



W.A(MD) No.1271 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 20.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

W.A(MD) No.1271 of 2020

and

C.M.P.(MD)No.7230 of 2020

Zeenath

... Appellant / 3rd Respondent

Vs

1.Suhaina Beevi

... 1st Respondent / Petitioner

2.State Rep. through its,
The Superintendent of Police,
Kanyakumari District,
Kanyakumari.

3.The Inspector of Police,
Puthukadai Police Station,
Puthukadai,
Kanyakumari District.

4.Suresh Kumar
Sub Inspector of Police,
Puthukadai Police Station,
Puthukadai,
Kanyakumari District.

... Respondents 2 to 4/
Respondents 1, 2, 4



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the orders passed in W.P.(MD)No.8030 of 2020, dated 21.09.2020 by allowing this writ appeal.

For Appellant : Mr.V.M.Balamohan Thambi

For Respondents : Mr.S.Anwar Sameen
for R1

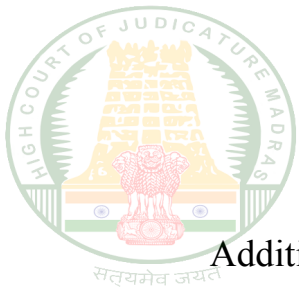
: Mr.M.Karunanidhi
Government Advocate for R2 to R4

ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

Heard both sides.

2. The first respondent herein obtained injunction decree in her favour in O.S.No.308 of 2002 on the file of the District Munsif Court, Kuzhithurai. Injunction decree was confirmed on 15.09.2008 in A.S.No. 3 of 2006 on the file of the Sub Court, Kuzithurai. It is stated that the defendants had filed S.A.(MD)No.359 of 2009 on the file of this Court and that it is still pending. In the meanwhile, the petitioner's husband filed O.S.No.138 of 2005 for recovery of possession before the 1st



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Additional District Munsif Court, Kuzhithurai. The suit was decreed on

22.06.2010. The first respondent's husband passed away on 17.11.2010.

Thereafter, first appeal was filed questioning the decree made in the suit for recovery of possession. The appeal was allowed exparte on

26.07.2012. To have the said decree declared as null and void, the first respondent herein had filed O.S.No.99 of 2020 and it is still pending.

In the meanwhile, since alterations were made contrary to the injunction decree, the first respondent herein filed W.P.(MD)No.8030 of 2020. It was disposed of on 21.09.2020 in the following terms:-

“15. Therefore, based on the Judgment and decree dated 27.09.2005, passed in O.S.No.308 of 2002, the petitioner is entitled to the relief as prayed for. Accordingly, it would be appropriate to issue the following directions:-

“(I) Upon receipt of the order passed by this Court in this writ petition, the petitioner is directed to submit a representation within one week only in respect of the Judgment and decree dated 27.09.2005 passed in O.S.No.308 of 2002.

(II) Upon receipt of the said representation, the second respondent is directed to consider the prayer sought for by the petitioner only in accordance with the Judgment and decree dated 27.09.2005 passed in O.S.No.308 of 2002.”

Questioning the same, this writ appeal has been filed.



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3. We carefully considered the rival contentions and perused the records. When the first respondent is having a subsisting decree in her favour, it is for her to file EP for executing the same. The writ Court cannot be used as the executing Court. Be that as it may, in view of the subsequent events, we are of the view that interest of justice will be met by directing the learned Sub Court, Kuzhithurai to dispose of O.S.No.99 of 2020 pending on its file on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. The order impugned in the writ petition is set aside. The writ appeal is allowed with the aforesaid direction. The writ appeal has been allowed only on a technical ground. We have not gone into the merits of the matter. The Sub Court, Kuzhithurai will dispose of the suit independently and on its own merit. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) (M.J.R., J.)
20.02.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To

- 1.The Sub Court, Kuzhithurai
- 2.The Superintendent of Police,
Kanyakumari District,
Kanyakumari.
- 3.The Inspector of Police,
Puthukadai Police Station,
Puthukadai,
Kanyakumari District.
- 4.Sub Inspector of Police,
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