



C.R.P(MD)Nos.2358 and 2359 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)Nos.2358 and 2359 of 2024

and

C.M.P(MD)No.13392 of 2024

P.Sundararajan (Died)

1.S.Vijayalakshmi

2.Sundaramoorthy

3.Anandha Jothi

4.Sangareswaran

... Revision Petitioners / Petitioner Nos.2 to 5 /
3rd Parties
(in both CRPs)

Vs

1.M.Prabhakaran Servai

... 1st Respondent / plaintiff

2.K.Duraipandi

... 2nd Respondent / Defendant

(in both CRPs)

PRAYER in C.R.P(MD)No.2358 of 2024 : This Civil Revision petition is filed under Article 227 of Constitution of India to set aside the non-speaking order of return in E.A.No.unnumbered/2022 in E.A.No.2 of 2022 in E.P.No.51 of 2018 in O.S.No.32 of 2015 dated 07.01.2023 and direct the Principal District Court, Sivagangai to number the E.A.No.Unnumbered/2022 and allow the Civil Revision Petition.



C.R.P(MD)Nos.2358 and 2359 of 2024

PRAYER in C.R.P(MD)No.2359 of 2024 : This Civil Revision petition is filed under Article 227 of Constitution of India to set aside the order passed in E.A.No.2 of 2022 in E.P.No.51 of 2018 in O.S.No.32 of 2015, on the file of the Principal District Court, Sivagangai, dated 19.07.2024 and allow the Civil Revision Petition.

For Petitioner : Mr.J.Jeyakumaran

For Respondents : Mr.PT.S.Narendra Vasan for R1
Mr.E.Marees kumar for R2

(in both CRPs)

ORDER

These Civil Revision petitions are filed to set aside the non-speaking order of return in E.A.No.unnumbered/2022 in E.A.No.2 of 2022 in E.P.No.51 of 2018 in O.S.No.32 of 2015 dated 07.01.2023 and direct the Principal District Court, Sivagangai to number the E.A.No.Unnumbered/2022 and to set aside the order passed in E.A.No.2 of 2022 in E.P.No.51 of 2018 in O.S.No.32 of 2015, on the file of the Principal District Court, Sivagangai, dated 19.07.2024 and allow the Civil Revision Petition.



C.R.P(MD)Nos.2358 and 2359 of 2024

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2. The suit in O.S.No.32 of 2015 was filed by one Prabhakaran Servai against one Duraipandi who are the respondents in this revision petition, seeking the relief of specific performance on the basis of the sale agreement dated 20.03.2015 entered into between the parties and for costs. The suit was decreed as prayed for with costs. The time for execution of the sale deed was fixed at two months. The date of judgment and decree is 13.09.2017.

3. After that another suit in O.S.No.79 of 2015 was filed by the deceased Sundarrajan against Duraipandi who is the judgment debtor in O.S.No.32 of 2015, seeking the relief of recovery of money of Rs.15 Lakhs with interest and costs. That suit was decreed as prayed for with costs, by a judgment and decree dated 19.01.2016 which shows that the judgment and decree in O.S.No.79 of 2015 is prior to the judgment and decree dated 13.09.2017 in O.S.No.32 of 2015. In O.S.No.79 of 2015, a petition under Order 38 Rule 5 and Section 151 of CPC, was filed by the plaintiff in I.A.No.282 of 2015 for attaching the property before the judgment. The order was passed on 19.01.2016. Later, E.A.No.2 of



C.R.P(MD)Nos.2358 and 2359 of 2024

2022 was filed to transmit the decree for execution. Pending E.A.No.2 of 2022, a petition was taken out by the revision petitioners in Unnumbered E.A.No.--2022, to implead themselves as respondents in E.A.No.2 of 2022 in E.P.No.51 of 2018, stating that the property was attached before the judgment in I.A.No.282 of 2015. On 28.10.2015, the property was attached. Suit was decreed ex parte on 19.01.2016. The judgment debtor namely Duraipandi did not take any further steps to set aside the ex parte decree. After the decree Duraipandi died, they are the only legal representatives. To execute the decree in O.S.No.79 of 2015, they filed E.P. Now Duraipandian / the judgment debtor and the decree holder namely Prabhakaran Servai colluded each other and delayed the execution of the decree in O.S.No.79 of 2015. They entered into a collusive sale agreement. Based upon which a collusive suit was filed in O.S.No.32 of 2015, allowed the suit to be decreed ex parte on 13.09.2017. E.P., was filed in E.P.No.51 of 2018. Even in the E.P., the judgment debtor failed to appear. Because of the proceedings, namely in the suit and as well as in the E.P. proceedings, the order passed by the District Judge, Srivilliputhur in I.A.No.282 of 2015 was suppressed. Both the E.Ps., filed in the very same Court and if any delivery is



C.R.P(MD)Nos.2358 and 2359 of 2024

ordered, there may not be any possibility to realize the fruits of the decree in O.S.No.71 of 2015. So they must be added as necessary party in the proceedings. The execution Court entertained a doubt regarding the maintainability of the impleading petition. It got returned repeatedly. Challenging the return order, dated 07.01.2023, CRP(MD)No.2358 of 2024 is filed.

4. CRP(MD)No.2359 of 2024 is filed against the order passed in E.A.No.2 of 2022. E.A.No.2 of 2022 was filed by the decree holder namely Prabhakaran Servai who is the first respondent herein seeking the delivery of the property in pursuance of the execution of the sale deed. Duraipandi filed objections stating that in view of the judgment and decree in O.S.No.79 of 2015, the execution is not maintainable. After hearing both sides, the execution Court ordered delivery of the property over turning the objection made by Duraipandian. Against which, this CRP(MD)No.2359 of 2024 is preferred by this revision petitioners.

5. Both the matters are heard in common and a common order is passed. From the narration of the facts in the preamble portion it is seen



C.R.P(MD)Nos.2358 and 2359 of 2024

that in respect of the very same property, two decree holders are fighting against each other instead of fighting the issue against the judgment debtor. In both the suits, Duraipandi is the judgment debtor. Duraipandi says that because of the decree in O.S.No.79 of 2015, the decree and judgment passed in O.S.No.32 of 2015 is not executable. The decree holder's legal representatives were the revision petitioners herein, who are stating that the suit in O.S.No.32 of 2015 is a collusive suit. By the collusive suit their right to get the fruits of the decree is taken away. The order of the trial Court in I.A.No.282 of 2015 was not brought to the notice of the Court while passing the decree in O.S.No.32 of 2015. So according to them, their objections must also be heard by the Execution Court before effecting delivery. But the decree holder in one of the suits namely Prabhakaran Servai would submit that it is other way round. It is a collusive suit between Duraipandian and deceased decree holder namely Sundarrajan. They want to stall the execution proceedings. Moreover, the revision petitioners are not parties in O.S.No.32 of 2015 and in E.P.No.51 of 2018. So they have no right to be heard since the delivery is ordered.



C.R.P(MD)Nos.2358 and 2359 of 2024

6. I am not going into the merits of the matters. A simple request is made by the revision petitioners that a direction may be issued to the execution court to process the unnumbered E.A.No.-- of 2022 in CRP(MD)No.2358 of 2024 and if any doubt arises it may be decided on the judicial side. Instead of passing judicial order, it is periodically returned. Similarly, their another request is that unnumbered petition filed by them may be ordered to be heard by the execution Court along with E.A.No.2 of 2022. Eventhough final order has been passed, the unnumbered E.A. was returned finally on 07.09.2023. But order in E.A. was passed on 19.07.2024, much after the return of the unnumbered E.A.

7. Learned counsel for the respondent would rely upon the judgment of Calcutta High Court in the case of ***Purna Chandra Basak vs Daulat Ali Mollah*** reported in ***AIR 1973 CALCUTTA 432*** and would submit that the agreement of sale was entered prior to the date of attachment, so as per the above said judgment, it will not prevail over the sale agreement dated 20.03.2015. So according to him, the revision petitioners has no right to make any objection or to be heard in the execution petition filed by them.



C.R.P(MD)Nos.2358 and 2359 of 2024

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8. But for the reasons stated above, I am not entering into the merits of the matter which is beyond the scope of this revision. It is open to the execution Court to decide the maintainability and as well as the merits of the matter. So that issue is left open to be decided by the execution Court.

9. In view of the above said issue, I am of the considered view that the execution Court ought to have entertained the unnumbered E.A., on its judicial side, after affording an opportunity it ought to have decided the matter. Returning the petition, without even numbering is not proper. On the sole ground, the order of return made by the execution Court is set aside and the matter is remitted back to the execution Court namely Principal District Court, Sivagangai. Learned Principal District Judge, Sivagangai, is directed to process the petition and decide the maintainability and the merits if required on the judicial side along with E.A.No.2 of 2022, since the delivery is not effected so far, which is deemed to be pending. For that purpose the original petition shall be returned to the revision petitioner by substituting proper copies.



C.R.P(MD)Nos.2358 and 2359 of 2024

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10. In view of the above submissions, these Civil Revision Petitions are allowed to the extend mentioned above and the non-speaking order of return dated 07.01.2023 in E.A.No.unnumbered/2022 in E.A.No.2 of 2022 in E.P.No.51 of 2018 in O.S.No.32 of 2015, by the Principal District Court, Sivagangai, and the order dated 19.07.2024 passed in E.A.No.2 of 2022 in E.P.No.51 of 2018 in O.S.No.32 of 2015, by the Principal District Court, Sivagangai, are set aside. Consequently, connected miscellaneous petition stands closed. No costs.

31-01-2025

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

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To

- 1.The District Judge, Sivagangai.
2. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

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C.R.P(MD)Nos.2358 and 2359 of 2024

G.ILANGO VAN, J.

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31.01.2025