



C.R.P.(PD)(MD).No.1691 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)No.1691 of 2022

and

C.M.P.(MD)Nos.13976, 13980 and 13983 of 2024

1.Wilson Philipose
2.Jaspin Japasheela

... Petitioners

Vs.

1.Kingslin Johns
2.Stantlin Johns
3.Charlet

... Respondents

PRAYER: Civil Revision Petition - filed under Section 115 of the Code of Civil Procedure, to set aside the order passed by the Principal District Munsif, Padmanabhapuram in E.P.No.25 of 2015 in O.S.No.74 of 2014 dated 16.07.2019.

For Petitioner : Mr.N.Dilip Kumar
For R1 : Mr.M.R.Srinivasan

ORDER

The Civil Revision Petition is filed challenging the order passed by the Principal District Munsif, Padmanabhapuram in E.P.No.25 of 2015 in O.S.No. 74 of 2014 dated 16.07.2019.



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2.The petitioners are the plaintiffs in O.S.No.74 of 2014 for demarcation of the eastern boundary of the plaint 'A' schedule property and permanent injunction. The suit was decreed on 01.04.2015. The petitioners have filed an execution proceedings in E.P.No.25 of 2015. The execution petition was dismissed on the ground that in the absence of specific decree of injunction or recovery of possession, the decree of the trial Court cannot be executed, since the subject property consists of a building and some other features. Challenging the same, the petitioners have filed the present Civil Revision Petition.

3.The learned counsel for the petitioners submits that it is the duty cast upon the Execution Court to execute the decree and judgment of the trial Court, unless it is set aside or stayed by the Appellate Court. Merely on the ground of technicalities, the execution Court had dismissed the execution petition and the same is not sustainable. Hence, he prays for appropriate orders.

4.Per contra, the learned counsel for the first respondent submits that the suit is filed for demarcation and injunction. The plaintiffs have not sought



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the relief of recovery of possession in the suit. The trial Court in order to ascertain the physical features of the suit schedule property, appointed an Advocate Commissioner and obtained a report. The report of the Advocate Commissioner shows that a portion of the property consists of construction, which was made by the defendants. Therefore, in the absence of the relief of recovery of possession, the trial Court has rightly dismissed the execution proceedings and the same need not be interfered with.

5.Heard the rival submissions made on either side and perused the materials placed on record.

6.Admittedly, the petitioners/plaintiffs filed the suit for demarcation of eastern boundary of the 'A' schedule property and for permanent injunction. The said suit was decreed. The execution petition filed by the plaintiffs was dismissed stating that since there is a construction in the suit schedule property, in the absence of the any specific decree of injunction or recovery of possession of the suit schedule property, the decree of the trial Court cannot be executed.



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7.The executing court's primary duty is to ensure the decree is executed. An execution petition, which is filed to enforce a court decree, cannot be dismissed simply due to technical errors or procedural flaws and it should not be avoided by technical objections. It may not always be necessary for the plaintiffs to specifically claim possession over the property as the relief of possession is inherent. Therefore, the executing court has a duty to deliver possession of the property to the decree holder, even if the decree doesn't explicitly mention recovery of possession.

8.In view of the above, the order passed by the execution Court in E.P.No.25 of 2015 is set aside and this Civil Revision Petition is allowed. The Executing Court is directed to implement the judgment and decree rendered by the trial Court in accordance with law forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

04.08.2025

Index : Yes/No
Internet : Yes / No
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To

- 1.The Principal District Munsif, Padmanabhapuram.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI,J.

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