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CRP No. 4378 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-02-2026

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

**CRP No. 4378 of 2025
and CMP no.22410 of 2025**

1. G.Santhosh Kumar
S/o. D.Ganesan No. 6, 2nd Street,
Brindavanam, Chetpat, Chennai 31

Petitioner(s)

Vs

1. E.Sridhar
No. 7, 1st Street, Brindavanam, Chetpat,
Chennai 31

2.E.Prabhu
No. 7, 1st Street, Brindavanam, Chetpat,
Chennai 31

3.E.Parivallal
No. 7, 1st Street, Brindavanam, Chetpat,
Chennai 31

4.Vijayalaxmi
No. 3, Anna 2nd street, Mahalakshmi
Nagar, Rajkilpakkam Chennai 73

5.G.Gopinath
No. 6, 2nd Street, Brindavanam, Chetpat,
Chennai 31

6.G.Elaiyarani



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No. 6, 2nd Street, Brindavanam, Chetpat,
Chennai 31

7.Bhavani

No. 6, 2nd Street, Brindavanam, Chetpat,
Chennai 31

Respondent(s)

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order passed in EP No.1070 of 2024 dated 28.04.2025 in O.S.No.6454 of 2019 on the file of XXVIII Assistant City Civil Court, Chennai.

For Petitioner(s): M/s. J.Umacharan

For Respondent(s): S.Vennimalai
For R.1 To R.3
R.4 to R.7 – No appearance

ORDER

Heard Mr.J.Umacharan, learned counsel for the petitioner and Mr.S.Vennimalai, learned counsel for the contesting respondents 1 to 3.

2. The first defendant is the revision petitioner challenging the order of delivery in EP No.1070 of 2024 dated 28.04.2025.

3. Learned counsel for the petitioner states that the defendants were directed to



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deliver vacant possession of the suit property and also pay Rs.3,60,000/-(Rupees Three Lakhs Sixty Thousand Only) as damages for use and occupation with further direction to pay a sum of Rs.10,000/-(Rupees Ten Thousand Only) per month towards future damages for use and occupation of the suit property from 01.11.2018.

4. According to the learned counsel for the petitioner, the defendants contested the suit by filing written statement and issues were also framed. However, the defendants were under the bonafide impression that the trial was not taken up, as after framing of issues, the suit was listed only under “not in the list category” and in the mean time, due to Covid-19 Pandemic, the defendants were not in a position to attend to the suit proceedings. When they contacted the erstwhile counsel, he was not able to give any proper explanation and he was not in a position to return the case bundles stating that he had misplaced the same. Therefore, the defendants were constrained to engage a new counsel in August 2022 and after verification of records, the new counsel informed the petitioners about the exparte decree in October 2022 passed on 22.12.2021. The defendants counsel states that an application was immediately filed to set aside the exparte decree along with an application to condone the delay. He therefore states that considering the relief sought for in the suit and the prejudice caused to the defendants, the executing court ought to have granted stay of further proceedings in the execution



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petition without proceeding to order delivery.

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5. Per contra, learned counsel for the respondents would submit that there is absolutely no bonafide in the request made by the learned counsel for the petitioner. Learned counsel for the respondents 1 to 3 states that the suit property was purchased for a valuable sale consideration under registered sale deed dated 16.10.2008 and the father of the petitioner who was then in occupation of the suit property sought for three months time to vacate and deliver possession. Taking a human approach, the respondents also acceded to the said request and granted time to vacate, despite having purchased the property in October 2008. However, it is the specific contention of the learned counsel for the respondents that taking advantage, the defendants filed a suit in O.S.No.8991 of 2008 seeking to set aside the sale deed executed by the father and also for partition and separate possession as if they had a share in the suit property and the father had no independent right to convey the property to the respondents 1 to 3. However, the said suit in O.S.No.8991 of 2008 was dismissed for default in the year 2011. An attempt to restore the suit to file was also dismissed and only thereafter, with no other option to recover possession of the property, the present suit in O.S.No.6454 of 2019 was filed for recovery of possession and damages for use and occupation and absolutely no defence is available to the defendants in view of the fact that the suit filed by them challenging the



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sale deed and claiming partition in O.S.No.8991 of 2008 also attained finality. The learned counsel would therefore state that there is no error committed by the executing court in ordering delivery and not rejecting the request for stay to enable the defendants to move the condone delay application as well as stay application.

6. I have carefully considered the submissions made by the learned counsel on either side.

7. In fact, after hearing the counsel for the parties, at the last hearing, I also indicated that I did not find any merit in the revision and if the petitioner/1st defendant requires any reasonable time to vacate and hand over, they can file an affidavit seeking such time which would be considered by this Court subject to hearing the objections of the learned counsel for the respondents 1 to 3, if any. However, today, learned counsel for the petitioner states that the petitioner is not willing to file an affidavit of undertaking and the defendants are desirous of awaiting orders in the condone delay application and setting aside application. In view of the above, I am proceeding to decide the revision on merits.



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8. As on the date of Execution Petition being taken, there was no impediment for the Court to order delivery. Mere pendency of Section 5 application and Order IX Rule 13 application would not amount to stay. In fact, I find that it was only after the revision was entertained in 2025, only pending revision in 2026 along, the condone delay application has been numbered.

9. In the light of the above, I do not find any infirmity in the order of the executing Court ordering delivery. The civil revision petition is dismissed. The executing court shall dispose of E.P.No.1070 of 2024. In the meantime, it shall be open to the petitioner to prosecute the condone delay application and setting aside application.

10. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2026

sr
Index:yes/no
Website:yes/no
Speaking Order/Non-speaking order
To
The XXVIII Assistant City Civil Court, Chennai



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P.B.BALAJI.,J

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