

C.R.P(MD)No.1006 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.04.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1006 of 2025

and

C.M.P(MD)No.5410 of 2025

A.Chidambaram

... Petitioner

Vs.

1.Sri Subramaniaswami Deity
Sri Subramania Swamy Thirukovil,
Tiruchendur,
Through its,
Joint Commissioner / Executive Officer,
Tiruchendur.

2.K.Chidambaram

3.C.Gomathinayagam

A.S.V.M.Moorthi Iyer (Died)

4.Ramasubramanian

5.Ramananth Subramanian

6.Narayanan

... Respondents



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order, dated 10.12.2024 passed in E.A.No.46 of 2017 in E.P.No.65 of 2017 in O.S.No.68 of 2004 on the file of the Sub Court, Tiruchendur by allowing this Civil Revision Petition.

For Petitioner : Mr.V.Meenakshi Sundaram

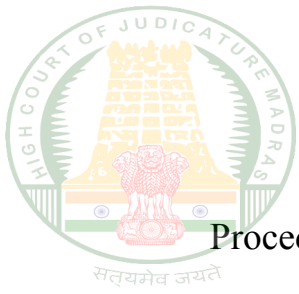
For R-1 : Mr.M.Muthugeethayan

For R-2 to R-6 : No appearance

ORDER

The first defendant in O.S.No.68 of 2004 on the file of the Sub Court, Tiruchendur has filed the present revision petition challenging the dismissal of E.A.No.46 of 2017 for default.

2. A perusal of the records reveal that the first respondent Temple has filed the above said suit for the relief of recovery of possession as against the fourth defendant and for the relief of mesne profits as against the other defendants. The suit was decreed as prayer for. The decree holder has filed E.P.No.65 of 2017. Pending execution proceedings, the first defendant has filed E.A.No.46 of 2017 under Section 47 of Civil



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Procedure Code, 1908.

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3. Pending Section 47 application, the third defendant, namely, Gomathinayagam has passed away. The decree holder / Temple had filed a Memo to the effect that the said Gomathinayagam is not a necessary party and therefore, his legal heirs need not be impleaded. This Memo was not only recorded in E.P.No.65 of 2017, it was also recorded in E.A.No.46 of 2017. Consequently, the first defendant had filed E.A.No.6 of 2024 to amend Section 47 application, so as to incorporate that there is no necessity to implead the legal heirs of deceased Gomathinayagam. This application was also allowed by the Executing Court.

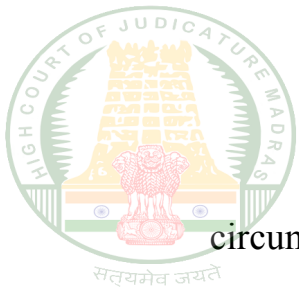
4. Consequent to the allowing of E.A.No.6 of 2024, the first defendant was expected to file amended copy of E.A.No.46 of 2017. Since the first defendant has not filed such an amended copy, the Executing Court has proceeded to dismiss E.A.No.46 of 2017 for default by way of an order, dated 10.12.2024. Challenging the said order, the present revision petition has been filed.



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5. According to the learned Counsel appearing for the revision petitioner, the deceased Gomathinayagam is an unnecessary party to the proceedings. Therefore, the decree holder has filed a Memo to exonerate him from execution proceedings and the Memo was recorded in E.P.No. 65 of 2017 as well as in E.A.No.46 of 2017. Only as a consequential application, E.A.No.6 of 2024 was filed. Even if the amendment allowed by the Court was not carried out, E.A.No.46 of 2017 can be dismissed only as against deceased Gomathinayagam and the said application cannot be dismissed in its entirety for default.

6. Per contra, the learned Counsel appearing for the decree holder / Temple had contended that the first defendant cannot raise any grounds under Section 47 of C.P.C., in view of the fact that, the decree for recovery of possession has been sought for only as against the fourth defendant and not as against the first defendant. He further contended that though the third defendant had died long back, it was brought to the knowledge of the decree holder belatedly and the first defendant has taken so much time to file the amended copy of the petition. In such



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circumstances, the Court did not have any other option than to dismiss E.A.No.46 of 2017 in its entirety. Hence, he prayed for sustaining the orders passed by the Trial Court.

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

8. The only grievance of the revision petitioner is that even assuming that the amendment was not carried out in E.A.No.46 of 2017, the Court can only dismiss E.A.No.46 of 2017 as against the deceased Gomathinayagam and the said application cannot be dismissed in its entirety. This legal position is sustainable.

9. In view of the above said deliberations, the order passed by the Trial Court dismissing E.A.No.46 of 2017 in its entirety is hereby set aside. E.A.No.46 of 2017 stands restored to the file except as against the deceased Gomathinayagam. The Trial Court is directed to dispose of E.A.No.46 of 2017 on or before **30.06.2025**.



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10. In the result, this Civil Revision Petition stands allowed. There

shall be no order as to costs. Consequently, connected Miscellaneous
Petition stands closed.

15.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Sub Court,
Tiruchendur.



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R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)No.1006 of 2025

15.04.2025