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CRP No.4084 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 09.03.2026

ORDER PRONOUNCED ON : 01.06.2026

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

CRP No.4084 of 2025

and CMP Nos.21118 of 2025 and 3 of 2026

Mohan Kumar,
S/o.Jothi,
No.13, Muthusamy Nagar Extension,
S.N.Savadi, Kondoor,
Cuddalore-607 002.

...Petitioner

Vs.

1.A.Krishnakumar,
S/o. Arumuga Mudaliar,
No.9, Barathidasan Street,
Villiyanoor, Pondicherry.

2.Manjini Gounder,
S/o. Rangasamy Gounder

3.Chandra,
W/o.Manjini Gounder

4.M.Manikandan,
S/o.Manjini Gounder,

5.M.Angel,
W/o.M.Manikandan,

All are residing at:
No.40, Madukkarai Main Road,
Thanikuppam Village,



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Hamlet of Embalam,
Nettapakkam, Commune,
Pondicherry.

...Respondents

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Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, 1908, praying to set aside the order dated 08.07.2025 in E.P.No.102 of 2021 in O.S.No.144 of 2014 passed by the I Additional District & Sessions Judge, Cuddalore, in so far as it directs execution against the petitioner (respondent No.3) by directing the attachment and sale of the Schedule B property purchased by him under registered sale deed dated 29.11.2017.

For Petitioner (s) : Mr.S.Ganesan

For Respondent (s): Mr.C.A.Diwakar
for R1

ORDER

Civil Revision Petition is filed to set aside the order passed in E.P.No.102 of 2021 in O.S.No.144 of 2014, dated 08.07.2025, in so far as it directs execution against the petitioner, by way of attachment of sale of B schedule property purchased by him from the respondents 2 and 3, under the registered sale deed dated 29.11.2017.

2. The facts are largely undisputed. It is an admitted fact that the 1st respondent obtained a decree in O.S.No.144 of 2014 on 24.08.2018, for refund of the advance amount of Rs.20,00,000/- together with interest at 12% per annum from the date of the



plaint till the date of the decree and thereafter, 6% per annum till realisation. It is also not disputed that during the pendency of the suit, the petitioner purchased a portion of the suit schedule property from the respondents 2 and 3 and the same was described as 'B' schedule property in the execution proceedings. Likewise, the properties alleged to have been purchased from and out of sale consideration of the 'B' schedule property by the respondents 4 and 5, who are the son and daughter-in-law of the respondents 2 and 3 were described as 'C' and 'D' schedule properties.

3.The Executing Court placing reliance on Section 55(6)(b) of the Transfer of Property Act (Hereinafter called as 'the Act') held that the decree obtained by the 1st respondent arose out of the agreement of sale relating to the suit property and consequently a statutory charge stood created over the property. The Executing Court rejected the contention of the petitioner that Section 55(6)(b) of the Act would apply only to a suit for specific performance or rescission of contract and not to a money decree for refund of advance amount. The Executing Court further held that since the petitioner had purchased a portion of the suit property pending suit, the statutory charge created under Section 55(6)(b) of the Act, binds not only the vendors, but also the persons claiming under them. However, the Executing Court declined to extend the relief against the properties purchased by the respondents 4 and 5 and confined the



execution only against 'A' and 'B' schedule properties.

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4.The learned counsel for the petitioner submitted that in absence of a declaration of any charge in the decree, the Executing Court ought to have treated the decree as a simple money decree and ought not to have invoked the provisions under Section 55(6) (b) of the Act. The learned counsel further submitted that the Executing Court failed to note that the provisions of Section 55(6)(b) of the Act, would apply only to cases where a decree was passed in a suit for specific performance or rescission of contract. The learned counsel therefore submitted that the present decree being a simple money decree for refund of advance amount, without any declaration of a statutory charge, under Section 55(6)(b) of the Act, the Executing Court erred in allowing the EP by directing the Decree holder to proceed against the petitioner's property described as 'B' schedule property.

5.Contrarily, the learned counsel for the 1st respondent submitted that as the decree for refund of advance amount, arose out of an agreement of sale of the suit property and on account of failure of the vendors to perform their part of the contract the provisions of Section 55(6)(b) of the Act, were attracted. The learned counsel submitted that the decree could not be treated as a simple money decree divorced from the agreement of



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sale and therefore no declaration under Section 55(6)(b) of the Act was necessary. The

learned counsel further submitted that as the statutory charge under Section 55(6)(b) of

the Act, extends not merely against the vendor, but also on the persons claiming under

him, the Executing Court was right in allowing the EP against the petitioner.

6. Heard both the learned counsels and perused the materials placed on record.

7. At the threshold, the provisions of Section 55(6)(b) of the Transfer of Property Act, are extracted, and it reads as follows:

“55. Rights and liabilities of buyer and seller.—In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following or such of them as are applicable to the property sold:-

(6) The buyer is entitled—

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount;



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and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.”

8.The contention of the learned counsel for the petitioner is that Section 55(6)(b) of the Act, applies only to cases where the decree had been passed in a suit for specific performance or rescission of contract. The learned counsel further contended that the decree was a simple money decree, and that in the absence of a declaration of charge under Section 55(6)(b) of the Act, the Executing Court erred in applying the said provision to proceed against the property of the petitioner, who is a third party to the suit proceedings. Let me examine the said contentions. Upon a perusal of the plaint as well as the judgment in O.S.No.144 of 2014, it is seen that the suit claim emanated from the agreement of sale dated 02.07.2014, and the relief of refund of advance amount, was also granted only upon a finding that there was no default on the part of the 1st respondent and that the respondents 2 and 3 alone had committed breach of contract. In such circumstances, this Court is of the view that the decree for refund of advance amount flows from the breach of the agreement of sale. The claim for refund, in the view of the this Court, is intrinsically traced to and flows from the agreement of sale itself and consequently the contention of the learned counsel for the petitioner that the

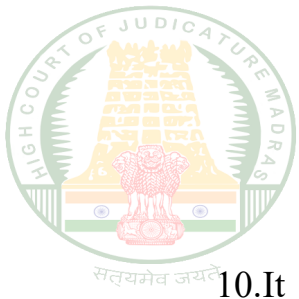


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decree for refund of money is not one for specific performance or recession of contract and as such the provisions of Section 55(6)(b) of the Act are not attracted cannot be countenanced.

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9. Having said so, the next question that arises for consideration is whether the Executing Court in the absence of any declaration of charge in the decree could have applied the provisions of Section 55(6)(b) of the Act, to proceed with the petitioner's property. It is significant to note that the decree passed in O.S.No.144 of 2014, does not declare any charge over the suit property under Section 55(6)(b) of the Act. Though Section 55(6)(b) of the Act, recognises the right of the buyer to claim charge over the property for the amount properly paid in anticipation of delivery, such charge, in the view of this Court, in the absence of an adjudication or declaration in the decree itself, cannot automatically be enforced in the execution against a third party purchaser claiming under the judgment debtor. In the present case, the decree holder has obtained a simple money decree for refund of advance amount with interest without any adjudication or declaration of a charge under Section 55(6)(b) of the Act. It is trite that the Executing Court cannot travel beyond the decree and independently declare or enforce a statutory charge, which was neither pleaded nor adjudicated in the suit proceedings.

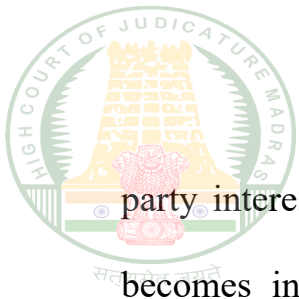


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10. It is settled law that the Executing Court is bound to the terms of the decree and cannot enlarge its scope. In the absence of any declaration of charge in the decree, the question of proceeding against 'B' schedule property purchased by the petitioner on the strength of Section 55(6)(b) of the Act does not arise. Admittedly, the petitioner is not the judgment debtor. The suit property purchased by him was sought to be proceeded against solely on the premise that a statutory charge stood created under Section 55(6)(b) of the Act. Since this Court has found that no such charge has been declared or incorporated in the decree, the impugned order passed by the Executing Court cannot be sustained.

11. The contention of the learned counsel for the 1st respondent that the charge under Section 55(6)(b) of the Act, being a statutory charge a simple money decree for refund of advance amount would itself automatically create an enforceable charge over the property cannot be accepted. It is to be noted that a statutory right created under Section 55(6)(b) of the Act and an executable charge are conceptually distinct. In the view of this Court the Section only furnishes a substantive basis for claiming a charge, but enforceability against the property arises only upon incorporation of such declaration in the decree, because the charge affects not merely the judgment debtor but also 3rd

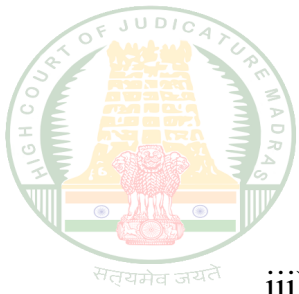


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party interests in the property. Hence, certainty and precision in the decretal portion becomes indispensable so that the nature and extent of encumbrance are formally recorded. Further Section 55(6)(b) of the Act itself does not prescribe any automatic mode of enforcement. The mechanism for enforcement flows from the decree declaring the charge and permitting realisation against the property. In the considered view of the Court a decree for refund and a decree declaring charge operate in different juridical spheres. The former creates a personal obligation and the latter creates a proprietary security interest over immovable property affecting third party interests in the property and not merely the judgment debtor. Hence, one does not subsume the other. The Executing Court failed to note this juridical distinction and therefore, this Court is of the considered view that the Executing Court exceeded its jurisdiction in invoking Section 55(6)(b) of the Act for proceeding against the petitioner's property in execution of a simple money decree.

12.This Court has gone through the following judgments produced by the learned counsel for the 1st respondent.

- i) ***Videocon Properties Ltd. vs. Dr.Bhalchandra Laboratories and others,***
reported in ***(2004) 3 SCC 711***
- ii) ***Delhi Development Authority vs. Skipper Constructions Co. (P) LTD.,***



reported in (2000) 10 SCC 130.

iii) *K.Shanmugam and another vs. C.Samiappan and others*, reported in 2013 (6) CTC 28.

iv) *Paramasivam and another vs Raja Ganapathi Finance & Investments Ltd and others*, reported in 2017 SCC OnLine Mad 11191.

v) *Shashikumar vs. G.Vasantha Simriji Sharath Chandrakumar (Died) and others*, reported in 2025 SCC OnLine Mad 4063.

vi) *Nagammal and others vs. Ayyavu Thevar and others*, reported in 85 Law Weekly 229 (Part 12).

In all the aforesaid judgments, the issue arose in entirely different factual contexts, namely, with regard to questions such as whether interest on advance amount would partake the character of a charge, the computation of limitation and other ancillary aspects. In none of the said cases, did the precise issue that is posed before this Court fell for adjudication. Hence this Court is of the view that the judgments relied on by the learned counsel for the respondent are clearly distinguishable on facts and consequently have no application to the case on hand.

13.This Court having found that, in the absence of any declaration of the charge in the decree, the Executing Court could not have enforced such charge in execution. The



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matter does not conclude there, the pleadings based on record disclose rival contentions regarding pendente lite transfer and alleged fraudulent alienation with an intent to defeat the decree holder's rights. Whether the transfer affected in favour of the petitioner during the pendency of the suit attracts doctrine of lis pendence under Section 52 of the Act and whether the transaction is liable to be tested on the anvil of Section 53 of the Act are issues which require adjudication on the basis of the pleadings, evidence and surrounding circumstances, such issues have not been comprehensively examined by the Executing Court. This Court is therefore of the view that the interest of justice would be served by remitting the matter to the Executing Court for fresh consideration limited to the aforesaid aspects. This Court has not expressed any opinion on the merits of the rival contentions concerning lis pendence and the alleged fraudulent transfer, lest, any observation made herein prejudice or influence the Executing Court while adjudicating the issues.

14. Accordingly, **this Civil Revision Petition is partly allowed** and the finding of the Executing Court in so far as it proceeds on the basis of enforcement of statutory charge under Section 55(6)(b) of the Act, is set aside. The matter is remitted to the Executing Court for fresh consideration on the basis of limited question whether the transfer in favour of the petitioner by Section 52 of the Act is valid, whether transfer is



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vitiated by fraud or intent to defeat right of decree holder and what relief the decree holder is entitled in law.

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15.The Executing Court shall afford sufficient opportunities to all parties and dispose of the matter afresh, uninfluenced by the observations made in this order as expeditiously as possible, preferably within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

01.06.2026

Index:Yes/No
Speaking Order:Yes/No
Neutral Citation:Yes/No
Internet:Yes
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N.MALA,J.

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To
The I Additional District & Sessions Judge,
Cuddalore.

Order in CRP No.4084 of 2025

Order Pronounced on 01.06.2026