



C.R..P.(NPD)(MD).No.983 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(NPD)(MD)No.983 of 2025

and

C.M.P(MD) No.5275 of 2025

1. N.Mallika

2.A.Sumathi

... Petitioners/
Respondents 1 and 2
Defendants 5 and 6

Vs.

1. Mariammal

... 1st Respondent/Petitioner/
Plaintiff

2. Devagi

... 2nd Respondent/3rd Respondent/
11th Defendant

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decretal order passed in E.P.No.15 of 2018 in O.S.No.82 of 2004 on the file of District Munsif -cum- Judicial Magistrate, Cheranmahadevi, dated 03.01.2025 and allow the Civil Revision Petition.

For Petitioners : Mr.T.Selvan

For Respondents : Mr.R.Ponkarthikeyan



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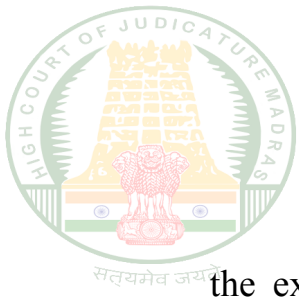
ORDER

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The defendants 5 and 6/the judgment debtors in a suit for permanent injunction have filed the present Civil Revision Petition challenging the order for removal of construction passed in E.P.No.15 of 2018 in O.S.No.82 of 2004 on the file of the District Munsif cum Judicial Magistrate, Cheranmahadevi.

2. A perusal of the records reveal that the first respondent herein has filed the above said suit for the relief of permanent injunction. The suit was decreed as prayed for on 05.12.2007. The first appeal filed by the defendants was dismissed on 22.09.2010. The second appeal filed by the defendants was dismissed on 17.08.2016. There is a specific finding by the Courts that the defendants have put up basement in the suit schedule property and they could not complete the construction in view of the order of interim injunction pending suit.

3. The decree holder had filed E.P.No.15 of 2018 for removal of construction put up by the defendants pending suit. As per the averments in



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the execution petition, in violation of the injunction order, the defendants have completed the construction. Therefore, the construction made should be considered that it is made in violation of the interim injunction order and during the pendency of the proceedings. However, it was contended by the defendants that the constructions were already available and therefore without seeking a prayer for mandatory injunction or recovery of possession, the decree for permanent injunction cannot be executed. The executing Court has accepted the contention of the decree holder and proceeded to pass the present impugned order directing the defendants to remove the construction. Challenging the same, the present Civil Revision Petition has been filed.

4. Heard both sides and perused the materials available on record.

5. A perusal of the deposition of the defendants in the suit clearly reveal that they have only put up only a basement and they could not complete the construction in view of the interim injunction order pending suit. Therefore, it is clear that the constructions have been put up, only in violation of injunction order, pending suit.



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6. The learned counsel appearing for the respondents has relied upon the judgment of this Court reported in **2000 (II) CTC 136 (Kaliammal and another Vs.D.C.Arunachalam and 6 others)**, wherein this Court has pleased to hold that where the constructions have been put up pending suit, the decree for permanent injunction could very well be executed and the constructions can be removed.

7. In view of the judgment of our High Court, this Court does not find any error or illegality in the order passed by the learned District Munsif-cum Judicial Magistrate, Cheranmahadevi and there are no merits in this Civil Revision Petition.

8. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

30.04.2025

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

1. The District Munsif -cum- Judicial Magistrate,
Cheranmahadevi.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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