



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-02-2026

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP No. 5310 of 2025

and

CMP No. 26746 of 2025

N.K.Kaliyaperumal

Petitioner(s)

Vs

R.Jayakumar

Respondent(s)

For Petitioner(s): Mr.N.Suresh

For Respondent(s): Mr.D.Vasanth

ORDER

Today, this matter is listed under the caption “For being mentioned” at the instance of the learned counsel for the petitioner.

2. Heard Mr.N.Suresh, learned counsel for the petitioner and Mr.D.Vasanth, learned counsel for the respondent.

3. Mr.N.Suresh, learned counsel for the petitioner states that in view of the non-availability of the web copy of the order, within a short period of

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time, the examination of the witnesses would not go on 02.02.2026 and 12.02.2026 as undertaken before this Court. Now he seeks for alteration of dates as 03.03.2026 and 11.03.2026, which would also automatically imply that the subsequent dates viz., 04.03.2026 and 12.03.2026 would be a cushion, in case, the evidence could not be concluded on the first day.

4. Mr.D.Vasanth, learned counsel for the respondent would however bring to my notice that the A-Diary endorsement dated 12.02.2026, where the petitioner before the trial Court has stated that the witness is not willing to appear before the Court and hence, he intends to take out an application to appear Subpoena.

5. It is made clear that the order was passed only on the assurance of the learned counsel for the petitioner that the witnesses would be made available on the particular dates and the petitioner shall not have the luxury of taking out the applications for summoning the witness and prolong the trial any further. In the event of the witnesses not appearing on 03.03.2026 and 11.03.2026, the petitioner shall forfeit his rights to examine the witnesses.

24-02-2026

Jd

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P.B.BALAJI J.
jd

CRP No. 5310 of 2025

24.02.2026



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.5310 of 2025

and CMP. No.26746 of 2025

N.K.Kaliyaperumal

... Petitioner

Vs.

R.Jayakumar

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order in E.A. No.14 of 2025 in E.A. No.10 of 2025 in E.P. No.61 of 2021 in O.S. No.24 of 2011 dated 13.08.2025 on the file of the learned Additional District Judge (Fast Track Court), Villupuram.

For Petitioner	: Mr.N.Suresh
For Respondent	: Mr.D.Vasanth

ORDER

The third party obstructor against whom an Application under Order 21 Rule 97 CPC has been filed by the decree holder is the revision petitioner. Aggrieved by the order dismissing his Application in E.A. No.14 of 2025 to issue summons to four witnesses which came to be dismissed by the



Executing Court and challenging the said order, the present Civil Revision
Petition has been filed.

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2. I have heard Mr.N.Suresh, learned counsel for the revision petitioner and Mr.D.Vasanth, learned counsel for the respondent.

3. Mr.N.Suresh, learned counsel for the petitioner would submit that the revision petitioner has admittedly been in peaceful possession of the decretal property and that is the reason why an application has been taken out by the decree holder under Order 21 Rule 97 CPC. Mr.Suresh, learned counsel would further contend that the petitioner claims under a prior agreement of sale dated 21.07.2003, in and by which, he was placed in physical possession of the suit property. However, behind his back, the respondent has proceeded to file a suit for specific performance of a subsequent agreement of sale dated 29.05.2009 and on the strength of the decree in the suit in O.S. No.24 of 2011 filed by the respondent, the petitioner is now attempted to be dispossessed.

4. Mr.N.Suresh, learned counsel would contend that in order to establish his independent claim to remain in possession of the decretal property, the petitioner intended to establish the genuineness of the



agreement of sale dated 21.07.2003 and it is only in such circumstances that the Application was filed seeking to issue summons under Order 16 Rule 1 CPC. Mr.Suresh, learned counsel would fairly contend that one of the four witnesses who were sought to be summoned was none else than the decree holder himself and conceded to the settled legal position that the adversary party cannot be compelled to give evidence against his own case. Mr.Suresh, would pray that the revision may be allowed insofar as the remaining three witnesses are concerned.

5. Per contra, Mr.D.Vasanth, learned counsel for the respondent/decrece holder would submit that the petitioner has no independent right or title to the decretal property and admittedly, he claims only under an agreement of sale. Pointing out to the fact that the said agreement of sale is of the year 2003, no effective steps have been taken to enforce the said agreement and only in order to protract the proceedings, the petitioner has filed the present application, he seeks for dismissal of the revision.

6. The learned counsel would also rely on the decision of this Court in *Munusamy and others Vs. Vengadachalam and others*, reported in 2011 (2) MWN (Civil) 150, where this Court held that in an Application under Order 21 Rule 97 CPC, the Executing Court need not go into the title of the

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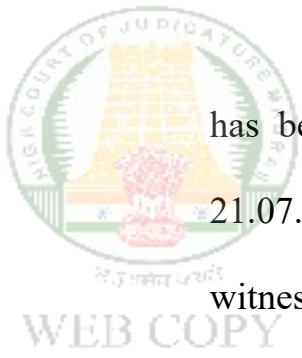


decree holder, even if it is questioned by the obstructor and the enquiry cannot be limited only to the right of the obstructor and nothing more. The learned counsel would further state that Order 16 Rule 1 CPC, also requires the petitioner to set out the reasons as to why summons have to be issued to witnesses, no specific reasons have been assigned in the affidavit filed by the petitioner in E.A. No.14 of 2025. He would therefore pray for dismissal of the revision.

7. I have carefully considered the submissions advanced by the learned counsel on either side.

8. In view of the fair concession shown by Mr.N.Suresh, learned counsel for the petitioner, there is no necessity to look into the requirement of issuing summons to the decree holder himself. The other three witnesses who were sought to be summoned are (i) a witness to the alleged agreement of sale dated 21.07.2003 (ii) the Scribe of the said agreement dated 21.07.2033 and (iii) neighboring owner of the decretal property. No doubt, it has been contended by Mr.Vasanth, learned counsel that no reasons have been assigned in the affidavit as to why summons will have to be issued under Order 16 Rule 1 of CPC. However on going through the affidavit in E.A. No.14 of 2025, I find that the revision petitioner has asserted that he

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has been put in possession in pursuance of an agreement of sale dated 21.07.2003 and in order to establish his rights, he needs to examine these witnesses.

9. Mr.Suresh, would also contend that an Application under Order 21 Rule 97 CPC, has to be tried as a suit and therefore, the revision petitioner cannot be denied an opportunity to establish the truth of the agreement of sale in his favour. In fact, Mr.Suresh, learned counsel would also submit that the suit for specific performance has already been filed to enforce the said agreement and the same is pending. In view of the above, I find that there are sufficient averments in the affidavit regarding the purpose for which the summons is sought to be issued to various persons. However, at the same time, I do not see how the neighbor's evidence will have any value, especially when there is no pleading with regard to the role of the neighbor even in the affidavit in support of E.A. No.14 of 2025.

10. In the light of the above, I am inclined to direct examination of the attesting witness and the Scribe of the agreement dated 21.07.2003. Mr.Suresh, learned counsel for the petitioner would state that the revision petitioner is in a position to bring the said witnesses took out and there is no necessity to issue summons to them. In the light of the above and also

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considering that even on earlier occasions, this Court had directed as early as in January 2025, to dispose of the EP in three months and EP is still pending, in order to ensure an expeditious disposal of the Execution Petition including the Application under Order 21 Rule 97 CPC, I am inclined to allow the revision on the following terms:

(i) The order of the Executing Court in E.A. No.14 of 2025, is set aside insofar as the witnesses T.Chandrasekaran and S.Kalivaradhan alone. The order is confirmed insofar as Jeyakumar and Sri Raman.

(ii) The petitioner shall ensure the appearance of Mr.T.Chandrasekaran on 02.02.2026 before the Executing Court and his evidence shall be recorded in chief and cross preferably on 02.02.2026 and in the unlikely event of the same being not being completed on the same day, the examination shall be continued on the next day that is, on 03.02.2026 and shall be concluded without any further extension of time.

(iii) The second witness viz., Mr.S.Kalivaradhan, the Scribe shall be examined on 12.02.2026 and similarly, the examination shall be concluded on the same day and in the unlikely event of the same not being possible, it shall be concluded on the next day on 13.02.2026 which is a working day for the Subordinate Courts.

(iv) The Executing Court shall dispose of the Order 21 Rule 97 Application by 31.03.2026 and the main Executing Petition shall also be thereafter dispose of subject to the orders in the Orders in the Order 21 Rule 97 petition within a period of one month



thereafter.

11. In fine, this Civil Revision Petition is partly allowed.

Consequently connected Miscellaneous Petition is closed. No costs.

04.12.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No

rkp

To

The Additional District Judge (Fast Track Court), Villupuram.

P.B.BALAJI.J.,

rkp

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and CMP. No.26746 of 2025



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04.12.2025