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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-11-2026

Case QR

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

CRP No. 7179 of 2026 and

CMP No.30959 of 2026

CNR: {HCMA012109952026}

Nagarajan, s/o A.S.Nagaiah,
Swarna Illam,
No.30/8, Sundara Vinayagar Koil 1st Street,
Perambur, Chennai-600 011.

..Petitioner(s)

Vs

1. R.Venkatesan, S/o Raghavan,
   No.36 (old No. 15),
   Sundara Vinayagar Koil 1st Street,
   Perambur, Chennai-600 011Chennai

2. The Commissioner
   Greater Chennai Corporation,
   Ripon Buildings, Chennai-600 003

3. The Assistant Commissioner
   Greater Chennai Corporation,
   Ayanavaram Zone-IV, Chennai

4. The Executive Engineer
   Greater Chennai Corporation,
   Zone-IV, Division-53, Chennai.

5. The Assistant Engineer
   Greater Chennai Corporation,
   Zone-IV, Division-53,, Chennai

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..Respondent(s)

Prayer: Civil Revision Petition is filed under Section 115 of CPC to set aside the order dated 27.08.2026 in E.A.No.05 of 2026 in EP.No.529 of 2020 in O.S.No.14551 of 2010 on the file of the XXVI Assistant City Civil Court, at Allikulam, Chennai and consequently direct the XXVI Assistant City Civil Court, Allikulam, Chennai to impleaded the petitioner as the 5th Defendant/party to the execution proceedings.

For Petitioner(s): Mr. L.K.Sudhirgha Basu

ORDER

This Civil Revision Petition has been filed challenging the order passed by the Executing Court, dismissing the application filed by the petitioner seeking his impleadment in the execution petition filed by the 1st respondent/ decree holder.

2. The 1st respondent herein/ plaintiff filed a suit in O.S.No.14551 of 2010 seeking permanent injunction restraining the defendants 5 and 6 from putting up any unauthorised construction in front of his house at No.35, Sundara Vinayagar Koil 1st street, Perambur, Chennai 600 011. He also sought for mandatory injunction directing the defendants 1 to 4 to demolish the illegal and unauthorised construction put by the defendants 5 and 6 in the Street in front of

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his property. The petitioner herein was arrayed as 5th defendant in the suit. The respondents 2 to 5 herein, the officials of the local authority were added as defendants 1 to 4 in the said suit. The above said suit was decreed by injuncting the petitioner and the 6th defendant therein from putting up any new construction and the officials of the local authority, namely respondents 2 to 5 herein were directed to remove the unauthorised construction put up by the defendants 5 and 6 in the street, in front of 1st respondent's property. It is pertinent to note that the petitioner, who was arrayed as 5th defendant in the suit remained exparte and decree for injunction was passed against him. Subsequently, the 1st respondent/ plaintiff filed an Execution Petition in E.P.No.529 of 2020 to execute the decree for mandatory injunction passed against the respondents 2 to 5/ defendants 1 to 4. In the said execution petition, the petitioner herein filed an application in E.A.No. 5 of 2026 seeking his impleadment as a party /respondent and the same was dismissed by the Executing Court. Aggrieved by the same, the petitioner has come before this court by filing the present civil revision petition.

3. The learned counsel for the petitioner would submit that the alleged unauthorised construction was put up by the petitioner and hence, any execution petition for removal of the said construction should be decided only in his presence. The learned counsel also relied on the decision of the Apex Court in

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Mumbai International Airport Pvt. Ltd. Vs. regency Convention Centre & Hotels Pvt. Ltd. and others reported in ***2010 AIR Supreme Court 3109***.

4. Admittedly, no decree for mandatory injunction was passed against the petitioner/5th defendant. The constructions are found to be put up in the Street, belong to the local authorities, in front of the house of the 1st respondent/decree holder, causing hindrance to his ingress and egress. When there is no decree for mandatory injunction against the petitioner, it is not necessary for the 1st respondent/ decree holder to implead the petitioner as a party in the execution petition. If the right of the petitioner had not been adjudicated in the suit, the presence of the petitioner is necessary to adjudicate the right of the petitioner in the execution petition. In the case on hand, the petitioner was made as a party/5th defendant in the suit and his right was adjudicated by the Trial Court after full trial, though the petitioner remained exparte. The decree for permanent injunction passed by the Trial Court is binding on the petitioner, unless it is set aside, in the manner known to law. As far as the decree for mandatory injunction is concerned, the same was passed only against the officials, who are competent authorities to remove the construction put up in the Street and no mandatory injunction was passed against the petitioner. In such circumstances, the petitioner is not a necessary party in the execution petition.

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5. It is submitted by the learned counsel for the petitioner that already the petitioner has taken steps to set aside the exparte decree passed in the suit and hence, till the disposal of the proceedings initiated by the petitioner to set aside the exparte decree, further proceedings of the execution petition shall be stayed.

6. It is seen from the typed set of papers that exparte decree was passed against the petitioner as early as on 28.02.2018 and now 8 years have gone. It appears that the petitioner has not taken any steps to set aside the exparte decree immediately. Since no stay was granted by the competent court, the Executing Court was justified in proceed with the execution petition. Therefore, I do not find any error in the impugned order passed by the Executing Court.

7. Accordingly, this civil revision petition is dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

17-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
MST

To:

The XXVI Assistant Judge,
City Civil Court, Chennai.

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S.SOUNTHAR, J.

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