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CRP.No.2672 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:05.01.2026

Pronounced on:09.01.2026

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.2672 of 2023
and CMP. No.16513 of 2023**

1.Arunagiri
2.Sujaya Giri

Petitioner(s)

Vs

Shalini Suresh

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.07.2023 in E.A. No.1 of 2022 in E.P. No.31 of 2019 in O.S. No.24 of 2015 on the file of the Additional Subordinate Judge, Chengalpet.

For Petitioners : Mr.G.P.Kothandaraman

For Respondent : Mr.S.Surya for
M/s.A.S.Kailasam Associates

ORDER



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The judgment debtors are the revision petitioners, challenging the dismissal of their application under Order XXI, Rule 106 CPC, to set aside the ex-parte order dated 25.08.2022 in E.P.No.31 of 2022, the present revision petition has been filed.

2. I have heard Mr.G.P.Kothandaraman, learned counsel for the revision petitioners and Mr.S.Surya for M/s. A.S. Kailasam Associates, learned counsel for the respondent.

3. The learned counsel for the revision petitioners, Mr.Kothandaraman, would submit that the respondent/decreed holder is none else than the daughter of the revision petitioners and she had filed a suit in O.S.No.24 of 2015 for recovery of vacant possession of the suit property from the revision petitioners, her parents, besides also seeking relief of damages for use and occupation at the rate of Rs.20,000/- per month. Mr. Kothandaraman, learned counsel for the revision petitioners, would submit that though the suit was initially dismissed by the Trial Court, in A.S.No.458 of 2024 by judgment dated 08.07.2025, this Court set aside the judgment and decree of the Trial Court and decreed the suit filed by the respondent. It is brought to my notice that pursuant to the



judgment and decree, the petitioners have also vacated and handed over possession to the respondent. The learned counsel would however, state that in E.P. No.31 of 2019, the respondent sought for execution of the decree for damages. The said Execution Petition came to be ordered by the Court on 25.08.2022. E.A.No. 1 of 2022 was therefore necessitated to set aside the ex-parte order dated 25.08.2022.

4. Mr. Kothandaraman, learned counsel for the petitioners, would contend that the first petitioner is aged 81 years and he is also suffering from various ailments for which he is taking treatment and only under such circumstances, he was unable to appear and contest the Execution Petition. The learned counsel would further state that the application was in fact filed in time and the Executing Court ought to have adopted a liberal approach by giving an opportunity to the petitioners, especially considering the fact that the decree holder is none else than the daughter of the revision petitioners.

5. Per contra, Mr.S.Surya, learned counsel appearing for the respondent/daughter, would submit that despite the First Appeal being allowed by this Court in favour of the respondent, the respondent had to file E.P. No.4 of 2018 for taking possession and only in the said



Execution Petition, delivery was recorded on 03.10.2019. He would further state that there is absolutely no defence available to the petitioners since the judgement and decree of this Court in A. S. No.458 of 2024 has become final and the Execution Petition has been filed only for recovery of the monies due and payable towards damages for use and occupation, till such time the petitioners occupied the suit property. He would therefore state that there is absolutely no merit in the revision and the Executing Court has rightly dismissed the application which does not warrant any interference in the revision.

6. I have carefully considered the submissions advanced by learned counsel for the parties.

7. In fact, considering the relationship between the parties, I also suggested the parties to amicably resolve all their disputes and even advised the respondent/daughter to give up a portion of the decree for damages. Though the respondent was willing for negotiation, the petitioners have expressed their unwillingness to pay any amount to their daughter. Hence, I am constrained to decide the revision on merits.



8. Admittedly, the decree passed by this Court in A.S. No.458 of 2024 has become final. The petitioners are liable to pay damages for use and occupation at the rate of Rs.20,000/- per month from December 2014 onwards till the date on which they vacated and handed over vacant possession to the respondent. There is absolutely no defense available to the petitioners to scuttle the Execution Petition. Only after giving sufficient opportunity to the petitioners, the Executing Court has proceeded to pass an ex-parte order on 25.08.2022.

9. Though inconvenience of the first petitioner has been expressed as the reason for not filing counter, I do not see any real purpose in permitting the petitioners to protract the proceedings further. They cannot have any objection at this juncture to question the amount payable to the respondent towards damages for use and occupation. In fact, the Executing Court has also recorded the said fact and found that by setting aside the ex-parte order dated 25.08.2022, no purpose is going to be served and that the decree holder should be permitted to enjoy the fruits of the decree. I do not see any grounds to interfere with the said findings arrived at by the Executing Court.



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10. In fine, this Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is also dismissed. No costs.

09.01.2026

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Neutral Citation Case : Yes/No

Internet: Yes/No

Index : Yes/No

To:

The Additional Subordinate Judge, Chengalpet

P.B.BALAJI, J.,

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Pre-delivery order in
CRP. No.2672 of 2023
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