



WEB COPY

CRP Nos. 745 and 5166 of
2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-12-2025

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP Nos. 745 and 5166 of 2024 and CMP No.3702 of 2024

CRP No.745 of 2024

1. Sudamani @ Malliga

W/o. late. Shanmugasamy Chettiar, 33,
Church Street, Villianur, Pondicherry.
and 4 Others

2. Palanivel

S/o. late. Shanmugasamy Chettiar, 33,
Church Street, Villianur, Pondicherry.

3. Rajavelu

S/o. late. Shanmugasamy Chettiar, 33,
Church Street, Villianur, Pondicherry.

4. Vijayalakshmi

D/o. late. Shanmugasamy Chettiar, 33,
Church Street, Villianur, Pondicherry.

5. Kumar @ Kumaravel

S/o. late. Shanmugasamy Chettiar, 33,
Church Street, Villianur, Pondicherry.

Petitioner(s)

Vs

1. Dr.LOUIS PRAKASSAM



CRP Nos. 745 and 5166 of
2024



KANNAIYA

S/o. Late.Victor Jeannatha Mudaliar,
No. 23, Saint Therese St, Pondicherry -

1
2.Nataraja Chettiar

S/o. late. Palanisamy Chettiar,
Villianur, Sri Bharathi Jewellery,
Ambalathadayar Madam St,
Pondicherry.

3.Louis Sinnaya Arokiasamy

S/o. Late.Victor Jeannatha Mudaliar,
M.G.Road, Pondicherry.

Respondent(s)

CRP No. 5166 of 2024

Louis Prakasam Kannaiya

S/o. Late Victor Jegannatha Mudaliar,
No. 23, St. Theresa Street, Puducherry
605 001.

Petitioner(s)

Vs

1. S.Sudamani @ Malliga

W/o. Late Shanmugasamy Chettiar,
Res. at No. 33, Chruch Street, Villianur,
Puducherry.

2. Palanivel

S/o. late. Shanmugasamy
Chettiar, 33, Church
Street, Villianur,
Pondicherry.



CRP Nos. 745 and 5166 of
2024



3. Rajavelu

S/o. late. Shanmugasamy

Chettiar, 33, Church

Street, Villianur,

Pondicherry.

4. Vijayalakshmi

D/o. late. Shanmugasamy

Chettiar, 33, Church

Street, Villianur,

Pondicherry.

5. Kumar @ Kumaravel

S/o. late. Shanmugasamy

Chettiar, 33, Church

Street, Villianur,

Pondicherry.

6. Nataraja Chettiar

S/o. late. Palanisamy Chettiar, Villianur, Sri Bharathi Jewellery,

Ambalathadayar Madam St, Pondicherry.

7. Louis Sinnaya Arokiasamy.

S/o. Late. Victor Jeannatha Mudaliar, M.G.Road, Pondicherry.

Respondent(s)

CRP No.745 of 2024: Revision filed under Section 115 of Code of Civil Procedure against the portion of the order and decretal order passed in E.A.No.278 of 2017 in E.P.No.58 of 2012 in O.S.No.354 of 2005 dated 19.07.2023 insofar as Clause 3 concerning R.S.No.243/17 and 243/18 on the



CRP Nos. 745 and 5166 of
2024



file of learned Additional Sub Judge at Puducherry and pray for setting aside the same.

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CRP No.5166 of 2024: Revision filed under 115 of Code of Civil Procedure against the order and decretal order dated 19.07.2023 passed in E.A.No.278 of 2017 in E.P.No.58 of 2012 in O.S.No.354 of 2005 on the file of Additional Sub Judge, Puducherry and to set aside the same.

For Petitioner(s) Mr.S.Sadhasharam
in CRP No.745/2024:For S. Nagarajan

For Respondent(s): M/s.Prakash Adiapadam
For R.1
Mr.P.Vasantha Kumar
For R.3

For Petitioner Prakash Adiapadam
in CRP
No.5166/2024:

For Respondent(s): Mr.S.Sadhasharam
For S. Nagarajan

COMMON ORDER

CRP No.745 of 2024 is at the instance of the legal heirs of the defendants/judgment debtors.



WEB COPY

CRP Nos. 745 and 5166 of
2024



CRP No.5166 of 2024 is at the instance of the decree holder.

The first respondent in CRP No.745 of 2024, who is the decree holder, filed a suit for recovery of possession and for damages for use and occupation. The suit came to be decreed as against which, the defendants preferred first appeal, which was ultimately dismissed after contest. The Second Appeal, filed by the revision petitioners in CRP No.745 of 2024 was also dismissed confirming the judgment and decree passed in O.S.No.354 of 2005.

2. Mr.S.Sadhasharam, learned counsel for the revision petitioners in CRP No.745 of 2024 and the contesting respondents in CRP No.5166 of 2024 would invite my attention to the decree passed in the suit which is now put to execution in E.P No.58 of 2012.

3. Pointing out that the suit property has been described as “B” schedule property, forming part of “A” schedule property, it is the contention of the learned counsel for the revision petitioners that the schedule does not



disclose the four boundaries and also the extent available in each of the survey numbers and Schedule “B” only reflects the suit property to be half portion of the “A” schedule property on the western side. He would also point out to the discussions made by the executing court in the application filed under Section 47 of the Civil Procedure Code, filed by the revision petitioners in CRP No.745 of 2024. where, after going through the documents, the executing court, has in fact, found that the revision petitioner has himself proceeded to purchase a portion of the property in and by way of a registered sale deed and that apart, there have been five other alienations, in favour of various other third parties.

4. There is also a finding by the executing court after perusal of the registered sale deed that it is only the eastern portion that was allotted to the decree holder and not western portion. The learned counsel would therefore state that the petitioner has suppressed all material facts and filed a suit in O.S.No.354 of 2005, including alienations that have been made prior in point of time.



5. Learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in *Union of India vs Ramesh Gandhi* reported in (2012) 1 SCC 476, where, the Hon'ble Supreme Court, relying on the ratio laid down in the case of *S.P.Chengalvaraya Naidu vs Jagannath* reported in (1994) 1 SCC 1, held that fraud vitiates all proceedings and even in collateral proceedings, the court can take note of any fraud that is committed by the litigant and the Hon'ble Supreme Court has explained that even non-disclosure of all the necessary facts would tantamount to playing fraud on the courts. Learned counsel would therefore state that the order of the executing court has to be necessarily set aside in toto and the matter may be remanded to the executing court to first identify the property which is capable of being executed at the hands of the decree holder.

6. The learned counsel for the revision petitioner in CRP No.5166 of 2024 submits that the revision petitioner/judgment debtor is admittedly a tenant. In the written statement as well as the oral testimony, the judgment debtor admitted that he is only tenant and therefore, it is not been open to the revision



petition to object to the decree being put to execution, to recover possession of the property that has been admittedly let out to the revision petitioner.

7. Learned counsel appearing for the third respondent in CRP No.745 of 2024 submits that he is the brother of the decree holder and he is a formal party, who was also alienated his share in the suit property, originally measuring 29000 sq.ft.

8. I have also perused the order of the executing court. The executing Court has rightly taken note of the material circumstances that various portions out of the total extent have been sold in and by way of Exs.P.1 to P.6 and at the same time, as the decree holder has conceded his entitlement to only to 5778 sq.ft based on a Memo filed by the decree holder, the court has gone through the registered document and has found that the decree holder is entitled to only recover possession of 5778 sq.ft comprised in S.Nos.243/17 and 243/18 and clearly found that in respect of lands in S.Nos.243/19 and 243/27, the decree cannot be executed.



WEB COPY

CRP Nos. 745 and 5166 of
2024



9. Independently I have also gone through the judgment passed by the trial court, first appellate court as well as this Court in second appeal proceedings. The petitioner even though he has purchased an extent in the total extent of property measuring 29000 sq.ft, he has not disputed the fact of his being a tenant under the respondent/decree holder. Therefore, the petitioner cannot at this juncture, take advantage of the fact that the respondents have also alienated portion of the property and they are not entitled to execute the decree in toto. At the same time, I find force in the submissions of the learned counsel for the revision petitioner Mr.S.Sadhasharam.

10. When the schedule does not disclose the extent available in each of the survey numbers and it is only at execution stage, the decree holder has filed a Memo restricting his entitlement to 5778 sq.ft and giving up his claim in respect of two survey numbers, the decree as it stands today and confirmed upto this court in Second Appeal cannot be executed. However, taking note of the subsequent events viz., the Section 47 application being partly allowed



accepting the plea of the judgment debtor that he himself has purchased the portion of the suit property and that he is not liable to vacate and hand over possession of 14500 sq.ft., viz., the western portion, I am inclined to dispose of both the revisions in the manner following:-

(i) While executing the decree limited to 5778 sq.ft, comprised in S.Nos.243/17 and 243/18, the Bailiff, who has been assigned the task of executing the warrant, shall take the assistance of the Head Taluk Surveyor concerned and the property shall be measured in the presence of the parties/respective counsels with the aid of the Taluk Surveory. The said extent of 5778 sq.ft shall be identified in S.Nos.243/17 and 243/18 and if the said property is capable of identification, then, the Bailiff shall proceed to hand over possession of that portion of the property alone to the decree holder. The costs of taking the services of the Taluk Surveyor shall be borne



WEB COPY

CRP Nos. 745 and 5166 of
2024



by the Decree Holder.

(ii) The executing court shall ensure that the execution petition in EP No.58 of 2012 is disposed of finally within a period of two months from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petition is closed.

08.12.2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

sr

To

The Additional Sub Judge, Puducherry



WEB COPY

CRP Nos. 745 and 5166 of
2024



P.B.BALAJI.,J

sr

**CRP Nos. 745 and 5166
of 2024**



WEB COPY

CRP Nos. 745 and 5166 of
2024



08.12.2025