



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.02.2026

Pronounced on: 27.02.2026

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.4403 of 2025
and CMP. No.22538 of 2025**

K.Manikandan

Petitioner(s)

Vs

1.Amirthavalli
2.Selvi
3.Indira
4.Dhanalakshmi
5.Vijayalakshmi

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Section 115 of CPC, to set aside the fair and decreetal order dated 15.04.2025 passed in E.A. No.72 of 2023 in E.P. No.33 of 2022 in O.S. No.701 of 1995 on the file of the Principal District Munsif, Cuddalore.

For Petitioner : Mr.W.M.Abdul Majeed

For Respondents : Mr.P.Valliappan,
Senior Counsel for
Mr.S.M.S.Sriram Narayanan



ORDER

A third party to the proceedings filed an Application under Section 47 of CPC to declare that the Execution Petition is not maintainable and the decree cannot be executed. The said Application was dismissed by the Trial Court, as against which the present Revision Petition has been filed.

2. I have heard Mr.W.M.Abdul Majeed, learned counsel for the petitioner and Mr.P.Valliappan, learned Senior Counsel for Mr.S.M.S.Sriram Narayanan, learned counsel appearing for the respondents.

3. The learned counsel for the revision petitioner Mr.W.M.Abdul Majeed, would contend that the father of the revision petitioner was a party to the suit and initially, a decree was passed as against which, the defendants including the father of the petitioner preferred an Appeal. The First Appeal preferred by the defendants, including the father of the revision petitioner, was allowed by the Additional District Court, Cuddalore. As against the same, the respondents moved this Court by way of Second Appeal in S.A. No.226 of 2004. In the Second Appeal, the petitioner's father was arrayed as the second respondent. However, the petitioner's father was given up by the respondents and thereafter, the Second Appeal was allowed and in order to execute the decree in their favour, the respondents filed an Execution Petition. In the said Execution



Petition, the revision petitioner contending that he is in possession of the decreetal property filed an Application under Section 47 of CPC. It is the case of the revision petitioner that his father left the family without any information and his whereabouts are not known even today and it is only the petitioner and his family, who continue to reside in the decreetal property.

4. Mr.Abdul Majeed, learned counsel for the petitioner would contend that when the petitioner's father had been given up in the Second Appeal, there was no decree against the petitioner's father and in such circumstances, the decree cannot be executed against the petitioner who is in possession of the property. He would therefore state that the Executing Court without considering the said moot point, has erroneously dismissed the Section 47 Application. He has relied on the following decision in support of his contentions, *Kishun (Dead) through Lrs. Vs. Bihari (D) by Lrs.*, reported in (2005) 6 SCC 300.

5. Per contra, Mr.P.Valliappan, learned Senior Counsel appearing for the respondents/decreet holders would invite my attention to the written statement filed by the defendants in the suit before the Trial Court, where the petitioner's father has adopted the written statement filed by the third defendant where it has been stated that it is only the first defendant and the third defendant who are in possession of the suit property by paying house taxes. Referring to the said



written statement, Mr.P.Valliappan, learned Senior Counsel would state that the father of the petitioner having adopted the said written statement, has conceded the fact that he was not in possession of the suit property. Therefore, it is contended by Mr.P.Valliappan, learned Senior Counsel that the petitioner cannot take a different or better stand than what his father had taken before the Trial Court. He would therefore state that when the petitioner's father has not been in possession, the petitioner cannot now seek to question the executability of the decree, which is only against the other defendants who have admittedly plead in possession of the property. Mr.P.Valliappan, learned Senior Counsel would further rely on the following decisions in support of his contentions:-

(1) *Kizhiakalathil Puthan Veettil Thavazhi Karnavan and Manager Choroti Amma's son, Gopalan Nair Vs. Manikat Variath Ukkali Varissiar's son Sankunni Variar and others*, reported in 1934 L.W. 730;

(2) *Gajraj Vs. Sudha and others*, reported in (1999) 3 SCC 109; and

(3) *J.Vijaya Bhaskar and others Vs. J.Jayalakshmi and others*, reported in 2004-2-L.W.614;

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



7. It is a peculiar case where the petitioner's father was arrayed as the second defendant before the Trial Court. The second defendant suffered a decree, he joined with the other defendants and preferred a First Appeal. The First Appeal came to be allowed and the decree passed by the Trial Court was set aside. Aggrieved by the dismissal of the suit by the First Appellate Court, the respondents preferred Second Appeal before this Court and in the Second Appeal, the petitioner's father was given up. It is the contention of Mr.P.Valliappan, learned Senior Counsel that when even the petitioner admit that his father's whereabouts have not been known to the family, the factum of giving up of the petitioner's father in the Second Appeal cannot be held to be fatal to the case of the respondents/decreed holders.

8. It is also the submission of the learned Senior Counsel that in any event, the petitioner's father has admitted to the factum of not being in possession of the suit properties. It is therefore, the submission of the learned Senior Counsel that the Executing Court has rightly dismissed the Section 47 Application. It is in this regard, that he has relied on various decisions, in *Kizhiakalathil Puthan Veetil Thavazhi Karnavan and Manager Choroti Amma's son, Gopalan Nair's* case, (referred herein supra) this Court held that a party who comes to the suit as Legal Representatives of another party cannot be



allowed to depart from or vary or contradict the stand taken up by the party's whose legal representatives he is.

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9. In Gajraj's case, (referred herein supra), the Hon'ble Supreme Court held that the legal representatives take the place of and are bound by the pleadings of their predecessor and they cannot pursue their own individual rights and interest, particularly when they had earlier failed to establish themselves as having any other status in relation to the case.

10. In J.Vijaya Bhaskar's case, (referred herein supra), this Court held that legal representatives are not entitled to plead other than what he has already been pleaded by the then existing party. No doubt, when legal representatives step into the shoes of the deceased party to the proceedings, they are bound by the stand taken by their predecessors in interest. It is not open to them to take any different stand. This rule will certainly apply with regard to the pleadings in the suit. However, when it comes to question of execution of a decree and it is claimed by the petitioner who though happens to be a legal representative of one of the defendants in the suit, that he and his family are in possession of the decreetal property, I am unable to see how these decisions would apply, especially when Order XXI of CPC provides for circumstances of this nature



and also remedies available to both the decree holder as well as the judgment debtor, including third parties.

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11. In *Kishun's* case, (referred herein supra), the Hon'ble Supreme Court held that when legal representatives of neither of the parties are brought on record, the Second Appeal would stand abated and the decree passed in favour of the dead party or against the dead party would amount to a nullity. In the Section 47 application, I find that parties have led evidence, where the 5th respondent, who was examined herself as R.W.1 in the Section 47 Application, in her cross examination has stated that only because the respondents were in possession, the proceedings have been instituted for recovery of possession. She has also spoken about the photographs which were confronted to her and she is admitted that there is an old wall which is seen in Ex.R3. She has also admitted that Ex.R2 Police Complaint was given to prevent the petitioner from putting up construction. It is thus seen that the respondents were fully aware of the fact that the petitioner was in possession of the decretal property that is the reason why the petitioner has sought to execute the decree, pursuant to having succeeded before the Second Appellate Court i.e., this Court. Unfortunately for the respondents, in the Second Appeal, they have given up the father of the petitioner who was the second defendant in the Original Suit. The second defendant had succeeded before the First Appellate Court and the decree in



favour of the second defendant has not been set aside in Second Appeal as the father of the petitioner has been given up.

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12. It is the contention of the learned Senior Counsel that the decree against the other defendants having become final, it is open to the respondents to execute the same and recover possession of the property and it is not open to the petitioner to file a petition under Section 47 of the CPC as today, he does not claim as legal representative of the second defendant, but claims to be in independent possession of the decreetal property, even to the exclusion of the other defendants.

13. In this regard, I find force in the submissions of Mr.P.Valliappan, learned Senior Counsel, it is only when the petitioner claims under the judgment debtor or the defendant that he can maintain an application under Section 47 CPC. It is his case that even the other defendants are not in possession and it is only the petitioner and his family who are in possession. Therefore, I am in agreement with the arguments of the learned Senior Counsel that the Application under Section 47 CPC was not the proper recourse to the petitioner. At the same time, even according to the respondents, it is the petitioner from whom possession has to be taken and in this regard, the petitioner cannot be



deprived of a fair opportunity to contest the decree, especially when there was also no decree against his father who was a party defendant to the suit.

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14. In the light of the above, though I am inclined to dismiss the revision holding that the Section 47 Application was not maintainable and the order of Executing Court does not warrant interference. It shall be open to either of the parties, to invoke Order XXI, Rule 97 CPC and seek adjudication of their rights with regard to the possession of the decreetal property and if any such application is filed, the Executing Court shall dispose of the same on merits and after affording fair opportunity to both parties, as expeditiously as possible, preferably within a period of three (3) months.

15. In fine, with the above observation, this Civil Revision Petition is **dismissed.** Consequently, connected Miscellaneous Petition is also dismissed.

No costs.

27.02.2026

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Neutral Citation Case : Yes/No

Internet: Yes/No

Index : Yes/No

To:

The Principal District Munsif, Cuddalore.



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P.B.BALAJI, J.,

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Pre-delivery order in
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