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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-06-2025

CORAM

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

A No. 643 of 2025

in

A.No.4503 of 2024

in

E.P No. 112 of 2015

in

C.S.No.633 of 2011

1.G.Ramakrishnan (Deceased)

2.R.Gopikrishna

Applicant(s)

Vs

1. G. Subramanian

2.G.Jayaraman (Deceased)

3.Mamutha Bai

4.J.Latha

5.J.Indira Priyadharshini

6.J.Jayashree

7.J.Venkateswara Rao

8.R.Nandadevi

9.R.Murali Krishna

Respondent(s)

**PRAYER:**

This application is filed seeking to set aside the order dated 29/11/2024 passed by the learned Master Court in A.No.4503 of 2024 in E.P.No.112 of 2015 in C.S.No.633 of 2011 and consequently to allow the Execution Petition to execute the proceedings as per the decree in toto.

For Applicant(s): Mr.S.Mahaveer Shivaji
For Respondent: Mr.R.Rajesh for R1
Mr.P.R.Raman, Senior Counsel
for Mr.G.Nithyakumar for R8 & R9

ORDER

This application has been filed to set aside the order dated 29.11.2024 passed by the learned Master in A.No.4503 of 2024 in E.P.No.112 of 2015 in C.S.No.663 of 2011.

2.The suit had been filed for a declaration that the plaintiff is the sole and absolute owner of the suit property at Nos.18/1 and 18/2, Soodiammanpet, Saidapet, Chennai – 600 015 and for a direction against the defendant to hand over vacant possession and for a further injunction restraining the defendants from creating any encumbrance or alienation or for payment of mesne profits.

By judgment dated 11.02.2015, the suit had been decreed. Very specifically, a

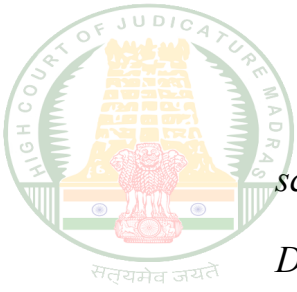


decree had been passed that the defendants are restrained by an order of injunction from creating any encumbrance or alienation of any nature.

3. Thereafter, the plaintiff had filed E.P.No.112 of 2015. Pending the Execution Petition, he died and one of his legal heirs has brought on record as 2nd petitioner in the Execution Petition and the other two legal heirs were brought on record as 8th and 9th respondents. Pending the Execution Petition, the 8th and 9th respondents who were entitled to undivided 2/3rd share in the property appear to have entered into an agreement with the 4th, 5th and 6th respondents to convey their share. The learned Master had proceeded on the inference that the 8th and 9th respondents had actually transferred their share and holding as above, had proceeded to dismiss the Execution Petition. Questioning that particular decision taken by the learned Master, the present application has been filed.

4. This application came up for consideration on 02.06.2025 and this Court had observed as follows:

“A decree had been passed in favour of the plaintiff on 11.02.2015 affirming the title of the plaintiff over the suit

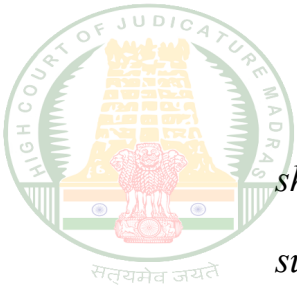


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schedule property. The decree had been affirmed by the Division Bench of this Court and also by the Hon'ble Supreme Court. The decree holder / plaintiff had filed E.P.No.112 of 2015 seeking to put into effect the decree. Pending the Execution Petition he died. He left behind two sons and one daughter. One of his sons had impleaded himself as the applicant in the Execution Petition and the other son and daughter were impleaded as respondents.

2.It is contended that the other son and the daughter who had been impleaded as respondents had transferred their share to the judgment debtor. But there is no document evidencing the same. In the absence of such document, an oral statement of transfer cannot be accepted and is not permissible. Transfer requires a registered document setting out the right of the transferrer to so transfer and stating in the schedule the specific property which is so transferred with boundaries. In the absence of such a document, the statement that there has been transfer cannot be permitted to be advanced as an argument before this Court.

3.The learned Master appears to have been misled by the statement that there has been a transfer of share in property. He



should however must have examined the document evidencing such transfer.

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4.The learned counsel for the judgment debtor and also for the son and daughter who had transferred their share to the judgment debtor will necessarily have to produce the document evidencing such transfer and in the absence thereof their claim of transfer cannot be countenanced by this Court. The position of law is very clear on that aspect. For producing the document, list the matter once again on 10.06.2025.”

5.It is today contended by the learned Senior Counsel who had been instructed on behalf of the 8th and 9th respondents / two of the legal representatives of the decree holder that there has been no transfer of property but only an agreement had been entered into to transfer the undivided 2/3rd share.

6.A proposal had also been forwarded to the Court by the learned Senior Counsel for division of the property into three equal parts. The learned counsel for the appellant / 2nd petitioner in the Execution Petition was requested to get

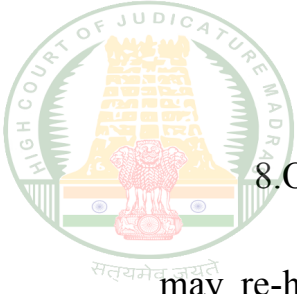


his opinion on the same. But even if the proposal is to move forward, the entire issue can be adjudicated only before the learned Master, who had dismissed the

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Execution Petition, which order does not withstand the scrutiny of this Court, since there has been no transfer of the property. An agreement does not create any interest or charge over the property. Therefore, as on date, since the learned Master had proceeded on the ground that there had been transfer of property, which observation is factually incorrect, the order of the learned Master necessarily has to be interfered with and is therefore set aside.

7.E.P.No.112 of 2015 is remitted back to the learned Master for fresh consideration in accordance with law. The 2nd petitioner and the 8th and 9th respondents who are the co-sharers of the property with each having an undivided 1/3rd share may put up any proposal before the learned Master for consideration, who may take up the issues raised in accordance with law and adjudicate on the same.



8.Observing as above, this application stands allowed. The learned Master

may re-hear E.P.No.112 of 2015 afresh and address all issues raised by the

parties therein.

10-06-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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C.V.KARTHIKEYAN J.

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