



C.R.P.(NPD)(MD).No.1799 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD).No.1799 of 2022
and CMP(MD).No.8010 of 2022

M.Raja

....Petitioner/2nd Respondent
/2nd Respondent /2nd Defendant

-VS-

P.Veerathevar (died)

1.V.Otchammal

2.Rajeswari

3.Rani

4.Murugan

5.Lakshmanan

6.Ganesan

7.Muthusaram

8.Minor Mahajana Sri

...Respondents 1 to 8/Petitioners
/Petitioners/Plaintiffs

Ochana Thevar @ Mekkaya Thevar (died)
Meena (died)

9.T.Pitchaimani

10.Jeyapriya

11.Thiraviyam

... Respondents 9 to 11/Respondents 4 to 6
Respondents 4 -6/Defendants 4-6

(Notice to respondents 9 to 11 given up)

1/7



C.R.P.(NPD)(MD).No.1799 of 2022

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PRAYER: The Civil Revision Petition has been filed under Section 115 of Code of Civil Procedure, to set aside the fair order and executable order dated 21.07.2022 made in I.A.No.05 of 2022 in I.A.No.420 of 2014 in O.S.No.180 of 2008 on the file of the District Munsif, Theni.

For Petitioner : Mr.R.Suriya Narayanan

For Respondents : Mr.S.Sivathilakar for R1 to R8

: No appearance for R9 to R11

ORDER

The second defendant in O.S.No.180 of 2008 on the file of the District Munsif Court, Theni is the revision petitioner.

2.The plaintiffs had filed the said suit for redemption of mortgage. A preliminary decree came to be passed on 31.03.2011 wherein the plaintiff was directed to pay the mortgage money of Rs.1150/- and the defendants were directed to pay the cost of Rs.2972/- to the plaintiff. However, the said preliminary decree was amended by the trial Court pursuant to the order passed in I.A.No.142 of 2014 dated 03.06.2014. As per the amended decree, the plaintiff has to pay a sum of Rs.1150/- as mortgage money and the plaintiff has to pay a sum of Rs.2972/- as cost to the defendants.



C.R.P.(NPD)(MD).No.1799 of 2022

WEB COPY

3. On the basis of the amended decree, the plaintiffs had filed I.A.No.420 of 2014. The trial Court had dismissed I.A.No.420 of 2014 on 17.12.2021 on the ground that the decree holder has not deposited the cost amount of Rs.2972/-. Thereafter, the plaintiffs had filed I.A.No.5 of 2022 to review the order passed in I.A.No.420 of 2014. As per the review application, the cost of Rs.2972/- has to be paid only by the defendants to the plaintiffs and by mistake, the final decree application has been dismissed. The final decree Court relying upon the unamended decree, had allowed the review application in I.A.No.5 of 2022 on 21.07.2022. Challenging the same, the present civil revision petition has been filed.

4. According to the learned counsel for the revision petitioners, as per unamended decree, the plaintiffs have to pay the mortgage money of Rs.1150/-. The said amount has been deposited by him even pending suit and there is no dispute. However, under the said unamended decree, it was wrongly mentioned that the defendant has to pay a sum of Rs.2972/- as cost to the plaintiffs. This mistake was amended and a revised decree was passed wherein it was stated that the cost of Rs.2972/- has to be paid by the plaintiffs to the defendants. This amended decree was not taken into consideration when the review application was allowed by the trial Court.



C.R.P.(NPD)(MD).No.1799 of 2022

WEB COPY

5.Per contra, the learned counsel for the respondents had contended that the mortgage money has already been deposited and therefore, the plaintiffs/decreed holders would be entitled to passing of the final decree.

6.I have considered the submissions made on either side and perused the material records.

7.Considering the above said facts, it is clear that the plaintiff has to deposit a sum of Rs.2972/- as cost to the defendants as per amended decree. So far the said cost has not been deposited before the Court. In such circumstances, the plaintiffs, decreed holders would not be in a position to execute a final decree, unless they deposit the said amount.

8.In view of the above said deliberations, the respondents herein/decreed holders are directed to deposit a sum of Rs.2972/- to the credit of O.S.No.180 of 2008 on the file of the District Munsif Court, Theni, within a period of four weeks from the date of receipt of a copy of this order. Only on such deposit, the decreed holders would be entitled to execute the decree.

9.It is brought to the notice of the Court that the defendant in the suit has already filed A.S.No.55 of 2011 before the Subordinate Court,



C.R.P.(NPD)(MD).No.1799 of 2022

Theni challenging the preliminary decree and the same is pending.

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Considering the above said facts, the Subordinate Judge, Theni is directed to dispose of the appeal on or before 30.11.2025.

10.This civil revision petition stands disposed of on the above said terms. No costs. Consequently, connected miscellaneous petition is closed.

17.02.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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C.R.P.(NPD)(MD).No.1799 of 2022

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To

- 1.The Subordinate Judge, Theni
- 2.The District Munsif,Theni.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(NPD)(MD).No.1799 of 2022

R.VIJAYAKUMAR, J

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C.R.P.(NPD)(MD).No.1799 of 2022
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17.02.2025