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CRP.No.4955 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:05.12.2025

Pronounced on:19.12.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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1.R.Santhanam
2.Mrs.Nirmala
R.Ethiraj(Died)
3.E.Selvakumari
4.E.Ramesh
5.R.Dhanalakshmi
6.E.Jayakumar
7.E.Bhakiyalakshmi
Leela (Died)
8.E.Parthiban

Petitioner(s)

Vs

1.The Official Trustee of Tamil Nadu,
Represented by the Trust Estate of M.M.Charities,
Additional City Civil Court Buildings,
High Court Buildings, Chennai – 600 104.

Mrs.Jaya Radhakrishnan (Died)

2.R.Loganathan

V.Durairaj

3.D.Vasanthakumar

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 29.08.2025 passed in



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Memo dated 06.08.2025 filed by the 1st respondent in E.P. No.1781 of 2012 on the file of the learned IX Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.R.Natarajan

For Respondents : Mr.R.Krishnamurthy for R1
No Appearance for R2 and R3

ORDER

The revision petitioners are judgment debtors. The 1st respondent had filed an suit for ejectment against the tenants occupying the property belonging to the first respondent. Pending the suit, an application was taken out by the tenants under Section 9 of the City Tenants Protection Act, 1921 for purchasing the land belonging to the charities. The said application was allowed by the Trial Court. However, on the same day when the Section 9 application was allowed, the suit came to be dismissed.

2. A Second appeal preferred by the judgment debtors came to be dismissed in S.A.No. 925 of 2012, by a judgment and decree dated 22.08.2023. E.P.No.1781 of 2012 was filed for recovery of vacant



possession from the judgment debtors under Order 21 Rule 35 of Civil Procedure Code. Pending the Execution Petition, the revision petitioners filed a memo before the Executing Court bringing it to the notice of the Court as well as the decree holders that the 1st respondent, 2nd respondent as well as 5th respondent had died on 15.01.2021, 28.09.2012 and 15.02.2015 respectively. The matter came up before the Executing Court on 10.07.2025, the learned counsel for the revision petitioners entered appearance for judgment debtors 3 and 4, the court recorded the factum of death of judgment debtors 1, 2, 5 and 7. Service of notice on the 6th judgment debtor was recorded as served and consequently the 6th judgment debtor was set ex-parte.

3. A memo was filed on 14.07.2025 by the learned counsel enclosing copies of death certificates and legal heirship certificates. The Execution Petition was adjourned to 22.07.2025. On 22.07.2025, it was brought to the notice of the Executing Court that the decree holders had filed an application under Order 22 Rule 4 CPC read with Section 50 of CPC, for bringing on record the legal representatives of the deceased judgment debtors. The execution petition stood adjourned to 30.07.2025. However on 06.08.2025, the decree holder filed a memo stating that there



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was no necessity to implead the legal representatives of deceased judgment debtors 2 and 5 as they were not recognized as tenants or assignees of the original tenant. The 1st revision petitioner filed his objections to the said memo on 11.08.2025. After a couple of hearings in the Execution Petition, the Executing Court accepted the memo filed by the decree holder raising steps for deceased judgment debtors 1, 2, 5 and 7 by order dated 29.08.2025. Challenging the said order, the present revision petition has been filed.

4. Mr.R.Natrajan, learned counsel for the revision petitioner would submit that the ejectment suit was initially filed against only two defendants and subsequently defendants 3 to 8 have been impleaded in this suit. The order permitting the impleadment was not challenged by the 1st respondent/plaintiff. According to Mr.Natrajan, no doubt the revision petitioners had suffered a decree for recovery of vacant possession up to this Court in Second Appeal proceedings. However, he would contend that merely because the judgment debtors have suffered a decree and their request for sale of the property under Section 9 of the City Tenants Protection Act has been declined, it does not give a window to the decree



holders to dispense with even bringing on record the legal representatives of the deceased judgment debtors.

5. The learned counsel would rely on the Full Bench decision of this Court in *Kanchamalai Pathar vs Ry. Shahaji Rajah Sahib (deceased) and others*, reported in 43 Mad LW 238. The learned counsel would also invite my attention to Section 50 of the Civil Procedure Code and contend that the Executing Court ought not to have dispensed with or waived the impleadment of the legal representatives of deceased judgement debtors, contrary to the said provisions.

6. Per contra, Mr.R.Krishnaswamy, learned counsel appearing for the 1st respondent, would submit that there is no serious issues of title involved in the suit. The ejectment suit was a suit filed for simpliciter of the recovery of possession from tenants and admittedly the judgement debtors 3 to 8 are not tenants. He would take me through the findings rendered by the Courts below in this regard. The learned counsel would also state that the Executing Court is concerned only with satisfaction of the decree and there is no jurisdictional error committed by the Executing Court. It is also his contention that the legal representatives of the



deceased judgment debtors are bound by the decision against the defendants in the suit.

7. Further, some of the legal representatives according to learned counsel Mr.R.Krishnamurthy, are also parties in the Second Appeal and in such circumstances, the present attempt was only to protract the proceedings, to delay handing over possession to the 1st respondent/plaintiff. The learned counsel would further state that the revision itself, challenging an order passed on memo is not maintainable and he prays for dismissal of the revision petition.

8. I have carefully considered the submissions advanced by the learned counsel for the parties and have also gone through the records including the order passed by the Executing Court, based on the memo filed by the decree holder.

9. OS.No. 4369 of 1996 was filed by the first respondent seeking ejectment of the defendants 1 and 2. Pending the said suit, defendants 3 to 9 have been impleaded by order dated 29.11.2000 in I.A.No.17406 of 1994. There is a clear reference to the same in the decree passed by the



12th Assistant City Civil Court Judge on 31.01.2007. In and by the decree the suit came to be dismissed, on account of the Section 9 application filed by the tenants to purchase the land being allowed.

10. However, on appeal at the instance of the 1st respondent/ plaintiff, in A.S.No.613 of 2007, the First Appellate Court found that the suit ought to have been kept pending, since the conditions which were imposed in the Section 9 petition had to be fulfilled and without the tenants complying the direction in the Section 9 application by payment of the sale consideration fixed, the suit could not have been dismissed. The appeal was therefore allowed and the judgement and decree in O.S.No. 4369 of 1986 was set aside on 05.03.2010. The tenants challenged the judgement passed in A.S.No.613 of 2007 before this Court in SA.No.925 of 2012. This Court, taking note of the fact that in CRP.No.3106 of 2012 had confirmed the judgement in CMA.No. 134 of 2007, setting aside the order allowing the section 9 application filed under the City Tenants Protection Act, proceeded to dismiss the Second Appeal, confirming the judgement of First Appellate Court A.S.No. 613 of 2007 which had set aside the dismissal of the suit and having restored



it to file. This Court also granted six months time to the tenants to vacate and hand over vacant possession.

11. In order to execute the decree for recovery of possession, the 1st respondent has filed the Execution Petition. As already discussed, the revision petitioners 1 and 2 who are judgement debtors/3 and 4 brought it to the notice of the Executive Court that the judgement debtors 1, 2, 5 and 7 had died. Acting upon the said memo filed by judgement debtor, the 1st respondent also filed an application for bringing on record the legal representatives of deceased judgement debtors. Subsequently, wisdom dawned on the 1st respondent that it was not necessary to implead the legal representatives of deceased judgement debtors and the decree holder filed a memo seeking to waive its right to implead the legal representatives of the deceased judgement debtors. The said request was strongly opposed by the revision petitioners. However, despite the same, the Executing Court, in and by an impugned order has waived steps for deceased judgement debtors 1, 2, 5 & 7.

12. According to learned counsel for the petitioner, the Executing Court, finding that the judgement debtors are liable to deliver vacant



possession of the schedule property and that the decree has become final with the dismissal of S.A.No.925 of 2012, held that a decree against the judgement debtor is also a decree against his legal heirs and therefore, the legal heirs are not necessary parties in the Execution Proceedings. The Executing Court further went on to hold that any person in possession of the decretal property, through the judgement debtor was bound by the decree and obstruction if any, caused in the execution of the decree can always be dealt with separately. Based on the said discussion and findings, the Executing Court held that the legal heirs of judgement debtors 1, 2, 5 & 7 need not be impleaded as parties in the Execution Petition.

13. It is one thing to state that the legal representative of a judgement debtor is bound by the decree against the judgement debtor and another thing altogether to state that the Execution Proceedings can be proceeded with, even without impleading the legal representatives. This may possibly be pressed into service, if the judgement debtor is alive. Section 50 of the Civil Procedure Code takes care of a situation like this. Section 50 Civil Procedure Code is usefully extracted herein:-

“50. Legal representative.—(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased. (2) Where the decree is executed



against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.”

14. Thus, it is clear from the reading of the above provision that when the judgement debtor dies before the decree is fully satisfied, the decree holder will have to make an application to the Executing Court to execute the decree against the legal representatives of the deceased. The first respondent conscious of this, has in fact, also filed an application to bring on record the legal representatives of the deceased judgement debtors. However, later, the decree holder has taken a u-turn and filed a memo stating that the legal representatives need not be impleaded. The only reason for the memo being filed was that the deceased judgement debtors were not the original tenants and they are also not claiming as assignees under the original tenants viz., defendants 1 and 2 and in such circumstances, they are bound by the decree passed against the defendants 1 and 2 and the legal representatives of the deceased judgement debtors were not required to be heard.



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15. The interpretation of Section 50 of the Civil Procedure Code was subject matter of the decision of the Full Bench of this Court in *Kanchamalai pathar's* case (referred herein supra). In fact the question that was formulated by the Hon'ble Full Bench of this Court was whether a decree holder, whose decree was unsatisfied, could execute the decree despite the death of the judgement debtor, without taking recourse to Section 50 of the Civil Procedure Code. The Hon'ble Full Bench unanimously held that recourse to Section 50 was mandatory and without complying with the same, the decree cannot be executed. The said decision would apply in all force to the fact of the present case.

16. It is not open to the 1st respondent to contend today that the deceased judgement debtors are not tenants or assignees of tenants and therefore, their legal representatives need not be impleaded and heard. Even pending the suit, before the Trial Court, the said deceased judgement debtors were impleaded as defendants. No doubt, the Trial Court had dismissed the suit. However, the First Appellate Court while reversing the dismissal decree, granted relief of possession against all the defendants, including the deceased judgement debtors. In such circumstances, when the decree is put to execution, it is not open to the



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decree holder to contend that the deceased judgement debtors not being tenants or assignees, their legal representatives are not entitled to be heard. The decree, admittedly, is not satisfied as on date and when it is brought to the notice of the Executing Court that four of the judgement debtors are no more, in such circumstances, the only option and recourse open to the decree holder was to seek execution of the decree against the legal representatives of the deceased judgement debtors as mandated u/s 50(1) of the Civil Procedure Code.

17. The Executing Court has clearly fell in error in not following the ratio laid down by the Full Bench of this Court in *Kanchamalai Pathar's* case (referred herein supra) leave alone the mandate under Section 50(1) Civil Procedure Code.

18. As regards the arguments of the learned counsel Mr.Krishnamurthy, that the revision is not maintainable as against the order passed in the memo, I do not find the argument meriting consideration. The valuable rights of the legal representatives of the judgement debtors who have passed away, before the satisfaction of the decree, is taken away by such an order passed by the Executing Court



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dispensing with steps to be taken by the decree holder, to bring on records the legal representatives of the deceased judgement debtors. In such circumstances, even though the order may have been passed only on a memo, the order being clearly perverse and illegal, this Court is certainly entitled to exercise the supervisory jurisdiction and power under Article 227 of the Constitution of India and interfere.

19. For all the above reasons, the revision is allowed, the order dated 29.08.2025 passed in memo dated 06.08.2025 filed by the 1st respondent in E.P. No.1781 of 2012 on the file of IX Assistant Judge, City Civil Court, Chennai is set aside. The Execution Court shall dispose of E.P. No.1781 of 2012 expeditiously, on merits and in accordance with law. No costs.

19.12.2025

rkp
Index : Yes
Internet : Yes

To:

The IX Assistant Judge, City Civil Court, Chennai.



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P.B.BALAJI, J.,

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Pre-delivery order in
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