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C.R.P.[NPD].No.5242 of 2024  
and C.M.P.No.29304 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.01.2025

CORAM

**THE HON'BLE MR.JUSTICE N.SATHISH KUMAR**

C.R.P.[NPD]No.5242 of 2024  
and C.M.P.No.29304 of 2024

Krishnan (Died)  
Ellammal (Died)  
Asaithambi

.. Petitioners

Vs.

Chinnammal

.. Respondent

**Prayer:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the docket order dated 26.11.2024 passed in R.E.P.No.10 of 2007 in O.S.No.130 of 1997 on the file of the District Munsif Court, Omalur, in ordering delivery of the suit property with Police aid.

For Petitioners : Mr.P.Mani

For Respondent : Mr.T.Ganesan

**ORDER**

This Civil Revision Petition has been filed seeking to set aside the docket order dated 26.11.2024 passed in R.E.P.No.10 of 2007 in O.S.No.130 of 1997 on the file of the District Munsif Court, Omalur, in ordering delivery of the suit property with Police aid.



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2.The brief facts of the case are as follows:-

The suit has been filed by the respondent herein for mandatory injunction and to remove the construction put up in the suit property and convert the same into its original vacant position. The suit came to be decreed *ex parte* vide judgment dated 01.11.2004 and execution proceedings also initiated by the respondent. Pending the execution petition, the defendants died and the petitioner herein was brought on records legal heir of the petitioner. However, the Execution Court has proceeded as if the execution proceedings is for delivery of possession and ordered delivery with the Police aid on 26.11.2024, without even issuing notice to the petitioner. Hence, the present Civil Revision Petition has been filed.

3.Learned counsel appearing for the petitioner would submit that when no decree was passed for delivery of possession particularly against the petitioner, who is not a party to the suit, the Executing Court has ordered delivery of possession, which is unsustainable in law.



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4.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

5.Upon perusal, this Court is of the view that the decree can be executed only with regard to the mandatory injunction and the construction made by the judgment debtor in the suit property has to be removed in the manner known to law. If the construction is not removed, the Court can order for removal of construction and the costs of removal has to be recovered from the revision petitioner. If the order of injunction is not obeyed, the revision petitioner can be proceeded further for sending him to civil prison. However, the Executing Court has ordered delivery of possession, when there was no such decree passed by the trial Court, which is illegal and the same is liable to be set aside. Accordingly, the order of the Executing Court dated 26.11.2024 in R.E.P.No.10 of 2007 in O.S.No.130 of 1997 is set aside. The Executing Court is directed to issue order for removal of construction pursuant to the decree passed in this regard.



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6.In the result, this Civil Revision Petition is allowed. No costs.

Consequently, connected miscellaneous petition is allowed.

**28.01.2025**

rst

Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

To:

The District Munsif Court,  
Omalur,



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**N.SATHISH KUMAR, J.**

rst

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