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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-10-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

CRP.No.2481 of 2026

CNR:{HCMA010884762026}

and
CMP.No.10541 of 2026

Kannada Veerasaiva Saineegar Sangam
rep. by its Secretary,
Nos.7 and 8, Malli Pillaiyar Koil Street,
Tiruvannamalai District, Arni

..Petitioner(s)

Vs

The State of Tamil Nadu,
Rep. by the District Collector,
Tiruvannamalai,
Tiruvannamalai District.

..Respondent(s)

PRAYER: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair Order and Decretal Order in E.P.No.69 of 2011 in O.S.No.63 of 1973 dated 05.03.2026 on the file of the Additional Subordinate Court, Tiruvannamalai.

For Petitioner : Mr.V.Raghavachari
Senior Counsel
for M/s.Srimathi V.

For Respondent : Mr.P.Sunil
Government Advocate

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ORDER

The Civil Revision Petition is filed challenging the order passed by the Executing Court in E.P.No.69 of 2011 in O.S.No.63 of 1973, dated 05.03.2026 dismissing the execution petition filed by the petitioner seeking to execute the direction given in the decree passed in LPA.No.139 of 1988, dated 29.10.1997.

2. It is not in dispute that the petitioner herein obtained a decree against the respondent in LPA.No.139 of 1988. The decretal portion of the order passed by this Court in LPA.No.139 of 1988, dated 29.10.1997, reads as follows:-

> *"Therefore, instead of the prayer sought for in the suit we are inclined to grant a decree directing the State Government to assign the third item of the suit property, namely Survey No.533 of the extent of 4 acres 44 cents to the plaintiff – Sangam within four months from the date of an application to be made by the plaintiff in this regard. In other respects, the suit will stand dismissed as not pressed by the plaintiff/appellant. Letters Patent Appeal will stand allowed to the above extent granting a decree as stated above. There will be no order as to costs."*

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3. The LPA was disposed of on 29.10.1997. The petitioner filed execution petition in E.P.No.69 of 2011 and the same was dismissed by the Executing Court on the ground of limitation. Aggrieved by the same, the petitioner has come before this Court.

4. The learned Senior Counsel appearing for the petitioner would submit that the respondent failed to act in accordance with the direction issued in the LPA decree. Therefore, the petitioner filed a writ petition before this Court in W.P.No.21756 of 2000 seeking assignment of land. The said petition was allowed on 20.11.2004, directing the respondents therein to pass orders as per the decree in LPA. The respondents filed a writ appeal in W.A.No.64 of 2005 and the same was allowed on 11.09.2007 setting aside the order passed by the learned Judge. Subsequently, the petitioner filed a review application in Review Application No.32 of 2009 seeking to review of the judgment passed by the Division Bench in the writ appeal. The said review application was disposed of with a modification that the petitioner shall workout its remedy before the appropriate forum, in case the decree passed by the Competent Court has not been complied with. Based on the liberty granted by the Division Bench in the review application, the petitioner filed the present execution petition and the Executing Court committed a serious error in not taking into consideration the liberty granted by the Division Bench of this Court.

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5. The LPA decree was passed in favour of the petitioner on 29.10.1997 directing the respondent to assign the subject land within a period of four months. The said four months period expired on 28.02.1998.

6. A perusal of the LPA decree would indicate that the direction was issued to the respondents to assign subject land, therefore, it is in the nature of mandatory injunction. The Executing Court rightly came to the conclusion that Article 135 of the Limitation Act, 1963 was applicable to the present case and said that the petitioner should have filed execution petition within a period of three years from the date of expiry of the time limit prescribed in the LPA decree. The said period expired as early as 01.03.2001. However, the present execution petition has been filed only on 27.08.2009. Therefore, the Executing Court rightly came to the conclusion that the present execution petition is hopelessly barred by limitation.

7. The learned Senior Counsel appearing for the petitioner vehemently contended that in view of the liberty granted by the Division Bench of this Court, the Executing Court ought not to have rejected the execution petition on

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the ground of limitation. The order passed by the Division Bench of this Court in Review Application No.32 of 2009, dated 29.07.2009 reads as follows:-

> *"8. As far as limitation is concerned, we are not expressing any opinion, though it will be open to the Kannada Association to bring to the notice of the court of competent jurisdiction that they were pursuing the remedy before the writ court, which gave rise to the writ appeal."*

8. Therefore, it is clear that the Division Bench of this Court has not expressed any opinion on the question of limitation and the petitioner was relegated to workout his remedy before the Executing Court. The liberty granted to the petitioner to work out the remedy before Executing Court will not have the effect of enlarging the period of limitation.

9. A Division Bench of this Court in ***Vellaiamma and another vs. Subbulakshmi and others***, reported in ***2024 SCC Online Mad 8344***, held that merely because liberty is granted to a party to initiate proceedings, the same cannot be treated as a license to invoke the provisions of the Limitation Act, the relevant observation reads as follows:-

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"31. The next issue that arises for consideration is as to: whether the liberty granted by the Writ Court can be taken advantage of? We are conscious that the earlier suit filed was not prosecuted and was allowed to be dismissed. However, while dismissing the Writ Petition, the Writ Court had merely stated that the plaintiff can approach the competent civil Court to ventilate her grievance, in accordance with law. An observation in order of the Writ court would not amount to permission being granted under Order XXIII C.P.C or having an effect of overriding the provisions of the Code of Civil Procedure or the Limitation Act. Therefore, merely because the plaintiff was given a liberty to approach the competent Court, it would not clothe her with a right to file a subsequent suit in gross violation of the Order XXIII Rule 1 C.P.C and without regard to the provisions of the Limitation Act."

10. In ***Arifa and others vs. Abhiman Apartment Co Operative Housing Society Ltd. and others*** reported in ***MANU/SC/0938/2025 = 2025 INSC 875***, the Apex Court held that leave granted to withdraw suit with liberty to file fresh suit on same cause of action will not save period of limitation. The relevant observation reads as follows:-

"7. ... ... No cause of action can be claimed on the liberty reserved, which is only on just exceptions including limitation, which in any event has to go by the period prescribed in the statute of limitation. The High Court has further found that

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there can also be no resort to Section 14 of the Limitation Act, since the suit already laid was not before a wrong forum but was not properly framed. Even when a suit is withdrawn with leave of the Court to file a fresh suit, under Order 23 Rule 1 of the CPC limitation applies with full force as per Rule 2 of Order 23."

11. In the light of the settled proposition of law that the liberty granted by the Court will not enlarge the period of limitation, I am unable to accept the contention raised by the learned Senior Counsel appearing for the petitioner. Admittedly, petitioner has not filed any application seeking exclusion of time taken by him in prosecuting the matter before Writ Court. Further, it is seen from typed set of papers, pending writ petition filed by the petitioner, he simultaneously prosecuted two execution petition also and the first one got dismissed for default and the subsequent one got not pressed. Hence, we cannot say the petitioner bonafidely prosecuted proceedings against respondent before another forum as he prosecuted execution proceedings before Executing Court simultaneously during pendency of writ petition. The petitioner also failed to file Execution Petition immediately after allowing of writ appeal. The Executing Court rightly came to the conclusion that the execution petition filed by the petitioner is hopelessly barred by limitation. I do not find any error in the impugned order passed by the Executing Court in E.P.No.69 of 2011 in O.S.No.63 of 1973, dated 05.03.2026.

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12. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

28-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1.The Additional Subordinate Court,
Tiruvannamalai.

2.The District Collector,
Tiruvannamalai,
Tiruvannamalai District.

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S.SOUNTHAR J.

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