



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 19.02.2026

Judgment pronounced on : 27.02.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.5980 of 2025
& CMP.No.29590 of 2025

S.P.Subbiah (Deceased)
1.R.Kanthalakshmi
2.L.Nagaiahswamy
3.PR.Dharmalingam
4.S.Krishnamoorthy
5.S.Chelladurai

.. Petitioners

Vs.

F.Nasurin (Deceased)
S.Faruk (Deceased)
1.Bose
2.Usha Bose
3.M.Nethaji Subhash Chandra Bose @ M.Bose
P.M.Ayyasamy (Deceased)
4.A.Rajkumar
5.A.Sudha

.. Respondents

[Petitioners 4 and 5 impleaded vide Court order dated 11.12.2025 made in CMP.No.31513 of 2025 in CRP.No.5980 of 2025]



Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the order dated 04.10.2024 in E.A.No.1 of 2023 in E.P.No.356 of 2021 in O.S.No.344 of 2002 (formerly of the Additional Sub-Court, Chengalpattu) by the EP Court, (Sub-Court, Alandur) to permit the judgment debtors to contest the EP further.

For Petitioners : Mr.J.Antony Jesus

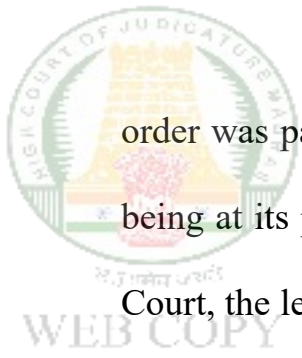
For Respondents : Mr.A.Sundaravadhanan for RR1 & 2

ORDER

The petitioners are judgment debtors 1, 3, 5 and 6 and aggrieved by the dismissal of their application under Order XXI Rule 106 of CPC, seeking to set aside the ex-parte order against the petitioners in the EP, the present revision petition has been filed.

2.Heard Mr.J.Antony Jesus, learned counsel for the petitioners and Mr.A.Sundaravadhanan, learned counsel for the respondents 1 and 2.

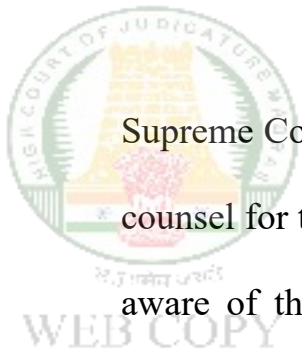
3.Mr.J.Antony Jesus, learned appearing for the revision petitioners would firstly contend that though EP was transmitted to the Alandur Court, no notice was served on the petitioners and on this limited ground, he would state that the executing Court ought to have adopted a liberal approach and allowed the application to set aside the ex-parte decree. He would further state that around the said period of time when the ex-parte



order was passed, the entire country was suffocating on account of the Covid pandemic being at its peak and considering the various directions issued by the Hon'ble Supreme Court, the learned counsel for the petitioners would state that the executing Court should not have adopted a hyper technical approach in dismissing the application.

4.It is also the submission of Mr.J.Antony Jesus that the respondents 1 and 2, namely F.Nasurin and S.Faruk were both dead and the entire proceedings were nullity. He would also bring to my notice that S.Faruk had admittedly died on 15.10.1993, even prior to the filing of the suit and in this regard, the learned counsel would invite my attention to the registered documents, where there is a reference to the demise of the said S.Faruk. It is also the submission of the learned counsel for the revision petitioner that the petitioners have come know that even S.Faruk's wife, F.Nasurin is also dead, though the petitioners are not aware of the exact date of death of the said F.Nasurin. He would therefore state that the entire proceedings are a nullity and fraud has been played upon the Court by filing a suit in the name of the dead person and in obtaining a decree. The learned counsel for the petitioner, relied on the decision of the Hon'ble Supreme Court in *S.P.Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by LRs and Others*, reported in (1994) 1 SCC 1 in this regard.

5.Per contra, Mr.A.Sundaravadhanan, learned counsel appearing for the respondents 1 and 2 would state that the respondents have succeeded up to the Hon'ble



Supreme Court. Thereafter, the execution petition was filed and according to the learned counsel for the respondents 1 and 2, notice was issued and the petitioners were very well aware of the transmission of the proceedings to the executing Court at Alandur. He would further state that F.Nasurin is very much alive and in this regard, he would invite my attention to the sale deed, where a Life Certificate has been enclosed to evidence that the said F.Nasurin is alive.

6. With regard to the demise of the husband, S.Faruk, the learned counsel for the respondents 1 and 2 would state that the suit was instituted by the power agent one Mr. Bose and at no point of time, the petitioners raised the question of the suit being either a fraud or the decree being nullity, especially after contesting the matter up to the Hon'ble Supreme Court and he would therefore state that there is no error committed by the executing Court in dismissing the application under Order XXI Rule 106 of CPC.

7. I have carefully considered the submissions advanced by the learned counsel for the parties.

8. Without going into the merits and demerits of the other submissions made and advanced by the learned counsel, with regard to at least the demise of S.Faruk, it has been clearly demonstrated by documentary evidence that he was not alive even on the date of institution of the suit. This factum was never brought to the notice of the trial

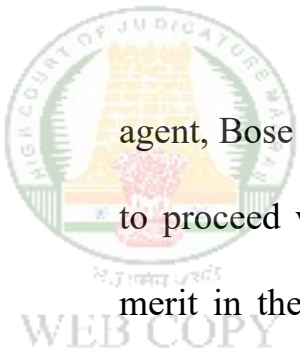


Court, the First Appellate Court, this Court or even the Hon'ble Supreme Court.

Therefore, there is merit in the submissions of the learned counsel for the revision petitioners that when fraud has been played, it vitiates all acts and the decree is a nullity, it can be raised at any stage and including in collateral proceedings and therefore, an opportunity should be given to the petitioners to object to the execution of the decree in the execution petition.

9. Insofar as the death of the wife F.Nasurin, there is no clarity with regard to her being alive or not. Though it is contended by the petitioners that she is also not alive, the petitioners are not able to adduce any proof in that regard. On the contrary, the respondents have relied on a registered document to show that she is very much alive. In the light of the above and factum of death one of the plaintiffs even on the time of institution of the suit, being brought to the notice of this Court, this Court cannot push it under the carpet and deny an opportunity to the petitioners to contest the EP.

10. In view of the disputed questions of fact, this Court is not in a position to decide the issues in the revision petition and therefore, it would be proper for the parties to lead evidence with regard to the allegations regarding the death of the wife, F.Nasurin in the execution petition and thereafter, the execution petition shall be decided on merits and in accordance with law. At this juncture, the learned counsel for the respondents 1 and 2 would make a request that in respect of the individual properties of the power



agent, Bose and his wife Usha Bose, there can be no impediment for the execution Court to proceed with, as already directed by this Court by earlier orders. I am able to see merit in the said request even though the said request is vehemently opposed by the learned counsel for the petitioners, on the ground that once there is a fraud, the entire decree would go, I do not see how the independent right of the plaintiffs 3 and 4 can be said to be affected or become a nullity on account of the death of another plaintiff. The decree is severable and in such circumstances, the respondents are certainly entitled to proceed with the execution petition insofar as the separate and independent properties of the plaintiffs 3 and 4, respondents 1 and 2 herein.

11. In fine, the Civil Revision Petition is allowed and the order of the executing Court dated 04.10.2024 in E.A.No.1 of 2023 in E.P.No.356 of 2021 in O.S.No.344 of 2002 passed by the Sub-Court, Alandur (formerly the Additional Sub-Court, Chengalpattu) is set aside. The executing Court shall permit the parties to lead evidence with regard to the executability of the decree and taking into account the allegations that the husband, S.Faruk was not alive even on the date of institution of the suit and F.Nasurin is not alive now and after giving fair opportunity to both the parties, the executing Court shall pass final orders in the EP. Insofar as the individual properties of the respondents 1 and 2, namely Bose and Usha Bose, who are plaintiffs 3 and 4, there can be no impediment for them to proceed with the execution petition limited to their



separate entitlement alone. Since the points that arise in the revision are attacking the foundation of the decree itself as being nullity, the Executing Court shall first take up the issue of whether the decree is a nullity or not and subject to a final decision in this regard, Application under Order XXI, Rule 97 shall be taken up, if necessary. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

27.02.2026

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

The Sub Court, Alandur.



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P.B.BALAJI.J.

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Pre-delivery order made in
CRP.No.5980 of 2025
& CMP.No.29590 of 2025

27.02.2026