



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2025

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(NPD)(MD)No.1716 of 2017

and

C.M.P.(MD).Nos.9358 of 2017 and 1146 of 2025

C.Seemaisamy

...Petitioner

Vs.

1.Meenakshi Sundaram (died)

2.The Executive Officer,
Natham Town Panchayat,
Natham Taluk,
Dindigul District.

3.M.Venkatarama Subramnian

4.Meenakshi

...Respondents

(Respondent Nos.3 and 4 are brought on record as legal representatives of the deceased first respondent vide Court order dated 11.01.2024 made in C.M.P. (MD).Nos.12665, 12667 and 12669 of 2023 in C.R.P.(NPD).(MD).No.1716 of 2017)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records and set aside the fair and decreetal order made in E.P.No.12 of 2008 in O.S.No.36 of 2006 on the file of the learned District Munsif-cum-Judicial Magistrate, Natham, dated 16.08.2017 and allow this petition.



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C.R.P.(NPD)(MD)No.1716 of 2015



For Petitioner : Mr.R.Shankar Ganesh

R-1 : Died

For R-2 : Mr.B.Saravanan,
Additional Government Pleader

For R-3 : No appearance

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ORDER

This petition has been filed seeking orders to set aside the fair and decreetal order made in E.P.No.12 of 2008 in O.S.No.36 of 2006 on the file of the learned District Munsif-cum-Judicial Magistrate, Natham, dated 16.08.2017.

2. The petitioner is the first defendant in O.S. No.36 of 2006 on the file of the learned District Munsif-cum-Judicial Magistrate, Natham. The first respondent filed the said suit seeking mandatory injunction for the removal of the alleged encroachment made by the petitioner in T.S. No.517/31, which is adjacent to the property of the first respondent. The suit was decreed on 30.08.2007. Thereafter, the first respondent filed an Execution Petition in E.P. No.12 of 2008 before the learned District Munsif-cum-Judicial Magistrate, Natham, Dindigul District and the said petition was dismissed on 02.12.2011. Aggrieved by the dismissal, the first respondent filed a Civil Revision Petition before this Court in C.R.P. (MD) No.2079 of 2013 and this Court by an order dated 07.07.2015, set aside the dismissal order dated 02.12.2011 in E.P. No.12



of 2008 and directed the learned Executing Court to consider the decree passed in O.S. No.36 of 2006 in light of the judgment and the Commissioner's report in I.A. No.355 of 2005, and to take a decision as to whether the decree is executable. Subsequently, the Execution Petition was restored and, after adjudication, it was allowed on 16.08.2017 by directing the petitioner to remove the encroachment. Challenging the said order, the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the trial Court failed to consider that the alleged pathway is not a common pathway, but belongs to the revision petitioner and his family members. Hence, the plea of encroachment is not tenable. He would further submit that the trial Court directed the petitioner to remove the encroachment within a period of two months, failing which, the second respondent / Executive Officer, Natham Town Panchayat, was directed to remove the alleged encroachment and recover the expenses from the petitioner. Such an order passed by the trial Court is perverse and liable to be set aside. He would further submit that though the decree was passed in the year 2007, the Execution Petition was not filed within the prescribed limitation period and was filed belatedly. Accordingly, he prays to allow this petition.



4. Though the name of the third respondent has been printed in the cause list, none appears on behalf of him.

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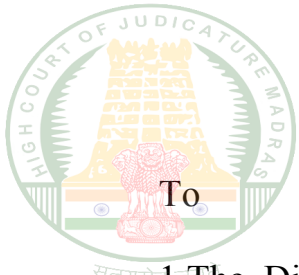
5. The learned Additional Government Pleader appearing for the second respondent would submit that admittedly, the petitioner suffered a decree granted by the trial Court in O.S.No.36 of 2006 learned District Munsif-cum-Judicial Magistrate, Natham, Dindigul District, dated 30.08.2007. However, the petitioner did not choose to challenge the said decree granted in favour of the first respondent.

6. It is seen that the petitioner did not challenge the decree granted in favour of the first respondent in O.S.No.36 of 2006 dated 30.08.2007 and challenging only the Execution Petition, without questioning the validity of the decree itself, is not legally sustainable. This Court feels that the petitioner has not approached this Court with clean hands. It is further seen that the petitioner has encroached upon the public property and is not ready to remove the said encroachment.

7. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

06.06.2025

Internet: Yes/No
Index: Yes/No
TSG



To

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- 1.The District Munsif-cum-Judicial Magistrate, Natham,
- 2.The Executive Officer, Natham Town Panchayat, Natham Taluk,
Dindigul District.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI, J.

TSG

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