



CRP(MD).No.1093 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.01.2025

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.1093 of 2024 and
CMP(MD).No.6078 of 2024

1.M.Murugesan
2.M.Ganesan
3.M.Neelagandan
4.Pappathy
5.P.Parvathy

... Petitioners / petitioners

Vs.

Ekambaram (died)
Mariappan (died)
1.Selvaraj
2.Rajendran
3.Marudambal
4.Sakthivel
5.Periyasamy
6.Sakulthala
7.Jothi
8.Valarmathi

9.The State of Tamil Nadu,
Rep. by its District Collector,
Collector Office,
Trichy District.

10.Thiruppanjili Village Panchayat,
Thiruppanjili Manachanallur Taluk,



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by its President

: Respondents / defendants

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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the return made in E.A.S.R.No.1119 of 2024 in E.P.No.21 of 2021 in O.S.No.138 of 2002 on the file of the District Munsif Court, Lalgudi, dated 15.03.2024.

For Petitioner : Mr.L.Muthiah

For respondents R1 to R4 and R8 : Mr.R.Yamuna

For respondents 9 and 10 : Mr.B.Saravanan

Additional Government Pleader

ORDER

This Civil Revision Petition has been filed against the return made in E.A.S.R.No.1119 of 2024 in E.P.No.21 of 2021 in O.S.No.138 of 2002 on the file of the District Munsif Court, Lalgudi, dated 15.03.2024.

2. The learned counsel appearing for the revision petitioners submits that the issue on hand relating to public pathway in S.No.615 /8. The said Survey Number classified as pathway in revenue records. But, the respondents 1 to 8 / decree holders filed a suit in O.S.No.138 of 2002 claiming to be they are in suit property and obtained an ex parte decree.



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Challenging the same, the revision petitioners filed a suit in O.S.No.406 of 2015 on the file of the District Munsif Court, Lalgudi and another suit in O.S.No.162 of 2002 to declare the said pathway as a public pathway. While so the respondents 1 to 8 / decree holders filed the said Execution Petition to arrest the 9th and 10th respondents / Judgment debtors with a view to bring them to terms to classify and assess the said pathway as Patta land of the respondents / decree holders so as to enable them to usurp the suit pathway. In these circumstances, the revision petitioners filed E.A.No. 2 of 2022 seeking to implead themselves as a party respondents in the execution petition. However, the said application has been dismissed by the Executing Court holding that impleading cannot be made in Execution Petition and the learned Judge had observed that the petitioners herein can only file an obstruction petition under Order 21 Rule 97 CPC, 1908. In such circumstances, the petitioners herein were constrained to file the said Execution Application. However, the said application filed under Order 21 Rule 97 CPC was returned by the executing Court as not maintainable by stating that arrest order has already been pronounced and therefore, the obstruction petition is not maintainable. Challenging the same, the present revision is preferred.



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3. The learned counsel appearing for the respondents would submit that in spite of the decree passed in O.S.No.138 of 2022 is still in force the revision petitioners have filed the said obstruct petition in order to defeat the claim made by the respondents / plaintiffs.

4. Heard. Records perused.

5. It has been repeatedly made by this Court as well as the Hon'ble Apex Court that at the time of numbering the application, the learned Judge has to see whether cause of action has been made out or not and after numbering the application, if any defect is found out, the Court can always reject the plaint. Numbering the application is a ministerial act. No roving enquiry can be done at the time of numbering the application. Considering the facts and circumstances of the case, the learned trial Judge is directed to number the execution application and dispose the same on merits and in accordance with law within a period of one month from the date of receipt of a copy of this order, after giving an sufficient opportunity to both the parties.



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6. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

23.01.2025

Index : Yes / No

Internet : Yes/ No

trp

Note : Registry is directed to return the original papers after substituting the xerox copy of the same.

To

The District Munsif Court, Lalgudi,



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K. GOVINDARAJAN THILAKAVADI, J.,

trp

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