

C.R.P.(NPD)(MD).No.869 of 2025

[BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 21.04.2025

DELIVERED ON: 28.04.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(NPD)(MD).No.869 of 2025
and CMP(MD).No.4630 of 2025**

1.D.Thiagarajan

2.K.Jeyakumar

3.K.Vijayakumar

....Petitioners/Respondents 2, 11 & 12/
Judgment Debtors

Vs

1.Kumbakonam Thuluva Vellalar Sangam

Represented by its

President N.Ramesh

...1st Respondent/Petitioner
/Plaintiff

P.S.Nataraja Nadar (died)

D.Rajammal (died after filing the petition)

Manickavalli (died)

2.N.Ponmudi (alias) Rajasekaran

Sugumar (given up)

3.K.Rajan



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4.K.Sathiskumar

5.S.Amareswari

Krishnamoorthy (dead after filing the petition)

6.K.Devi

...Respondents 2 to 6/Petitioners
5,7 to 9 & 13/Judgment Debtor
(Legal heirs of defendant 1 & 3)

PRAYER: Civil Revision Case is filed under Section 115 of C.P.C, to set aside the fair order and the decretal order dated 21.02.2025 passed in E.P.No.39 of 2022 in O.S.No.73 of 1986 on the file of the learned Principal District Munsif at Kumbakonam by allowing the civil revision petition.

For Petitioner : Mr.S.Ruban Prabu

For Respondents : Mr.A.Navaneethakrishnan
Senior Counsel for
Mr.O.R.Maheswaran for R1

ORDER

The second defendant and the legal heirs of the third defendant in O.S.No.73 of 1986 on the file of the Principal District Munsif Court, Kumbakonam have filed the present civil revision petition challenging the order of delivery passed in E.P.No.39 of 2022.

2.The first respondent herein had filed the above said suit for the relief of recovery of possession as against three defendants. The suit was



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decreed by the trial Court 30.07.1993. The defendant had filed A.S.No.87 of 1993 before the Sub Court, Kumbakonam. The learned Subordinate Court was pleased to dismiss the appeal on 17.04.1995. The defendant had preferred S.A.No.29 of 1996 before this Court. Pending second appeal an order of interim stay was granted on 09.01.1996 and the said order was made absolute on 04.03.1996 and the second appeal was dismissed on 07.01.2020. The decree holder had filed E.P.No.39 of 2022 on 21.07.2022. These facts are not in dispute.

3.In the execution proceedings, the defendants had contended that one Nataraja Nadar is the President of the society and he had passed away and therefore, the present President namely N.Ramesh has no right to present the execution. He had further contended that the description of the property is not correct in view of the fact that the town Survey Number and the boundaries have not been mentioned. It was further contended that the execution application is barred by limitation and the provisions given in the execution application are not correct. The Executing Court rejected the said contentions and ordered delivery on 21.02.2025. Challenging the same, the present revision petition has been filed.

4.According to the revision petitioners, the execution proceedings

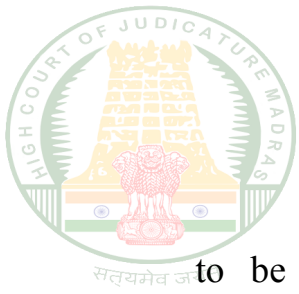


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are clearly barred by limitation. The trial Court has passed the decree on 30.07.1993 and E.P.has been filed only on 21.07.2022. When the first appeal was pending, there was no interim order. The period during which the stay order was in operation alone can be excluded and not the period during which the appeal was pending can be excluded.

5.The petitioner had further contended that the landlord had earlier filed RCOP.No.25 of 1975 as against the first defendant for evicting him. The eviction petition was allowed. The appeal filed by the first defendant in RCA.No.57 of 1976 was also dismissed. The first defendant had preferred CRP.No.1915 of 1978 and the same was also dismissed on 24.10.1979. Instead of levying execution on the basis of the said eviction order passed in the rent control proceedings, a fresh suit has been filed seeking recovery of possession. When the building is also involved, the Civil Court has no jurisdiction and only the rent control proceedings have to be filed. In the present case, the rent control proceedings having already been filed, the present suit and the decree are not legally valid and the said decree cannot be executed.

6.The learned counsel for the petitioner had further contended that though the prayer is for recovery of possession, it should only be construed



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to be a prayer for mandatory injunction to hand over possession.

Therefore, the period of limitation for filing execution petition is only three years and hence, the present E.P. is barred by limitation. Only if the trial Court decree was reversed by the Appellate Court, there would be a merger of decree. In the present case, the decree passed by the trial Court has been confirmed by the First Appellate as well as the Second Appellate Court. Therefore, the plaintiff cannot calculate period of limitation from the date of disposal of the second appeal.

7.The learned counsel for the petitioner had further contended that as per Order 21 Rule 23 of C.P.C, the Executing Court is mandated to consider all the issues raised by either parties. In the present case, the issue raised on the side of the tenant have not been considered at all and the order is liable to be set aside.

8.The learned counsel for the petitioner further relied upon Order 41 Rule 5 of C.P.C and the judgment of the Hon'ble Supreme Court reported in **(2001) 1 SCC 469 (Ratansingh -Vs- Vijay Singh & Ors)** and contended that when there is no stay order passed by the Appellate Court, mere pendency of the appeal would not be a bar for executing the decree passed by the trial Court.



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9.The learned counsel for the petitioner had further contended that as per Order 21 Rule 36 of C.P.C any decree passed as against the tenant would be binding upon the subtenant also. In the present case, the first respondent has obtained a decree as against the main tenant in the rent control proceedings. Therefore, the defendants 2 and 3 herein who are the subtenants of the property are bound by the eviction decree. In such circumstances, the present suit for recovery of possession without executing the order in the eviction proceedings, is not legally sustainable. Hence, he prayed for setting aside of the delivery order and to allow the revision petition.

10.Per contra, the learned senior counsel appearing for the first respondent had contended that the suit is for recovery of possession and therefore, the period of limitation for filing execution proceedings is 12 years. The second appeal was pending from the year 1996 till 2020. During the said period, interim order was in force and therefore, the present execution proceedings filed on 21.07.2022 is within time.

11.The learned Senior Counsel had further contended that RCOP were laid only as against the first defendant. The second and third



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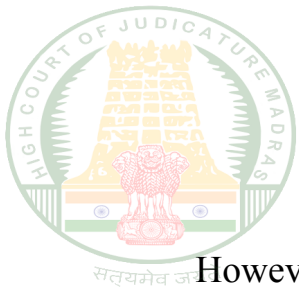
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defendants who are the petitioners herein, were not arrayed as parties therein. He had further contended that they are not the tenants of the first respondent sangam. In such circumstances, a civil suit came to be filed for recovery of possession and the decree was confirmed up to the High Court. Therefore the Executing Court cannot go behind the decree and arrive at a finding that the decree is not valid in the eye of law.

12.The revision petitioners herein had claimed that they are inducted as tenants by the first defendant. They have not admitted the title of the first respondent in their reply notice. Therefore, now they cannot contend that they are the sub-tenants of the respondent society. He had further contended that the suit was filed in the year 1986 for taking possession. So far they are not able to recover possession of the property. He elaborately took the Court through the judgement delivered by this Court in the second appeal and contended that the revision petitioners herein have been described as trespassers to the suit schedule property. Hence, he prayed for confirming the order of delivery.

13.Heard both sides and perused the material records.

14.The learned counsel for the petitioner had contended that the decree should only be construed to be a decree for mandatory injunction.



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However, a perusal of the plaint prayer and the decree granted by the Court would clearly indicate that it is a suit for recovery of possession. Therefore, Article 136 alone is applicable and not Article 135 of Limitation Act.

15.This Court has called for the records pertaining to S.A.No.29 of 1996 in order to verify whether any interim order was operating pending second appeal. This Court has granted interim order on 09.01.1996 and it was made absolute on 04.03.1996. The second appeal was dismissed only on 07.01.2020. The execution petition has been filed on 21.07.2022. Even if the period of limitation is calculated from the date of trial Court decree, after excluding the period of interim order, the execution petition has been laid within a period of 12 years. Therefore, the contention of the learned counsel for the petitioner that the execution petition is barred by limitation is not correct.

16.The first respondent society had earlier initiated rent control proceedings as against the first defendant to evict him. An order of eviction was passed by rent controller and confirmed up to the High Court. In the said proceedings, the second and third defendants were not parties. When the pre suit notice was issued to the revision petitioners, they have



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sent a reply disputing the title of the society and contended that they have been inducted as tenants only by the first defendant. While disposing of S.A.No.29 of 1996 in Paragraph No.13, this Court has specifically held that the present revision petitioners are trespassers. The revision petitioners herein after disputing the title of the society, cannot turn around and contend that they are the subtenants of the society through the first defendant. In such circumstances, the plea raised by the revision petitioner with regard to the maintainability of the suit is not sustainable.

17. When the President of the society had passed away, it is quite natural that the new President files the execution petition. The question of impleading the legal heirs of the deceased President does not arise. The judgment debtor cannot raise any dispute with regard to the description of the property in the execution proceedings. When the plea was available to the defendants and they have not taken the same during the trial, the same cannot be raised during the execution proceedings. If the same is permitted, it would amount to conducting fresh trial after the suit is decreed.



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18. In view of the above said deliberations, there are no merits in the revision petition and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28 .04.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

1. The Principal District Munsif at Kumbakonam

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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