



C.R.P.(NPD)(MD).Nos.888, 889 & 889 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P(MD)Nos.888 to 890 of 2025
and C.M.P.(MD)No.4762 of 2025**

Rajapandy (Died)

...Petitioner/Petitioner/Respondent/
Judgment Debtor/Defendant

- 1.R.Jenat
- 2.R.Kirupa Gnana Selvi
- 3.R.Sebastian
- 4.R.Daniel
- 5.Flasing Ponnudurai

...Petitioners/Petitioners/Respondents
/L.R of Judgment Debtor/----
in all the petitions

Vs

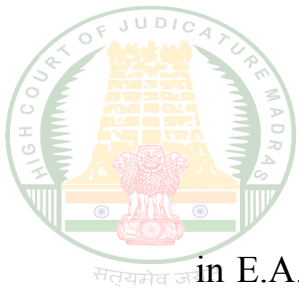
Arulpandi (Died)

...Respondent /Respondent/Petitioner
/Decree Holder/Plaintiff

- 1.Daisirani
- 2.Janshi
- 3.Kirupakar Albert
- 4.Rajadurai Sudhakar
- 5.Kingston Charles

...Respondents Respondents/Petitioners
/L.R.of Decree Holder/-----
in all the petitions

PRAYER in CRP(MD).No.888 of 2025 : Civil Miscellaneous Petition is
filed under Section 115 of C.P.C., to set aside the order dated 07.03.2025



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in E.A.No.53 of 2018 in E.P.No.28 of 2006 on the file of the Subordinate Court, Tiruchendur.

PRAYER in CRP(MD).No.889 of 2025 : Civil Miscellaneous Petition is filed under Section 115 of C.P.C., to set aside the order dated 17.02.2025 in E.A.No.54 of 2018 in E.A.No.53 of 2018 in E.P.No.28 of 2006 on the file of the Subordinate Court, Tiruchendur.

PRAYER in CRP(MD).No.890 of 2025 : Civil Miscellaneous Petition is filed under Section 115 of C.P.C., to set aside the order dated 17.02.2025 in E.A.No.55 of 2018 in E.A.No.53 of 2018 in E.P.No.28 of 2006 on the file of the Subordinate Court, Tiruchendur.

(in all the petitions:)

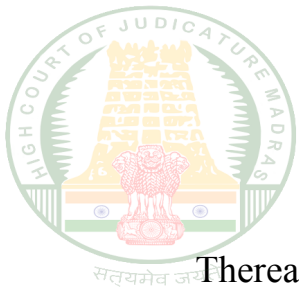
For Petitioners : Mr.B.Rajesh Saravanan

For Respondents :Mr.G.Rajaraman
For R1 to R5

COMMON ORDER

The judgement debtor in O.S.No.288 of 2000 on the file of the Subordinate Court, Tiruchendur has filed the above revision petitions.

2.The respondent herein had filed the said suit for the relief of specific performance. The suit was decreed on 25.02.2005. The decree holder has filed E.P.No.28 of 2006 for execution of sale deed. The Court had executed the sale deed in favour of the decree holder on 26.10.2007.



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Thereafter, the decree holder has filed E.A.No.53 of 2018 for taking delivery.

3.Pending delivery application, the judgment debtor has filed E.A.No.55 of 2018 for appointment of Advocate Commissioner to note down the physical features of the property questioning the lie and location of the property. The judgment debtor has also filed E.A.No.54 of 2018 to send for sale deed from the Sub-Registrar office. According to him, due certain defects in the said sale deed, the Sub-Registrar has not chosen to register the same. The application filed by the decree holder in E.A.No.53 of 2018 has been allowed and two execution applications filed by the judgment debtor in E.A.Nos.54 & 55 of 2018 have been dismissed by the Executing Court. Challenging these three orders, the present civil revision petitions have been filed.

4.According to the learned counsel for the revision petitioner, one of the parties had passed away and the decree holders were directed to implead the legal heirs. The decree holder has filed an amended copy of E.A.No.53 of 2018. Without giving any further opportunity to the legal heirs, the order of delivery has been passed.



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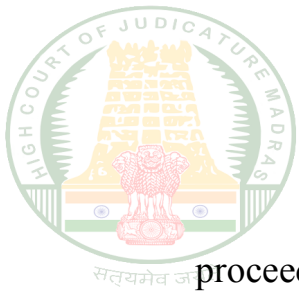
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5. There is a dispute with regard to the lie and location of the property and therefore, the Executing Court ought to have allowed the application for appointment of Advocate Commissioner. He had further pointed out that the dispute with regard to lie and location of the property has been found out by the Sub-Registrar and the document has not been registered. Therefore, he prayed for allowing all the revision petitions.

6. Per contra, the learned counsel for the respondent/decreed holder submits that the decree was passed in the year 2005 and the sale deed was executed in his favour in the year 2007. The dispute relating to the lie and location of the property cannot be raised during the execution proceedings. The decree was passed only after contest. The First Appeal was filed with a huge delay and the delay petition was dismissed. Challenging the same, the defendants had filed CRP(MD).No.1480 of 2012 and the same was also dismissed by this Court on 30.01.2020. Therefore, the decree for specific performance has attained finality. Hence, he prayed for dismissal of the revision petitions.

7. Heard both the sides and perused the material records.

8. The defence raised by the revision petitioners relating to lie and location of the property cannot be raised in the execution



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proceedings. In case, if there is a discrepancy with regard to the lie and location, the same should have been raised during trial and cannot be raised for the first time in the execution petition. Therefore, the request of the judgment debtors for appointment of Advocate Commissioner and to to send for sale deed executed by the Court from the Sub Registrar are not sustainable in the eye of law. Therefore, the trial Court cannot be found fault with for ordering delivery of property.

9.At this juncture, the learned counsel for the petitioners submits that the property in dispute is a residential one and he seeks some time to vacate and handover the possession of the property.

10.Considering the above said facts, delivery order shall be kept in abeyance till 31.05.2025. Thereafter, the Executing Court is directed to proceed in accordance with law.

11.With the above said observations, these civil revision petitions stand disposed of. No costs. Consequently, connected miscellaneous petition is closed.

04.04.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

- 1.The Subordinate Judge, Tiruchendur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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