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CRP Nos. 3699 and 3700 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-03-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CRP Nos. 3699 & 3700 of 2019

CRP No. 3699 of 2019

Muthusamy
S/o.Sellappa Gounder, Siddhappatt Village,
Kattuputhoor Post, Thottiyam Taluk, Trichi
District

..Petitioner(s)

Vs

1. Gowthami
W/o.P.Senthilnathan,

Sigamani (died)

2. Balachandrasekar, S/o.Seshachalam,

3. Bakkiyam
W/o.Late.Sigamani,

4. Dhandapani
S/o.Late.Sigamani, Res

5. Sasikala
D/o.Late.Sigamani,

6. Suguna
D/o.Late.Sigamani,

..Respondent(s)

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 04.03.2019 made in REA No.25 of 2018 in REP No.138 of 2007 on the file of the Additional Sub Court, Namakkal.



CRP No. 3700 of 2019

Muthusamy
S/o.Sellappa Gounder, Siddhappatt Village,
Kattuputhoor Post, Thottiyam Taluk, Trichi
District

..Petitioner(s)

Vs

Sigamani (died)

1. Balachandrasekar, S/o.Seshachalam,

2. Bakkiyam
W/o.Late.Sigamani,

3. Dhandapani
S/o.Late.Sigamani, Res

4. Sasikala
D/o.Late.Sigamani,

5. Suguna
D/o.Late.Sigamani

.. Respondent(s)

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 04.03.2019 made in REP No.138 of 2007 in O.S.No.617 of 1999 on the file of the Additional Sub Court, Namakkal.

For Petitioner(s):

Mr.T.Dhanyakumar
(in both CRP)

For Respondent(s):

Mr.P.Mani
Not ready in notice RR2 to 6
(in CRP.No.3699 of 2019)

Not ready in notice RR1 tp 5
(in CRP.No.3700 of 2019)



COMMON ORDER

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These Civil Revision Petitions have been made challenging the orders and decretal orders dated 04.03.2019 made in REA No.25 of 2018 in REP No.138 of 2007 and REP No.138 of 2007 in O.S.No.617 of 1999 on the file of the Additional Sub Court, Namakkal.

2. Heard Mr.T.Dhanyakumar, learned counsel appearing on behalf of the petitioner and Mr.P.Mani, learned counsel appearing on behalf of the first respondent in CRP.No.3699 of 2019.

3. Mr.T.Dhanyakumar, learned counsel for the petitioner would submit that the petitioner has a decree of specific performance against the deceased respondent which was also executed and a sale deed has also been executed by the Executing Court in his favour. However, when he had taken out an application for delivery of possession, the obstruction petitions was filed by two individuals claiming to be the owners of the property. The Court below upholding the objections, allowed the objections petitions, thereby dismissed his application for delivery of possession. Challenging the orders passed, he had filed the present Revision Petition.

4. He would submit that the property originally belonged to one Sigamani who had entered into an Agreement of Sale with him and failed to honour the



Agreement of Sale. Hence, he had approached the Court in O.S.No.617 of 1999, wherein a decree for specific performance and delivery of possession was ordered. Pursuant to the same, a Sale Deed was also executed in his favour in E.P.No.538 of 2006 on 31.01.2007 and the E.P. stood closed on 25.10.2007. Thereafter, the petitioner had taken out an application for delivery of possession. Hence, he would submit that the Court below without considering the sale deed that had been executed by it failed to uphold the title in favour of the petitioner and ordered the objection petitions, thereby dismissing the petition where he had sought for delivery. Hence, he would seek indulgence of this Court and direct delivery of possession to the petitioner.

5. Countering his arguments, Mr.P.Mani, learned counsel appearing on behalf of the first respondent in CRP.No.3699 of 2019 would submit that one Sigamani had earlier mortgaged the property in favour of her mother Madheswari, who had instituted a suit in O.S.No.595 of 1999, wherein a decree was granted in her favour and against the said Sigamani, the subject property was also brought to auction in the said suit and a third party auction purchaser had purchased the property. After the purchase of the property, the property was purchased by her mother in the name of her minor brother Arun Kumar. Only after the decree in the suit for mortgage, the petitioner's suit was decreed and sale deed executed. He would submit that the said Arun Kumar had also filed an



obstruction petition and the same was also allowed. The petitioner had not challenged the same.

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6. He would further submit that the petitioner had also taken out a petition seeking to deliver possession of the property to him based upon the decree that he had obtained in the mortgage suit filed by the mother and the same also came to be dismissed and remains unchallenged. Hence, he would submit that the petition is estopped from filing this present Revision selectively challenging the impugned orders in these Revision Petitions. Without challenging the orders passed against him in other Petitions which would only lead to an anomalous situation of varying orders, if this Court would interfere in these Revisions. He would submit that the said submission is without prejudice to the submissions of merits.

7. He would further submit that the said Sigamani, who was the original owner of the property had mortgaged the property in favour of the mother of the petitioner and also entered into a Sale Agreement with the petitioner. The suit for mortgage was decreed much earlier and the auction sale that was conducted pursuant to the decree in the Execution Petition was also confirmed by the Executing Court on 07.02.2001 and the auction purchaser had taken possession of the property on 26.09.2001. Thereafter, the property was also purchased in the name of her brother, who was a minor at that point of time and was treated as a joint family property. Hence, she had taken out an application under



Section 47 of CPC objecting to the delivery of possession sought for by the petitioner. He would submit that the Sale Agreement between the petitioner and the said Sigamani itself is a sham and nominal agreement only to defeat the rights of the mortgagor, who had a decree of recovery based on the mortgage. Therefore, he would submit that there is no merits in the Revision and seeks for dismissal of the Revision Petitions.

8. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

9. It is not disputed that the property originally belonged to one Sigamani, who suffered a decree for mortgage, pursuant to which the property had been sold by the Executing Court in a public auction and possession has also been handed over to the auction purchaser. The said auction purchaser had sold the property to a minor represented by his mother. The petitioner, who had instituted a suit for specific performance was benefitted by an *ex-parte* decree on 12.04.2004.

10. A perusal of the decree would indicate that even though the said Sigamani had entered appearance through a counsel had thereafter, not participated in the suit which had led to an *ex-parte* decree against her. Such *ex-parte* decree came to be passed much after the decree in a mortgage suit filed against the said Sigamani, wherein pursuant to the Execution Petition filed by



the decree holder therein the property had been brought to auction sale and sold to a third party.

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11. The Court below had considered these aspects and found that the said decree granted in favour of the petitioner is an inexecutable decree, in view of the fact that the property had been sold by the Court auction during the pendency of the suit of specific performance filed by the petitioner and therefore, had dismissed his claim for delivery of possession. As rightly pointed out by the learned counsel for the respondent, the petitioner had also suffered an order under Section 47 filed by the person in whose name the property now stands. The same had not been challenged by the petitioner. Similarly he had also failed to challenge the adverse order that was made against him in the REP filed for delivery in the suit for mortgage and no reasons have been attributed. When the petitioner had failed to challenge the order made in the petition filed by the owner of the property, this Court is of the view that the present Revision Petitions as filed by the petitioner deserves not to be considered on merits.

12. For the aforesaid reasons, these Revision Petitions fails and accordingly dismissed. However, there shall be no order as to costs.

12-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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K.KUMARESH BABU, J.

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