

**C.R.P(MD)No.1425 of 2024**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**Reserved on : 30.10.2024**

**Pronounced on : 08.05.2025**

**CORAM**

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN**

**C.R.P(MD)No.1425 of 2024**

**and**

**W.M.P(MD)No.8455 of 2024**

Nachammal

.... Petitioner /  
Petitioner /  
Objector

**Vs.**

Valliammai Achi (Died)

1.A.R.Ganesan

N.A.R.N.Nachiappa Chettiar (Died)

2.N.Nachiappan

3.N.Murugappan

4.N.Arunachalam

5.N.Thirugnanasambandham

6.Subramaniyan

7.A.L.Muthuga Poonguzhali



8.M.Meiyammai

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... Respondents /  
Respondents /  
Petitioners

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 04.03.2024 in E.A.No.1 of 2021 in E.P.No.7 of 2016 in O.S.No.17 of 1987 on the file of the Sub Court, Devakottai.

For Petitioner : Mr.S.Parthasarathy  
for Mr.J.Anandkumar

For Respondents : Mr.R.Sundar Srinivasan  
for R.1

Mr.VR.Shanmuganathan  
for R.2 to R.6

### **ORDER**

Heard both sides.

2.This Civil Revision Petition is directed against the order dated 06.03.2024 passed by the Executing Court dismissing an application filed under Order 21 Rule 97 of CPC.

3.The basic facts are not in dispute. The suit property is a heritage building known as “Aathankudi Palace”. It belonged to one Nachiappa



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Chettiar who will be described as “Senior Nachiappa Chettiar”. He had two wives, namely, Meyyammai Achi and Paripooranam Achi. Through his first wife, 3 sons (Junior Nachiappa Chettiar, Chidambaram Chettiyar and Arunachalam Chettiyar) and two daughters (Valliammai Achi and Nachal Achi) were born. Through the second wife, a son by name Kadappan was born. On 28.12.1942, a partition was effected among the male members of the family. Senior Nachiappa Chettiar was allotted  $\frac{2}{9}$ <sup>th</sup> share. Each of the sons born through the first wife, namely, Junior Nachiappa Chettiar, Chidambaram Chettiyar and Arunachalam Chettiyar, were also given  $\frac{2}{9}$ <sup>th</sup> share. Kadappan / the son born through the second wife was given  $\frac{1}{9}$ <sup>th</sup> share. All the shares were undivided in nature.

4. Junior Nachiappa Chettiar had 5 sons, namely, (N.Nachiappan, N.Murugappan, N.Arunachalam, N.Thirugnasamandham, N.Subramanian) and three daughters, namely, Meyyammai, Alamelu and Nachammai. Nachammai is the revision petitioner herein.

5. It is not in dispute that one Vairavan Chettiyar has filed O.S.No.30 of 1958 against Junior Nachiappa Chettiar (father of the revision petitioner herein) for recovery of certain sum of money and obtained decree. The said decree was



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put to execution in E.P.No.302 of 1970. The 2/9<sup>th</sup> undivided share allotted to

Junior Nachiappa Chettiar was brought to sale and in the Court auction sale, Valliammai Achi, who is none other than the sister-in-law of Junior Nachiyappa Chettiar, emerged as the successful bidder. Valliammai Achi was the wife of Arunachalam Chettiar, who was Junior Nachiappa Chettiar's sibling. Subsequently, Valliammai Achi is said to have obtained symbolic delivery of the property purchased by her in the Court auction sale.

6.Subsequently, Valliammai Achi filed O.S.No.17 of 1987 against Junior Nachiyappa Chettiar and his sons and sought relief of declaration and recovery of possession. The suit was decreed. Questioning the same, A.S.No.956 of 1992 was filed before the High Court. The Appeal was dismissed and the trial Court's decree for declaration and recovery of possession was confirmed vide judgment dated 20.02.2020. In the meanwhile, the decree holder filed E.P.No.7 of 2016 for executing a decree. In the said decree, Nachammai filed E.A.No.1 of 2021 under Order 21 Rule 97 of CPC raising her objection and resistance.

7.The case of the revision petitioner is as follows:

She was born in 1936. She got married on 05.02.1967. As per the oral family arrangement, the revision petitioner was in enjoyment of two double rooms



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wherein she has kept her stridhana articles. The decree obtained by Valliammai

Achin O.S.No.17 of 1987 does not bind the petitioner as she was not a party to any of the proceedings. Since the decree holder is having only undivided share, she can take only paper delivery and not physical or actual delivery. In view of the amendment made to Hindu Succession Act in the year 2005 and in view of the decision of the Hon'ble Supreme Court in *Vineeta Sharma v. Rakesh Sharma ((2020) 9 SCC 1)*, the revision petitioner has become a coparcener by virtue of her birth and she is entitled to 1/8<sup>th</sup> share in her father's 2/9<sup>th</sup> share. In other words, she has 2/72<sup>th</sup> share in the suit property. As already mentioned, the Court below dismissed the petition as not maintainable.

8.The learned counsel appearing for the revision petitioner reiterated all the contentions set out in the memorandum of grounds of revision petition. According to him, the revision petitioner would have undivided share in the suit property not only in her capacity as daughter of Junior Nachiappa Chettiar but also as a granddaughter of senior Nachiappa Chettiar. He pointed out that under Order 21 Rule 97, even a third party who is affected by a decree can very well maintain the petition. Since the decree holder has a decree only for undivided 2/9<sup>th</sup> share in the suit property, her only remedy is to file a suit for partition to determine her interest in the larger property. The decree obtained

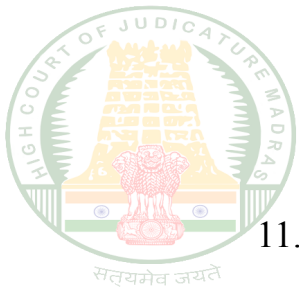


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by the decree holder behind the back of the revision petitioner does not bind her. The learned counsel submitted that the revision petitioner has instituted O.S.No.135 of 2021 seeking partition which is pending on the file of the learned Sub Judge, Devakottai. He further submitted that the outcome of the execution proceedings can be determined after the said suit is decided and the trial Court erred in deciding the suit in the execution application. He called upon this Court to set aside the impugned order and allow the Civil Revision Petition as prayed for.

9.Per contra, the learned counsel appearing for the respondent / legal heir of decree holder / A.R.Ganesan submitted that the impugned order does not call for interference. He pointed out that the revision petitioner knew fully well about the pendency of the civil suit as well as the appeal proceedings. She chose to consciously keep quiet. After her father and brothers lost the civil suit in O.S.No.17 of 1987, she had been set up to drag on the matter. The learned counsel called upon this Court to sustain the impugned order and dismiss the Civil Revision Petition.

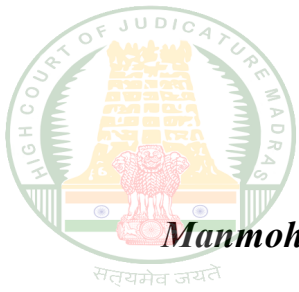
10.I carefully considered the rival contentions and went through the materials on record.



11.The trial Court had shown the door to the revision petitioner on the simple ground that an application under Order 21 Rule 97 cannot be filed by a third party to the suit. Order 21 Rule 97 of CPC is as follows:

***“97. Resistance or obstruction to possession of immovable property.—(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction. ”***

The plain understanding of the aforesaid provision would lead one to the conclusion that it is only the decree holder who can file the application. This is evident from the following words “he may make an application to the Court complaining of such resistance or obstruction”. Since a person in possession of the property can complain of only dispossession or an attempted dispossession, the question of complaining about resistance or obstruction by such person would not arise at all. But one cannot go by one's plain understanding of the statutory text. Any statutory provision has to be understood and applied only in the light of the interpretation and construction subsequently put on it by the High Courts and Supreme Court. When the executing Court dismissed a petition under Order 21 Rule 97 of CPC filed by an obstructor by citing the Full Bench decision of the Madhya Pradesh High Court in ***Usha Jain Vs***



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**Manmohan Bajaj (AIR 1980 MP 146)**, it was reversed by the Hon'ble Supreme

Court in the decision reported in **(1998) 4 SCC 543** (vide **Shreenath v. Rajesh**).

It was held that the term “any person” occurring in Order 21 Rule 97 includes all persons resisting the delivery of possession, claiming right in the property, even those not bound by the decree, including tenants or other persons claiming right on their own, including a stranger. It was further held that the executing Court has to decide the objections at the instance of such person under Order 21 Rule 97 of CPC. Therefore, the view taken by the Court below on the ground of maintainability may not be in consonance with the law laid down by the Hon'ble Supreme Court in **Shreenath v. Rajesh, ((1998) 4 SCC 543)**.

12.However, another two Judges Bench of the Hon'ble Supreme Court in **Sriram Housing Finance and Investment India Limited Vs Omesh Mishra Memorial Charitable Trust (2022) 15 SCC 176** had taken the view that it is only the decree holder who can maintain an application under Order 21 Rule 97 of CPC. **Sriram Housing Finance's** decision is later in point of time. But it does not make any reference to **Shreenath v. Rajesh** (supra). I had a look at the Op-Ed published on 07.03.2025 in SCC Online Times titled “ Locus Standi to File Application under Order 21 Rule 97 CPC- Unsettling the Settled Law?” by Tupakula Nikhil. The relevant paras are reproduced below:



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**“Decision of “ Sriram Housing Finance & Investment  
(India) Ltd. v. Omesh Mishra Memorial Charitable Trust**

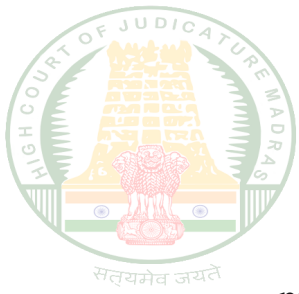
... The said decision is per incurium and contrary to the true purport of Order 21 Rule 97 for more than one reason, namely:

(a) That, it is apposite to mention here that the said decision was rendered by the Supreme Court in the year 2022 and the Coram of the Bench is 2 Judges. However, in the year 1998, the Coordinate Bench i.e. 2 Judges of the Supreme Court of India in Shreenath case (Shreenath case) had specifically dealt with the self-same contention that “it is only ‘decree-holder’ who is entitled to make an application in case where he is offered resistance or obstruction by ‘any person’” under Order 21 Rule 97 CPC and categorically held that the said contention is wholly incorrect and any person holding possession of immovable property on his own right can object to the execution proceeding under Order 21 Rule 97 CPC.

In the said case of Shreenath, the issue before the Supreme Court was:

5. whether the third party in possession of a property claiming independent right as a tenant not party to a decree under execution could resist such decree by seeking adjudication of his objections under Order 21 Rule 97 of the Civil Procedure Code, 1908?

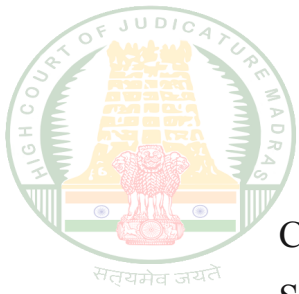
And after taking note of Order 21 Rules 97 to 103, the Supreme Court held that:



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4. ...a third person claiming to be in possession of the property forming the subject-matter of decree in his own right can resist delivery of possession even by filing an objection under Order 21 Rule 97 of the Civil Procedure Code, 1908 in the executing court itself and if that is done, the objection shall have to be determined by the executing court itself. The provisions of Rule 99 in the new CPC will not defeat the right of such person to get his objection decided under Rule 97 which is a stage prior to his dispossession.

Further, aforesaid proposition of law enunciated in Shreenath case was further followed and approved by Supreme Court of India in Har Vilas v. Mahendra Nath (Har Vilas case) and Asgar v. Mohan Varma (Asgar case). As such, until 2022, the law is settled that any person i.e. including a third party who is in possession of immovable property can file an application under Order 21 Rule 97 CPC to safeguard and adjudicate his rights including that of title and possession. However, aforesaid Shreenath case, Har Vilas case and Asgar case were neither referred to nor distinguished in Sriram Housing Finance case. Without reference to the settled position of law as enunciated in aforesaid judgments or without any discussion of aforesaid decisions, the Supreme Court laid down a contrary view. As such, said Sriram Housing Finance judgment, insofar as the judgment pertaining to lack of locus standi of any person other than decree-holder or auction-purchaser to file an application under “Order 21 Rule 97 CPC” is contrary to the law laid by Coordinate Bench of the Supreme



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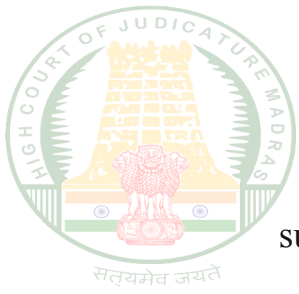


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Court in Shreenath case, Har Vilas case and Asgar case. Hence, Sriram Housing Finance judgment is per incurium and does not lay down the law.

(b) Further, at first blush and from bare reading of Order 21 Rule 97 CPC, it appears that it is only “decree-holder” or “auction purchaser” who can file an application under Order 21 Rule 97 CPC. However, it is sine qua non to note that, procedural law is handmaid of justice and has to be interpreted to sub serve the justice but not to elude the same. If more than one interpretation of procedural law is possible then the one which curtails the procedure without eluding justice shall be adopted. If the interpretation of Supreme Court in Sriram Housing Finance case is accepted then any third party in possession of the immovable property will be put to irreparable loss as he has no remedy prior to his dispossession and he will then be left with sole remedy under Order 21 Rule 99 CPC which requires prior dispossession of such party. Such remedy which was available prior to dispossession will be curtailed and will lead to institution of suit by such third party, thereby opens the flood gates of litigation, which the legislation at the first instance intends to curtail. As such, said interpretation is contrary to law.

(c) That, Order 21 Rules 97 to 103 provide the sole remedy both to the parties to a suit as well as to a stranger to the decree put to execution. In the event aforesaid interpretation in Sriram Housing Finance case is accepted then the remedy of such third party prior to his dispossession is taken away. As



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such, the third party cannot be left remediless.

(d) That, without reference to the settled law as enunciated earlier by the Coordinate Bench of the Supreme Court of India, *Sriram Housing Finance* case is a feeble attempt to unsettle the settled law. Further, the execution proceedings are often met with obfuscation and time-consuming process. Unsettling the settled law and taking away the remedy of third parties is deleterious to the process of execution itself.”

The author has virtually characterized the decision in *Sriram Housing* as *per incuriam*. An author has the privilege. A High Court Judge does not have such a license. In any event, judicial discipline demands adoption of a respectful course of action.

13.Coming to the case on hand, I am more than satisfied that after watching in the spectator's gallery for more than 35 years, the revision petitioner has suddenly felt inspired and jumped in the way to bat for her father and siblings who have already lost their wickets in the suit.

14.In my view, even *Shreenath v. Rajesh* will not come to the rescue of the revision petitioner. The Hon'ble Supreme Court in the said decision had only held that a tenant in possession of the property or someone claiming independent right who is not a party to the suit or to the decree can maintain an

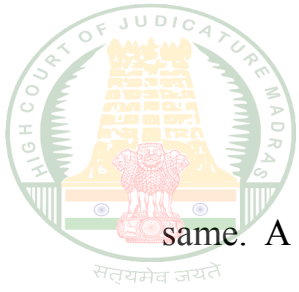


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application under Order 21 Rule 97 of CPC. In the present case, the revision petitioner has only made a tall claim that the suit property was allotted to her under an oral family arrangement. This is only her *ipse dixit* and has not been proved in the manner known to law. No witness has been examined to show that the revision petitioner is in possession of the suit property. There is zero evidence in support of her claim. In her cross examination, she pleaded ignorance about the date on which the alleged oral family arrangement was made.

15.The petitioner in any event traces her right only from the judgment debtor. When the judgment debtor's 2/9<sup>th</sup> share in the suit property had already been knocked off, and the plaintiffs in the present suit had purchased the same in Court auction sale proceedings, the revision petitioner has no independent right to claim. Thus, ***Shreenath v. Rajesh*** will not come to the petitioner's rescue.

16.There is also no merit in the petitioner's contention that an undivided share could not have been taken in possession by Valliammai Achi. This argument was specifically raised in A.S.No.956 of 1992 and the Hon'ble Judge vide judgment dated 20.02.2020 in paragraph no 26 specifically rejected the



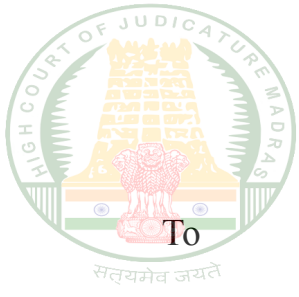
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same. A categorical finding was rendered that though only undivided share was sold in Court auction, the property was identified and delivered and the delivery report was signed by the first defendant and his sons. None of the contentions advanced by the learned counsel for the petitioner has merit. The impugned order is sustained for the reasons mentioned above. It is well settled that the scope of interference of the High Court in exercise of its revisional jurisdiction is constricted. The order impugned in this Civil Revision Petition cannot be said to be perverse. After a careful appreciation of the evidence on record, the Court below had categorically held that the revision petitioner herein failed to prove possession by adducing any evidence. Interference with the same is not warranted.

17.This Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**08.05.2025**

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**G.R.SWAMINATHAN, J.**

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