



C.R.P.No.711 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 11.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.711 of 2024
and
C.M.P.No.3597 of 2024

1.Dr.A.Sundaram
2.A.Kirubakaran
3.Kuppulakshmi
4.S.Senthilnathan
5.S.Durgadevi
6.A.Lalitha Prasad @ Lalitha
7.Padmini Raj @ Padmini

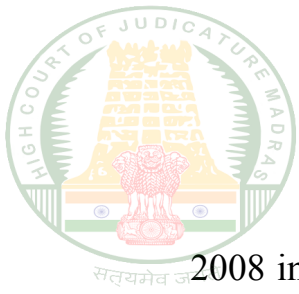
... Petitioners

Vs.

1.V.Shanmugam
K.A.Sankaran (deceased)
A.Shanmugam (deceased)
2.Kamakshi Basappan
A.Prema (deceased)
3.Gnanasekaran
4.Tharakeswari
5.Kasthuri
6.Shanthi
7.Latha
8.Sathish

... Respondents

Prayer : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 31.10.2023 in R.E.P.No.156 of



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2008 in O.S.No.131 of 1994 on the file of the Principal Subordinate Court,
Krishnagiri.

For Petitioners : Mr.S.Sadasharam
For R1 : Mr.V.Ramamurthy
For R2 to R8 : Given up
vide Court order dated 07.04.2025

ORDER

Challenging the order passed by the Executing Court directing the respondents 1 to 4 in Execution Petition/judgment debtors to execute the sale deed in respect of undivided 4/9 share, the present revision has been filed.

2.Brief facts leading to the filing of the present revision are as follows :

2.1.The respondents 1 to 4 in the Execution Petition have executed an agreement for sale in favour of the petitioner in the Execution Petition, which resulted in the suit for specific performance in O.S.No.131 of 1994. The said suit was decreed by the trial Court by judgment dated 22.08.1996.



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To enforce the decree, the decree holder filed E.P.No.124 of 1999. The said Execution Petition has been dismissed on 10.12.2007. Thereafter, he has filed the present Execution Petition in E.P.No.156 of 2008 on 22.08.2008.

2.2.It is to be noted that the suit was originally decreed on 22.08.1996 as against four defendants. However, the Execution Petition is filed not only against the original defendants/judgment debtors, but also against other co-owners who claim right in the property.

2.3.The suit property is said to be originally belonging to one Annamalai Maniyakar. He died leaving behind his wife and eight children. However, only the defendants 1 to 4, who are the sons, entered into the agreement for sale of the property, which resulted in the suit for specific performance in O.S.No.131 of 2024. In the meanwhile, one of the sisters of the defendants 1 to 4 filed a suit in O.S.No.91 of 1992 claiming partition of 1/9 share in the property. It is to be noted that, in the above partition suit, the decree holder, namely the agreement holder herein, has not been made as a party. The suit has been decreed for 1/9 share.

2.4.Challenging the preliminary decree in the suit, an appeal was filed in A.S.No.67 of 1997, in which, the Appellate Court modified the



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allotment of share. It appears that a Second Appeal was filed by the plaintiff in O.S.No.91 of 1992 in S.A.No.1613 of 1999.

2.5.Pending the Second Appeal, the decree holder in O.S.No.131 of 1994 filed the Execution Petition in R.E.P.No.156 of 2008, after dismissal of the earlier Execution Petition filed by him. Meanwhile, some of the defendants/judgment debtors died and therefore, their legal heirs were brought on record in the Execution Petition.

2.6.The respondents in the Execution Petition opposed the execution by stating that, since the earlier execution petition was dismissed, the second Execution Petition is not maintainable. Further, when the partition suit filed by one of the sisters was pending in Second Appeal, the decree obtained in suit for specific performance cannot be executed.

2.7.Thereafter, it appears that the Second Appeal was partly allowed by this Court by judgment dated 22.05.2019, declaring the plaintiff's (daughter's) 1/9 share in the suit property.

2.8.The Execution Court, considering the objections and the judgment of this Court in the Second Appeal arising out of the partition suit, wherein, this Court has found that, since the property originally belonged to the father of the parties, each legal heir is entitled to 1/9 share,



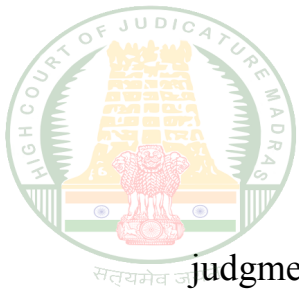
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and also considering the fact that the agreement has been executed by only four of the legal heirs, confined the execution of the decree only in respect of the four of the legal heirs, i.e., the judgment debtors in the suit for specific performance alone, and directed sale of undivided 4/9 share to the decree holder and also directed the decree holder to take separate steps to seek possession of the property as per law.

2.9.Challenging the order of the Execution Court, the present revision has been filed.

3.The main contention of the learned counsel for the revision petitioners before this Court is that the first Execution Petition in E.P.No.124 of 1999 was dismissed on 10.12.2007 and the second Execution Petition filed on 22.08.2008 is barred by limitation. According to the learned counsel for the revision petitioners, the date of limitation starts from the date of decree. Therefore, the second Execution Petition ought to have been filed on 21.08.2008. Further, it is his main contention that the agreement was entered into by four persons, whereas, the Execution Petition has been filed against 10 persons, which is not maintainable. In support of his submissions, the learned counsel relied upon the following



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judgments of the Hon'ble Supreme Court :

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- i. *Balraj Taneja and another v. Sunil Madan and another* [**AIR 1999 SC 3381**]
- ii. *W.B.Essential Commodities Supply Corporation v. Swadesh Agro Farming and Storage Pvt. Ltd. and another* [**AIR 1999 SC 3421**]
- iii. *Union of India and others v. Ramesh Gandhi* [**2012 (1) SCC 476**]

4. Whereas, the learned counsel for the 1st respondent/decreed holder would submit that the suit for specific performance was decreed as early as on 22.08.1996. Though only four male members have executed the agreement for sale, the decree in the suit for specific performance has reached finality. Thereafter, a female member of the family has filed the suit for partition claiming 1/9 share, which has been decreed in the Second Appeal. Further, in the applications filed under Section 47 CPC in R.E.A.No.11 of 2011 and R.E.A.No.64 of 2014, this Court held that the female members each is entitled to 1/40 share. However, the Execution Court, taking note of the decree passed by this Court in the Second Appeal, has directed execution of sale deed only in respect of undivided 4/9 share and relegated the decree holder to initiate separate proceedings for



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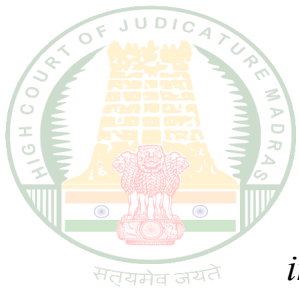
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possession by way of partition. Therefore, the learned counsel would submit that the order cannot be found fault with. The learned counsel would further submit that the second Execution Petition has been filed within time. According to him, the decree was passed on 22.08.1996 and the Execution Petition has been filed on 22.08.2008 which is within the period of 12 years. According to the learned counsel, the date of decree shall be excluded in computing the limitation as per Section 9 of the General Clauses Act, 1897, and therefore, the Execution Petition filed is well within time. Hence, he opposed the revision petition.

5.Heard the learned counsel on either side and perused the materials available on record.

6.In the light of the submissions made by the learned counsel on either side, the points that arise for consideration in this revision are as follows :

- i. *Whether the Execution Petition filed by the 1st respondent/decreed holder is barred by limitation ?*
- ii. *Whether the order of the Execution Court suffers from*



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infirmary?

7.It is not in dispute that the property was originally owned by father of the parties, namely Annamalai Maniyakar. He died leaving behind his wife and 8 children. However, four sons of the said Annamalai Maniyakar alone executed the sale agreement as if the property absolutely belongs to them. As they failed to execute the sale deed, a suit for specific performance came to be filed in O.S.No.131 of 1994. In the meanwhile, one of the daughters of the said Annamalai Maniyakar has filed a separate suit in O.S.No.91 of 1992, wherein, preliminary decree has been passed declaring her right.

8.Be that as it may, in the Execution Petition also, some of the daughters filed applications in R.E.A.Nos.11 of 2011 and R.E.A.No.64 of 2012 under Section 47 to declare their right. In the Second Appeal, the rights of the daughters has been declared, wherein, it is held that each of the legal heirs is entitled to 1/9 share. Taking note of the above facts, the Execution Court has allowed the Execution Petition only in respect of 4/9 share. In fact, the other legal heirs are saved and protected by the



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Execution Court, since sale deed is directed to be executed only in respect of 4/9 share.

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9.The fact remains that the vendors, namely the four brothers, have not challenged the decree for specific performance, which reached finality. Though the decree holder has earlier filed an Execution Petition in E.P.No.124 of 1999, the same was dismissed. Thereafter, the present second Execution Petition has been filed on 22.08.2008.

Point No.(i) :

10.As far as Point No.(i) is concerned, according to the learned counsel for the revision petitioners, limitation runs from the date of decree. Therefore, the limitation period of 12 years end on 21.08.2008. Whereas, the learned counsel for the 1st respondent would submit that the date of decree has to be excluded in reckoning the limitation.

11.It is relevant to refer to Section 9 of the General Clauses Act, 1897, and the same is extracted as under :



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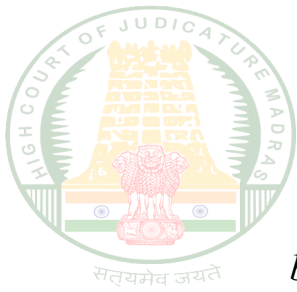
“9. Commencement and termination of time : (1) In any

Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word “from”, and, for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.”

12. The above section makes it very clear that, when a period is delimited by Statute or rule, which has both a beginning and an end and the word “from” is used indicating the beginning, the opening day is to be excluded and if the last day is to be included, the word “to” is to be used. In this regard, it is useful to refer to the judgment of the Full Bench of the Apex Court in ***Tarun Prasad Chatterjee v. Dinanath Sharma*** reported in ***(2000) 8 SCC 649***. The said judgment arises out of an Election Petition. The Hon'ble Supreme Court, in Para Nos.5 and 6 of the said judgment, has held as follows :

“5. The “date of election” of the returned candidate has



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been defined under Section 67(A) of the R.P. Act, 1951, which

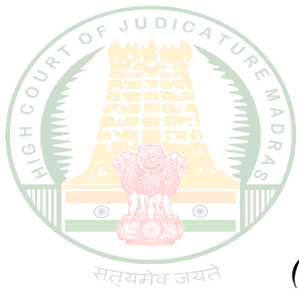
"67-A : Date of election of candidate For the purposes of this Act, the date on which a candidate is declared by the returning officer under the provisions of section 53, or section 66, to be elected to a House of Parliament or of the Legislature of the State shall be the date of election of that candidate."

Section 9 of the General Clauses Act, 1897 reads as follows:-

"9. Commencement and termination of time. (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(2) This section applies to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

6. As per Section 81(1) of the R.P. Act, the period of limitation prescribed for filing an election petition is forty-five days from the date of election of the returned candidate. It is also stated that it may not be filed earlier to the date of election of the returned candidate. Prior to Act No. 27 of 1956, the period of limitation for presentation of election petition was not provided in Section 81(1) of the R.P. Act, 1951. The period of limitation for presentation of election petition was provided under Rule 119 of Representation of the People



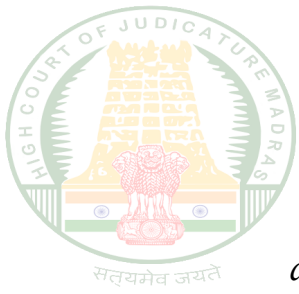
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(Conduct of Election & Election Petitions) Rules, 1951. In this code of rules, by Rule 2(6), it was expressly provided that the provisions of the General Clauses Act would apply. This express provision was required since the General Clauses Act would not normally be applicable to Rules framed under the Central Act. By Act No. 27 of 1956, a prescribed period for presentation of petition was provided under Section 81(1) of the R.P. Act, 1951 instead of giving such legislative power to the rule making authority. R.P. Act, 1951 being a self-contained code, it was held by courts in a series of decisions that the provisions contained in the Limitation Act have no application. However, in a line of decisions it has also been held that the provisions contained in General Clauses Act, 1897 are applicable in computing the period of limitation for filing election petition under the R.P. Act., 1951. There is nothing in Section 81(1) to indicate that the provisions contained in the General Clauses Act have no application.

...

9. So there cannot be any dispute to the proposition that Section 9 of the General Clauses Act would apply in computing the period of limitation under Section 81(1) of the R.P. Act, 1951. However, the contention urged by the learned Counsel for the appellant in this case is that even if it is held that Section 9 has an application to a petition filed under Section 81(1) of the R.P. Act, 1951, it could be applied only in



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appropriate cases and is not to be applied universally. The contention of the appellant is that in view of the specific language employed in Section 81(1) of the R.P. Act, 1951, the words "within" and "from" used therein would indicate that Section 9 has no application. It was also urged that the legislative mandate is that the election petition should be filed within 45 days from the date of election of the returned candidate and not earlier than the said date or after 45 days of the said date. On these premises, it was argued that section 9 has no application in the instant case.

10. Section 9 of the General Clauses Act, 1897 gives statutory recognition to the well-established principle applicable to the construction of statutes that ordinarily in computing the period of time prescribed, the rule observed is to exclude the first and include the last day.

11. In Halsbury Laws of England, 37th Edition, Volume 3 page 92, it is stated as follows:-

"Days included or excluded. When a period of time running from a given day or even to another day or event is prescribed by law or fixed as contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last- mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and



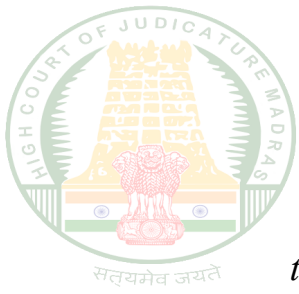
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not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as "from such a day" or "until such a day" are equivocal, since they do not make it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day."

12. Section 9 says that in any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any period of time, to use the word "to". The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word "from" is used indicating the beginning, the opening day is to be excluded and if the last day is to be excluded the word "to" is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a policy of insurance has to be good for one day from the 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get reasonable



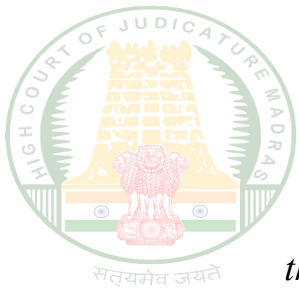
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time to lay claim, unless the 1st January is excluded from the period of computation.”

13. Similarly, the Hon'ble Supreme Court, in the case of ***Saketh India Ltd. and others v. India Securities Ltd.*** reported in ***(1999) 3 SCC 1***, wherein, the matter arises out of Negotiable Instruments Act, in Para Nos.6 and 7, has held as follows :

“6. Similar contention was considered by this Court in the case of Haru Das Gupta vs. State of West Bengal (1972) 1 SCC 639 wherein it was held that the rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that day is to be excluded; the effect of defining period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. In the context of that case, the Court held that in computing the period of three months from the date of detention, which was February 5th, 1971, before the expiration of which the order or decision for confirming the detention order and continuing the detention thereunder had to be made, the date of the commencement of detention, namely, February 5th has to be excluded; so done, the order of confirmation dated May 5th, 1971 was made before the expiration of the period of three months from the date of detention. The Court held that there is no reason why

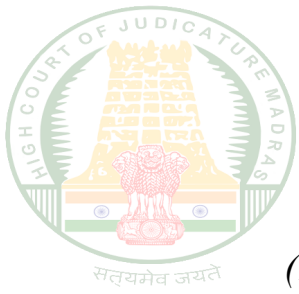


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the aforesaid rule of construction followed consistently and for so long should not be applied. For the aforesaid principle Court referred to the principle followed in English Courts. The relevant discussion is hereunder :-

"These decisions show that courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded. (See Goldsmith Company vs. The West Metropolitan Railway Company : 1904 KB 1 at 5) This rule was followed in Cartwright vs. Maccormack : (1963) 1 All ER 11 at 13 where the expression "fifteen days from the commencement of the policy" in a cover note issued by an insurance company was construed as excluding the first date and the cover note to commence at midnight of that day, and also in Marren v. Dawson Bentley & Co. Ltd., (1961) 2 QB 135 a case for compensation for injuries received in the course of employment, where for purposes of computing the period of limitation the date of the accident, being the date of the cause of action, was excluded. (See also Stewart v. Chadman (1951) 2 KB 792 and In re North, Ex parte Wasluck (1895) 2 QB 264.) Thus, as a general rule the effect of defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. (See Hall'sbury's Laws of England, (3rd ed.), Vol.37, pp.92 and 95.) There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here."

7.The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12



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(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provision is made in sub- section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of General Clauses Act, 1897 which, inter-alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'."

By applying the above principle, the contention of the learned counsel for the revision petitioners that limitation should start from the date of decree, cannot be countenanced. The date has to be computed after excluding the date of decree.

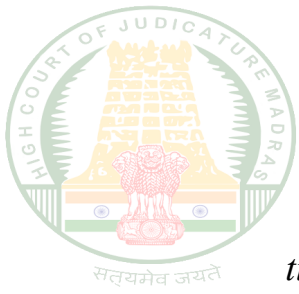
14. Though the judgment of the Apex Court reported in ***W.B.Essential Commodities Supply Corporation's case [AIR 1999 SC 3421]*** is relied upon by the learned counsel for the revision petitioner to buttress his submissions, wherein, the Apex Court has held that limitation starts from the date of decree and not on which the decree is actually drawn



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and signed, on careful perusal of the above judgment, it is to be noted that the Apex Court relied upon Article 136 of the Limitation Act in Para No.8, wherein, it is held as follows :

“8.From a perusal of the Article, extracted above, it is clear that for execution of any decree (other than a decree granting a mandatory injunction) or order of a civil court, a period of 12 years is prescribed; Column 3 contains two limbs indicating the time from which period of limitation begins to run, that is, the starting point of limitation; they are: (i) when the decree or order becomes enforceable and (ii) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment or delivery in respect of which execution is sought, takes place. The proviso says that there shall be no period of limitation for enforcement or execution of decree granting a perpetual injunction. We are concerned here with the first of the above-mentioned starting points, namely, when the decree or an order becomes enforceable. A decree or order is said to be enforceable when it is executable. For a decree to be executable, it must be in existence. A decree would be deemed to come into existence immediately on the pronouncement of the judgment. But it is a fact of which judicial notice may be taken of that drawing up and signing of the decree takes some



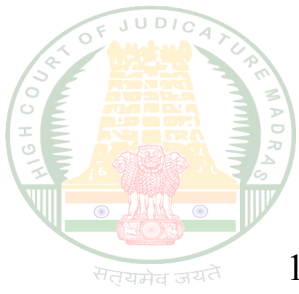
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time after the pronouncement of the judgment; the Code of Civil Procedure itself enjoins that the decree shall be drawn up expeditiously and in any case within 15 days from the date of the judgment. If the decree were to bear the date when it is actually drawn up and signed then that date will be incompatible with the date of the judgment. This incongruity is taken care of by Order XX Rule 7 C.P.C. which, inter alia, provides that the decree shall bear the date and the day on which the judgment was pronounced.”

The above judgment also makes it clear that the starting point of limitation as per the two limbs contained in Article 136 of the Limitation Act is when the decree or order becomes enforceable and where the decree or any subsequent order directs any payment of money or delivery of any property to be made at a certain date.

15. In the present case, in the decree for specific performance, the trial Court has directed the judgment debtors to execute the sale deed within two months. However, within two months, sale deed has not been executed. Therefore, the limitation, in the view of this Court, runs from the date of default.



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16.Be that as it may, even applying the general provisions for commencement of the limitation, Section 9 of the General Clauses Act excludes the first day of the decree. In such case, the date of decree shall be excluded. The Apex Court, in *W.B.Essential Commodities Supply Corporation v. Swadesh Agro Farming and Storage Pvt. Ltd. and another* [*AIR 1999 SC 3421*], has relied upon Article 136 of the Limitation Act. Even by applying the second limb of that Article, the Execution Petition is filed well within time. Applying Section 9 of the General Clauses Act, as held by the Full Bench of the Hon'ble Supreme Court in *Tarun Prasad Chatterjee's case* [(2000) 8 SCC 649] (*supra*), the first day is excluded and the Execution Petition is filed well within the period of limitation. The present Execution Petition has been filed on 22.08.2008, i.e., within 12 years. Therefore, the limitation aspect projected by the revision petitioners cannot hold water. ***Accordingly, Point No.(i) is answered against the revision petitioners.***



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Point No.(ii) :

17.As far as the impugned order of the Execution Court is concerned, though the family members are not party to the decree for specific performance, they have been made as parties in Execution Petitions. Thereafter, since the shares of the legal heirs have been declared in separate suit which has reached the stage of Second Appeal, the Execution Court, in fact, has taken note of the said facts and protected and preserved the rights of other co-owners declared in the Civil Suit and has ordered execution of the sale deed only in respect of undivided 4/9 share of the male members who executed agreement for sale. As far as the possession is concerned, the Execution Court has relegated the decree holder to initiate separate proceedings as per law. Therefore, the order of the Execution Court, in the view of this Court, does not suffer from any infirmity. As the decree obtained for specific performance has reached finality, now, the vendors joining with the other co-sharers are trying to avoid execution of the decree, such act cannot be permitted at this stage.



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18. Further, the learned counsel for the revision petitioners relied upon the judgment of the Apex Court in ***Balraj Taneja and another v. Sunil Madan and another [AIR 1999 SC 3381]***, wherein, it is held that, even though written statement has not been filed by the defendant, the Court should be a little cautious in proceeding under Order 8 Rule 10 CPC; before passing the judgment against the defendant, the Court must see that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint; it is a matter of Court's satisfaction and therefore, only on being satisfied that there is no fact which need to be proved on account of deemed admission, the Court can conveniently pass a judgment against the defendant who has not filed the written statement; only when there are disputed questions of fact involved in the case as per the plaint, further proof is required by the plaintiff. Therefore, the above judgment will not have any application to the present case.



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19. Though another judgment has been placed on record by the learned counsel for the petitioners in the case of ***Union of India and others v. Ramesh Gandhi [2012 (1) SCC 476]***, to show that the judgment obtained by the playing fraud on superior Court is nullity and can be set aside at any stage, the question of fraud does not arise in this case. In fact, the vendors/judgment debtors themselves have to be blamed for fraud in entering into an agreement claiming to be absolute owners of the property. When a decree has been passed against them and they have not challenged the decree and having allowed it to reach finality, now, they cannot have any say to contend that the decree is a nullity. The plaintiff herein, in fact, succeeded in getting a decree in the year 1996 itself. The said decree has not been challenged all these years. Therefore, at this stage, by joining hands with other co-owners, the vendors cannot oppose the Execution Petition. ***Accordingly, Point No.(ii) is also answered against the revision petitioners.***

20. In view of the above discussion, I do not find any merit in this revision petition. With the above observations, this Civil Revision Petition



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is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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11.06.2025

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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

Neutral Citation : Yes / No

To

The Principal Subordinate Judge,
Krishnagiri.



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