



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.02.2026

Pronounced on: 27.02.2026

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. Nos.5182 & 5184 of 2025
and CMP. Nos.26153 & 26155 of 2025**

K.Santhosh

Petitioner in both CRPs

Vs

1.Nagarajan
Sadayagounder (Died)
2.Kamaraj
3.Gopalakrishnan
4.Umarani
Lakshmiammal (died)

Respondents in both CRPs

COMMON PRAYER: These Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the petition and order passed in R.E.A. Nos.01 of 2024 & 03 of 2025 in R.E.P. No.76 of 2017 in O.S. No.171 of 2013 on the file of the III Additional District Munsif Court, Salem dated 17.09.2025.

For Petitioner : Mr.P.Nethaji in both CRPs

For Respondents : Ms.R.S.Lakshmi Priya for R1
R2, R3 and R4- No apperance.
in both CRPs



COMMON ORDER

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These revision petitions have been filed to set aside the petition and order passed in R.E.A. Nos.01 of 2024 & 03 of 2025 in R.E.P. No.76 of 2017 in O.S. No.171 of 2013 on the file of the III Additional District Munsif Court, Salem dated 17.09.2025

2. I have heard Mr.P.Nethaji, learned counsel for the petitioner and Ms.R.S.Lakshmi Priya, learned counsel for the contesting first respondent.

3. The learned counsel for the petitioner would state that the revision petitioner is a third party claimant who had filed an application for appointment of an Advocate Commissioner to measure the suit properties with the aid of a qualified surveyor and to note down the physical feature and to submit a report along with the plan. The said Application in R.E.A. No.3 of 2025 has been dismissed by the learned III Additional District Munsif, Salem. Insofar as the other revision, the revision petitioner had sought for stay of further proceedings in R.E.P. No.76 of 2017, pending disposal of the claimant's petition in R.E.P. No.76 of 2017, which also came to be dismissed by the Trial Court. Aggrieved by the said adverse orders, the present revision petitions have been filed by the claimant.



4. The learned counsel for the petitioner would contend that the petitioner is not a party to the original suit and he was only the son of the third respondent.

According to the learned counsel for the petitioner, the petitioner's grandfather purchased vacant land from one Chinnathambi Gounder way back in the year 1942 and the petitioner's grandfather was also issued Assignment Patta in respect of T.S. No.26 in 1950 by the Assistant Settlement Officer, Salem and that ever since, the petitioner's grandfather and subsequently, his successor in interest including the petitioner have been in possession and enjoyment of the suit property till date.

5. According to the learned counsel for the petitioner, the suit in O.S. No.171 of 2013 was filed by the first respondent and the said suit was decreed on 10.11.2016, pursuant to which REP. No.76 of 2017 has been filed. The learned counsel would therefore state that when the petitioner's claim petition is pending, the Execution Proceedings will have to be necessarily stayed as otherwise, serious prejudice would be caused to the revision petition.

6. As regards, appointment of the Advocate Commissioner, the learned counsel for the petitioner states that in order to substantiate the claim of the petitioner that the first respondent has no right over schedule B property which belongs to the petitioner absolutely, it was equally necessary for appointment of an Advocate Commissioner to measure the B schedule property which would



facilitate adjudicating the claim of the petitioner. The learned counsel for the petitioner would therefore pray for the revision petitions being allowed.

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7. Per contra, Ms.Lakshmi Priya, learned counsel appearing for the contesting first respondent would state that the petitioners cannot claim any independent right and his application by way of claim petition itself is not maintainable for the simple reason that the petitioner's father was a party defendant in the suit and he had also challenged the decree of the Trial Court unsuccessfully in A.S. No.35 of 2017 and even the Second Appeal before this Court in S.A. No.1057 of 2021 was dismissed. She would further state that even a Civil Revision Petition in CRP. No.1481 of 2020 was also dismissed by this Court, along with the Second Appeal. She would therefore state that the applications were filed only to protract the proceedings and to deny the fruits of the decree to the first respondent. The learned counsel therefore prays for dismissal of the revision petitions.

8. I have carefully considered the submissions of the learned counsel on either side and I have also gone through the impugned orders and various documents enclosed in the typed set of papers.

9. The petitioner's claim petition is pending in R.E.P. No.76 of 2017. The revision petitioner admits that his father was arrayed as the second defendant in



the suit and that his father challenged the decree not only before the First Appellate Court but also before this Court in Second Appeal and did not succeed in such endeavour. The second petitioner therefore cannot claim, he is a third party when he is the legal representative of the second defendant, especially when his admitted case is that his father executed a settlement deed in his favour on 03.05.2010. Therefore, to contend that the petitioner was not aware of the Execution Proceedings and the proceedings in E.P. must be stayed pending disposal of his claim petition can never be countenanced.

10. The Trial Court has rightly found that the petition under Order 21, Rule 26 CPC can even be pressed into service only before the Transferree Court and the object was only to enable the Judgment Debtor to apply to the Court which passed the decree or the Appellate Court to get stay of execution. Therefore, the findings of the Trial Court that the petitioner not being the judgment debtor and is claiming right under settlement deed executed by his father cannot maintain the petition seeking stay. I do not find any perversity in the findings in this regard warranting interference.

11. Even with regard to the application for appointment of Advocate Commissioner, the Court has rightly found that the petitioner cannot rely on the documents at this juncture to contend that there is a dispute with regard to the identification of the property and therefore, a Commissioner should be



appointed for local investigation. There is a decree granted in the Original Suit which came to be affirmed upto this Court in Second Appeal. The said decree is put to execution and at this stage, it is not relevant for the Executing Court to fall back on the documents that are now relied upon by the petitioner that too, when he claims only under a settlement deed by his father, who admittedly suffered a decree in the suit. Therefore, the appointment of Advocate Commissioner as sought for is totally unwarranted and the learned Trial Court has rightly dismissed the Application as being an attempt to gather evidence. In any event, the Executing Court cannot permit further evidence and place reliance on the documents that are now relied on by the petitioner when admittedly, it is the decree that is put into execution. Therefore, even the dismissal of the Advocate Commissioner Application does not warrant any interference.

12. In fine, both the Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. No costs.

27.02.2026

rkp
Neutral Citation Case : Yes/No
Internet: Yes/No
Index : Yes/No
To:
The III Additional District Munsif, Salem.



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P.B.BALAJI, J.,

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Pre-delivery order in
CRP. Nos.5182 & 5184 of 2025
and CMP. Nos.26153 & 26155 of 2025

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