent for recovery of possession, as rightly contended by learned Senior Counsel Mr.V.Prakash, there is no decree for recovery of possession. The decree granted originally in respect of Western half was only declaration and injunction. In appeal, the entirety of the suit property of Item No.18 was declared to be belonging to the respondent/plaintiff. Though the appellate decree does not clearly mention that in respect of the Eastern half also, the respondent is entitled to an injunction, even assuming the benefit of such interpretation can be given in favour of the respondent, at best, the decree as it stands today is only a decree for declaration of entire Item No.18 of the suit property and for an injunction as if the respondent/plaintiff is in possession.

14. It is not the case of the respondent that the respondent has been dispossessed despite the decree of declaration and injunction in his favour. Therefore, I do not see how the decision of the Punjab and Haryana High Court following the dictum of the Hon'ble Supreme Court in *Samee Khan's* case (referred herein supra) would apply to the facts of the present case. Those were cases where the decree holder approached



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the Court on the strength of a decree for injunction, complaining that he has been dispossessed by the judgment debtors, despite the decree for injunction and in such circumstances, Order XXI, Rule 32 was interpreted and it was held that even though the decree was only for injunction, the Executing Court can entertain an Application for restoration of possession in favour of the decree holder.

15. Admittedly, the petitioner is a third party and the petitioner cannot claim any rights under the 10th defendant. However, at the same time, it is an admitted fact that the revision petitioner is in possession of the Eastern half of the suit property and they are also running an orphanage. Therefore the petitioner who claims to have purchased the property under registered sale deed is entitled to obstruct the delivery of possession. However, the fact remains that the Trial Court has found the petitioner to be in possession and a decree for injunction has been granted. Therefore the respondent is certainly entitled to claim benefit of sub Rule (5) of Rule 32 of Order XXI CPC and call upon any act required to be done by the judgment debtor to be done in furtherance of execution of a decree for permanent injunction.



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16. In the light of the above, though the Trial Court has rightly dismissed the application under Section 47 CPC, finding that the petitioner is a third party and is not entitled to file an application under Section 47 CPC, considering the fact that the petitioner is admittedly in physical possession, running an orphanage, the Executing Court shall note the obstruction of the revision petitioner and shall call upon the parties to lead evidence and decide the application filed in E.A. No.12 of 2012 which shall be treated as one under Order XXI Rule 97 CPC. In fact, I find that the petition was filed invoking both Section 47 CPC as well as Order XXI Rule 97 CPC, but however, the Executing Court has proceeded to decide the maintainability of the Application under Section 47 CPC alone. In such circumstances, I deem it fit and proper to direct the Executing Court to decide E.A. 12 of 2025 under order XXI, Rule 97 CPC and dispose of the same on merits and in accordance with law within a period of three (3) months from today, without being influenced by any observations that may have been made herein above.

17. Accordingly, this Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.



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Index : Yes / No

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To:

The Principal District Munsif at Perambalur.

P.B.BALAJI, J.,

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Pre-delivery order in
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