



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:21.01.2026

Pronounced on: 30.01.2026

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.4735 of 2025
and CMP. Nos.23905 & 32472 of 2025**

S.Keerthi @ S.Keerthana

Petitioner(s)

Vs

R.Kandasamy (Died)

1.Lakshmi

2.Balamaheshwari

3.Anusuya

4.Vijaypriyadharshini

5. Minor Nagarvathini,

Rep. by her Grandmother Lakshmi.

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside petition and orders dated 19.09.2025 made in E.A. No.5 of 2025 in E.A. No.62 of 2017 in EP. No.19 of 2010 in O.S. No.25 of 2004 on the file of the learned First Additional District Court, Erode.

For Petitioner : Mr.N.Manoharan

For Respondents : Mr.M.Palani

ORDER



Aggrieved by the dismissal of an application in EA.No. 5 of 2025, the 5th judgment debtor, has come up by way of this revision petition.

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2. I have heard Mr.N.Manoharan, learned counsel for the revision petitioner and Mr.M.Palani, learned counsel for the contesting respondents/decreed holders.

3. Mr.N.Manoharan, learned counsel for the petitioner, would contend that the petitioner was set ex-parte and in the Execution Proceedings initiated by the respondents/decreed holders and within a period of 3 days, an application was promptly preferred for setting aside the ex-parte order, seeking an audience to contest the Execution Petition on merits. Inviting my attention to the impugned order, Mr.N.Manoharan, learned counsel for the revision petitioner would contend that the Executing Court has gone into the merits of the case and without noticing that the request made was only for setting aside the ex- parte order dated 01.09.2025, the Court has erroneously dismissed the application which was in fact filed without any loss of time. He would pray for the revision being allowed, so that an opportunity is given to the petitioner to contest the Execution Petition on merits.

4. Per contra, Mr.M.Palani, learned counsel for the respondents/decreed holders would submit that the decree holders have obtained a decree for specific



performance and the decree has been put to execution. According to the learned counsel Mr.Palani, the decree has become final and only in order to recover possession of the property, EP has been filed and there is absolutely no defence available to the petitioner and the attempt is only to protract proceedings and deny the fruits of the decree to the decree holders.

5. Mr.Palani, learned counsel also relies on the decision of the Honourable Supreme court in *Periyammal (dead) through legal representatives vs. V. Rajamani and Anr reported in (2025) 9 SCC 568*, where the Hon'ble Supreme Court has issued directions to Executing Courts to dispose of the Execution Petitions within six months and beyond the period of six months, the Executing Court has been directed to record reasons in writing for delay occasioned, if any. Therefore, the contention of Mr.Palani, learned counsel for respondents/ decree holders is that the Executing Court cannot be found fault with and there is no infirmity in the order passed by the Executing Court dismissing the setting aside application.

6. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the impugned order.



7. Admittedly, the respondents filed a suit in O.S.No. 25 of 2004 for specific performance of an agreement of sale. The suit was decreed on 17.01.2005 for specific performance of the said agreement and in order to recover possession from the judgment debtors, the Execution Petition has been filed. The case of the petitioner is that the petitioner is not a party to the sale agreement and she has already filed a suit in OS.No. 203 of 2006 on the file of the District Judge, Erode for partition. However the suit was dismissed on 28.02.2017, as against which a first appeal is pending before this Court in AS. No. 596 of 2017. It is the specific case of the revision petitioner that in order to file counter in the Execution Petition, particulars was sought for from the Counsel in Madras regarding the First Appeal and hence the counter could not be filed on 01.09.2025 resulting in an ex-parte order being passed. The petition has been filed on 04.09.2025, immediately after the ex-parte decree was passed on 01.09.2025 with no inordinate delay. The reasons assigned by the petitioner in the supporting affidavit are also justifiable and acceptable as it is an admitted case that as against the dismissal of the partition suit the first appeal is pending before this Court. However, the Trial Court without considering the reasons set out in the affidavit in support of E.A.No.5 of 2025 has dismissed the application.

8. No doubt, initially it was contended by Mr.Manoharan, at the time of



admission of the Civil Revision Petition that the order dismissing E.A.No. 5 of 2025 was not even a speaking order. However, learned counsel, Mr.Palani along with the counter affidavit of the respondent No. 3 has enclosed the detailed order passed by the Executing Court. However, I find that the order has been uploaded only after the revision was filed before this Court. In any event, I find from the order passed by the Executing Court that the impugned order though a speaking order, has not even considered the reasons assigned for non-filing of the counter which alone resulted in the ex-parte order being passed in the Execution Petition.

9. The Executing Court unfortunately has gone into the merits of the claims of the parties and rendered a finding that O.S.No. 203 of 2006 has nothing to do with the present suit for specific performance or its execution, and even though an appeal is pending as against the dismissal of the partition suit, it will not come in the way of the respondents seeking execution of the decree in their favour. The Executing Court was called upon only to decide whether the application to set aside the ex-parte order was to be entertained or not and without doing so, the Executing Court ought not to have dealt with the merits of the matter and non-suited the petitioner.



10. As already found the application was filed on 04.09.2025 and the ex-parte order itself was passed only on 01.09.2025. Therefore there is no delay in approaching the Court, seeking to set aside the ex-parte order as well. Even though the Hon'ble Supreme Court has issued directions to Executing Courts to dispose of the Execution Petitions expeditiously and within a period of six months, in matters of this nature where I do not see any undue advantage has been taken by the revision petitioner, having approached the Court within three days to set aside the ex-parte order within the time stipulated under the Limitation Act, I do not see how the directions issued by the Hon'ble Supreme Court should bar the petitioner from being afforded an opportunity to contest the Execution Petition on merits.

11. In the light of the above I am inclined to set aside the order in E.A No.5 of 2025. Accordingly, the Civil Revision Petition is allowed and the Executing Court shall dispose of EP. No.19 of 2005, on merits and in accordance with law by end of March 2026, after giving a fair opportunity to both parties.

12. In fine, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.



30.01.2026

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Neutral Citation Case : Yes/No

Internet: Yes/No

Index : Yes/No

To:

The Judge,

First Additional District Court, Erode.

P.B.BALAJI, J.,

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Pre-delivery order in
CRP. No.4735 of 2025
and CMP. Nos.23905 & 32472 of 2025

30.01.2026