



C.R.P.(MD)Nos.1061 & 1062 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 09.04.2025

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THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)Nos.1061 & 1062 of 2025
and C.M.P.(MD).No.5780 of 2025

R.Jeyachandra ... Petitioner/Petitioner/13th Respondent/
Auction Purchaser/Nil in both petitions

Vs.

P.S.T.Nagamani Marthandam (Died)

P.S.D.N.Chandra Pushbham (Died)

1.Santhakumari ... 1st Respondent/3rd Respondent/3rd Petitioner/
Lrs. of 7th Respondent
in both petitions

2.P.S.A.Rajaguru ... 2nd Respondent/4th Respondent/
1st Respondent/Decree Holder/Plaintiff
in both petitions

COMMON PRAYER: Civil Revision Petitions are filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order dated 17.03.2025 made in E.A.No.3 of 2025 in E.A.No.17 of 1999 and E.A.No.4 of 2025 in E.A.No.19 of 1999, in E.P.No.72 of 1990 in O.S.No.89 of 1981 on the file of Sub Court, Kovilpatti.



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For Petitioner : Mr.A.K.Baskarapandiyan

For Respondents : Mr.S.Kumar for R1
(in both petitions)

COMMON ORDER

C.R.P.(MD).No.1061 of 2025 is filed against the order passed by the Execution Court in E.A.No.3 of 2025. That application was filed by the revision petitioner herein to reopen the enquiry in E.A.No.17 of 1999 permitting the revision petitioner to lead oral and documentary evidence. It came to be dismissed by the Execution Court.

Similarly, C.R.P.(MD).No.1062 of 2025 is preferred against the order of dismissal passed by the Execution Court in E.A.No.4 of 2025 filed by the revision petitioner herein seeking permission to examine her by appointing Advocate Commissioner. It is also dismissed by the Execution Court by the order dated 17.03.2025.

2.Heard both matters in common. Since the second respondent is the husband of the petitioner, notice to him is dispensed with. Heard the petitioner as well as the counsel for the first respondent.

3.We will take up C.R.P.(MD).No.1062 of 2025 first for



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consideration. The revision petitioner is the 13th respondent in E.A.No.19 of 1999. That E.A was filed by the Judgment Debtor to set aside the sale.

The revision petitioner is the wife of decree holder, who is the fourth respondent. It is stated by her that she is aged about 69 years. Because of the accidental injuries she is suffering from heavy pain in the leg and apart from that she is also suffering from high blood sugar level, undergoing treatment continuously and she is not in position to move. She was advised to take bed rest. Apart from that some factual aspects also mentioned in it.

4.It was resisted by the Judgment debtor by citing out the dates and events. It is stated that to drag on the proceedings at the fag end of the enquiry process this petition is filed. No medical evidence was produced to prove her inability.

5.The Execution Court recorded a finding that the evidence was closed in the main petition. But, no proper evidence was produced to show the medical illness. Apart from that it is also stated at the instance of the revision petitioner's husband due opportunity was given in view of



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the order passed by this Court in C.R.P.(MD).No.3034 of 2024. To drag
on the proceedings this petition is filed.

6.Order 26 Rule 1 of the Civil Procedure Code reads as under.

***“1.Cases in which Court may issue commission to
examine witness -***

*Any Court may in any suit issue a commission for the
examination on interrogatories or otherwise of any
person resident within the local limits of its
jurisdiction who is exempted under this Code from
attending the Court or who is from sickness or
infirmity unable to attend it:*

*[Provided that a commission for examination
on interrogatories shall not be issued unless the
Court, for reasons to be recorded, thinks it necessary
so to do.*

*Explanation. - The Court may, for the purpose
of this rule, accept a certificate purporting to be
signed by a registered medical practitioner as
evidence of the sickness or infirmity of any person,
without calling the medical practitioner as a
witness.]”*



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7. So the revision petitioner must satisfy the requirement as mentioned above. The preliminary condition is that she must be suffering from sickness or infirmity making her unable to attend the Court for the purpose of examination. As indicated by the Execution Court in its order absolutely no medical evidence was produced. Mere statement of a party on affidavit is not sufficient to satisfy the requirement of law. So when the preliminary condition fails, naturally the petitioner is not entitled for any such order. On the sole ground I find absolutely no error, illegality or perversity in the order passed by the Execution Court. Hence, this petition deserves to be dismissed. **Accordingly, C.R.P.(MD).No.1062 of 2025 stands dismissed. No costs.**

8. So far as C.R.P.(MD).No.1061 of 2025 is concerned, the learned counsel for the petitioner would submit that because of the illness only she was unable to appear before the Court before closing the evidence. She incurred heavy cost in remodelling and repairing the suit property after purchasing. This fact must be brought on record by examining herself. So final opportunity may be given to her.



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9.Per contra the learned counsel for the respondent heavily objected to it. Produced the notes containing the dates and events stating that this is another attempt made by the revision petitioner at the instance of her husband. As observed in the earlier order opportunity was given to her husband by this court in C.R.P.(MD).No.3034 of 2024. That opportunity was utilised by her husband. Now at his instance this petition is filed to drag on the proceedings.

10.The suit is of the year 1981. A simple suit for recovery of money could not conclude because of the marathon proceedings taken by the parties. Now we are in 2025. Due opportunity was given to the revision petitioner such as 10.02.2025, 17.02.2025, 19.02.2025 and 24.02.2025. Later it was closed on 05.03.2025 and posted to 06.03.205 and 07.03.2025 for arguments. Only on 10.03.2025 these two E.As namely E.A.Nos.3 and 4 of 2025 were filed. So according to him, the parties could not be permitted to take proceedings to this advantage for dragging the matter.



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11.He would rely upon the following Judgments.

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- i) *P.Chellappa Vs. N.Alagu, AIR online 2018 MAD 357,*
- ii) *Nagarani Vs. Palani in C.R.P.Nos.2694 & 2695 of 2021, dated 07.12.2021,*
- iii) *P.K.Madeswaran Vs. T.S.Sivakumar in C.R.P.(NPD).Nos.758 of 2010 and*
- iv) *M/s.Bagai Construction Thro. Its Proprietor Mr.Lalit Bagai Vs. M/s.Gupta Building Material Store, AIR 2013 SUPREME COURT 1849.*

12.No doubt that the petitioner has not utilized the opportunity granted to her by the Execution Court on those two days. But when she says that at the heavy cost she has made improvements, repair works in the suit property, whether those facts are relevant or not is matter for consideration by the Execution Court at the time of disposing the E.A.No.17 of 1999 and connected matters. For put forth these facts, I am of the considered view that one more opportunity may be given to the petitioner on payment of cost.

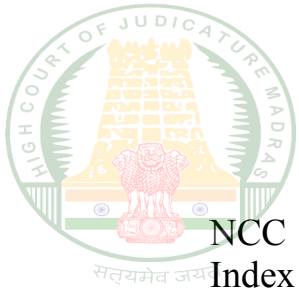


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13. Accordingly, the revision petitioner is directed to pay the cost of Rs.25,000/- to the first respondent. The cost must be paid to the first respondent on or before 17.04.2025. After payment of cost, memo must be filed by the revision petitioner before the Execution Court. If the first respondent refuse to receive the cost, it must be deposited before the Execution Court on the next day. On such payment or deposit being made, the Execution Court may reopen the enquiry and give opportunity to the revision petitioner to lead evidence on 22.04.2025. On that date the petitioner must appear before the Execution Court. Within a week thereafter, the enquiry in the main petition must be completed and orders shall be passed, thereafter. It is made clear that on no account the petitioner may be granted adjournment either for appearance or for leading evidence. If any failure is noticed then the Execution Court is at liberty to proceed by its own order dated.17.03.2025.

14. With the above said directions, **C.R.P.(MD).No.1061 of 2025 is allowed. No costs.** Consequently, connected miscellaneous petition is closed.

09.04.2025



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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Note: Issue order copy on 09.04.2025.

To

- 1.The Subordinate Judge, Kovilpatti.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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