



**C.R.P(NPD)(MD)No.1589 of 2023**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 28.01.2025**

**CORAM :**

**THE HONOURABLE Mr. JUSTICE G.ILANGO VAN**

**C.R.P(NPD)(MD)No.1589 of 2023**  
**and C.M.P.(MD)No.7795 of 2023**

1.Shoba

2.Aniba

... Petitioners

Vs

Dennis

... Respondent

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 10.09.2022, passed in E.P.No.17 of 2021 in O.S.No.240 of 2009, on the file of the learned Principal District Munsif Court, Padmanabhapuram.

For petitioners : Mr.C.Kishore

For Respondent : Mr.S.Sivakumar



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## **ORDER**

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This Civil Revision Petition is filed against the fair and decreetal order dated 10.09.2022, passed in E.P.No.17 of 2021 in O.S.No.240 of 2009, on the file of the learned Principal District Munsif Court, Padmanabhapuram.

### **2. The facts in brief:**

Suit in O.S.No.240 of 2009 was filed by the revision petitioners against the respondent herein seeking the relief of maintenance. The suit was decreed, after full trial, directing the respondent herein to pay a sum of Rs.1,000/- to the first petitioner and a sum of Rs.500/- to the second petitioner from the date of plaint. Apart from directing the respondent herein to pay the arrears of rent within two months from the date of decree. To enforce the decree, charge was created upon the property mentioned in the plaint. The respondent failed to satisfy the decree. Therefore, E.P.No.17 of 2021 was filed by the revision petitioner before the Execution Court to attach and sell of the property mentioned in the petition.



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3. There was a resistance by the respondent stating that the entire amount was paid by him and apart from that he gave huge amount to the revision petitioners. After hearing both sides, the Execution Court dismissed the petition observing that not even a single scrap of paper was produced by the revision petitioners to show that the suit property belongs to the respondent. Against that order of dismissal, this Civil Revision Petition is preferred.

4. Heard both sides.

5. The order of the Execution Court is *per se* illegal, because it failed to take notice that in the decree itself, charge was created over the property mentioned in the plaint. This was pointed by the revision petitioners' Advocate. The learned counsel appearing for the petitioners drawing the attention of this Court to the order passed in I.A.No.296 of 2009, which was filed by the revision petitioners herein under Order 38 Rule 5 of C.P.P.C. to attach the property mentioned in the petition before judgment. The order was passed directing the respondent herein not to encumber the property. As mentioned above, at the time of final



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judgment, charge was also created over the property. It is also submitted by the revision petitioner that in the written statement filed by the respondent in the main suit in para No.10, he has admitted that the property mentioned in the petition is the sole house available to him. It appears that without noticing all those things, the Execution Court has dismissed the petition.

6. If any doubt had arisen in the mind of the Court, it ought to have directed the revision petitioners to produce the encumbrance certificate. But it did not issue any direction. At the direction of this Court, the revision petitioners produced the encumbrance certificate from April 1975. Therefore, at the time of processing the EP, the Execution Court may take the encumbrance certificate for verification. Therefore, the order passed by the Execution Court is liable to be set aside and accordingly, set aside.

7. This Civil Revision Petition is allowed and the matter is remitted back to the Execution Court for fresh consideration. The Execution Court is directed to proceed in accordance with law by taking



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into account the above said facts and the Encumbrance Certificate.

Consequently, connected miscellaneous petition is closed. No costs.

**28.01.2025**

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

To

- 1.The Principal District Munsif Court, Padmanabhapuram.
- 2.The Section Officer, VR Section,  
Madurai Bench of Madras High Court, Madurai.



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**G.ILANGO VAN, J.**

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**28.01.2025**