



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.2088 of 2025

and

C.M.P.(MD).No.12151 of 2025

D.Lazarus (died)

1.Hepsiba Gnana Glorital

2.L.S.Abisha Gnana Merlibah

3.L.S.Jeush Deva Kiruba

...Petitioners

Vs.

Saroja Justus

represented by her power agent, A.Reguanantharaj

...Respondent

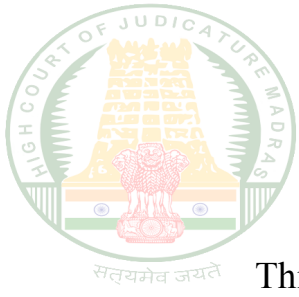
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in E.P.No.19 of 2022 in O.S.No.224 of 2018 on the file of the I Additional District Munsif Court, Nagercoil, dated 03.07.2025.

For Petitioners

: Mr.H.Arumugam

For Respondent

: Mr.M.P.Senthil



ORDER

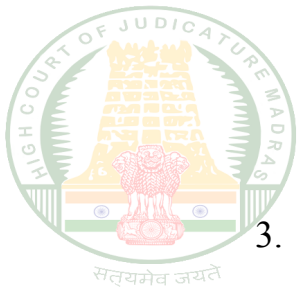
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This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 03.07.2025 passed in E.P.No.19 of 2022 in O.S.No.224 of 2018 on the file of the I Additional District Munsif Court, Nagercoil.

2. The respondent herein filed O.S.No.224 of 2018 before the learned I Additional District Munsif, Nagercoil, against one D. Selvin, seeking mandatory injunction directing demolition of an unlawful construction allegedly raised by D. Selvin in the plaint 'B' Schedule property; and permanent prohibitory injunction restraining the above said D.Selvin from putting up any further construction or acting in any manner detrimental to the safety of the 'B' Schedule property.

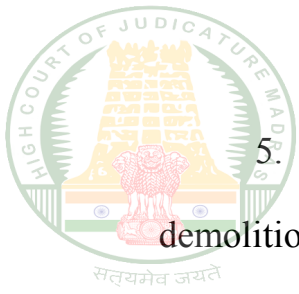
2.(i). It was the case of the respondent that she is the absolute owner of the property and, as she was residing in the United Kingdom, one D. Selvin took advantage of her absence and constructed a wall in the 'B' Schedule property. After the death of the said D.Selvin, the legal heirs of the respondent was impleaded in the said suit.

2.(ii). In the said suit, D. Selvin remained ex parte, and an ex parte decree was passed on 03.03.2022. In the meantime, the father of the present revision petitioners passed away on 22.06.2023.



3. Thereafter, the respondent filed E.P.No.19 of 2022 to execute the decree. Even in the execution proceedings, D. Lazarus remained exparte, and an exparte order was passed on 01.07.2023. When the Amin came to the property for execution of the decree, he informed the petitioners about the exparte decree passed against their father. The petitioners then approached their counsel, who advised them to file a memo reporting the death of their father in the execution proceedings. On 03.08.2023, they filed a memo enclosing the death certificate, informing the Court that their father had died on 22.06.2023. On the same day, the learned trial Judge allowed the applications in E.A.No.3 of 2023 (for police protection) and E.A.No.4 of 2023 (for disconnection of electricity supply) filed by the respondent.

4. Aggrieved by the same, the petitioners filed C.R.P. (MD) No.2105 of 2023 before this Court, and by order dated 21.12.2023, this Court allowed the revision, directing the trial Court to implead the petitioners in the execution petition and thereafter proceed in accordance with law. In the meantime, the petitioners filed I.A.No.8 of 2024 to condone the delay in filing the petition to set aside the ex parte decree and I.A.No.9 of 2024 to implead themselves in the suit proceedings. Both applications were allowed, and consequently, the petition to set aside the ex parte decree was numbered as I.A.No.13 of 2024. However, before disposal of I.A.No.13 of 2024, the trial Court ordered demolition of the property in execution.



5. The learned counsel for the petitioners submits that the order of demolition is unsustainable without deciding I.A.No.13 of 2024.

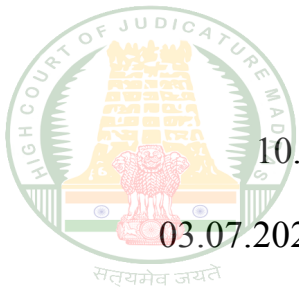
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6. The learned counsel for the respondent, while opposing the revision, fairly submits that the trial Court may be directed to dispose of I.A.No.13 of 2024 within a stipulated time and, till then, the execution may be deferred.

7. Heard the learned counsel for both sides.

8. The facts in the present case are not in dispute. The suit in O.S.No.224 of 2018 was decreed ex parte on 03.03.2022. The petitioners' father died on 22.06.2023. The petitioners' impleading petition and delay-condonation petition were allowed. The petition to set aside the ex parte decree is pending as I.A.No.13 of 2024. Despite this, the trial Court proceeded with the execution and ordered demolition.

9. In the considered view of this Court, the execution proceedings cannot be carried out before the disposal of I.A.No.13 of 2024, as the outcome of the said application will directly affect the decree under execution. Once the condonation and impleadment petitions have been allowed, keeping the main application pending while executing the decree is not sustainable.



10. Accordingly, the impugned order in E.P.No.19 of 2022 dated 03.07.2025 is set aside. The trial Court is directed to restore O.S.No.224 of 2018 to file, dispose of I.A.No.13 of 2024, and thereafter proceed with the suit in accordance with law. The petitioners are directed to pay a sum of Rs.2,000/- (Rupees Two Thousand only) jointly to the respondent within a period of two weeks from the date of receipt of a copy of this order and produce the receipt before the trial Court. After receipt of the same, the trial Court shall complete the process and dispose of the suit within a period of six months from the date of receipt of a copy of this order.

11. In the result, the Civil Revision Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

04.08.2025

Internet: Yes/No

Index: Yes/No

TSG

To

1.The I Additional District Munsif Court, Nagercoil.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

TSG

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