



CRP(MD). No.972 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 09.02.2026

CORAM

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

C.R.P(MD). No.972 of 2025

and

C.M.P(MD) No.5202 of 2025

Nandhagopal @ Jeyaraj

... Petitioner

Vs

1.D.Rathanamala

2.Dhanavelu

... Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the Ex and Fair order, dated 29-01-2025 and 30-01-2025 passed in E.A.No.151 of 2024 in E.A.No.21 of 2023 in E.P.No.236 of 2005 in O.S.No.122 of 1993 by the learned Principal District Munsif Court, Kumbakonam and to set aside the same by allowing this civil revision petition.

For Petitioner : Mr.R.Rajamohan

For R1 : No representation

For R2 : Mr.Azhagar Sami (Legal Aid Counsel)



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ORDER

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The present Civil Revision Petition has been filed challenging the orders, dated 29.01.2025 and 30.01.2025 passed in E.A.No.151 of 2024 in E.A.No.21 of 2023 in E.P.No.236 of 2005 in O.S.No.122 of 1993 on the file of the learned Principal District Munsif Court, Kumbakonam.

2. The revision petitioner is the decree holder. The original suit in O.S.No.122 of 1993 was filed for recovery of possession and for removal of fencing. The suit was decreed by common judgment, dated 21.11.2002 in O.S.Nos.121 and 122 of 1993. As against the same, an appeal was preferred in A.S.No.94 of 2003, which came to be dismissed by judgment dated 07.10.2004. Thereafter, E.P.No.236 of 2005 was filed for execution of the decree.

3. Meanwhile, a Second Appeal in S.A.(MD) No.174 of 2005 was filed and the same was dismissed on 03.12.2021, confirming the concurrent findings of the Courts below. Thereafter, execution proceedings were pursued. At that stage, the first respondent, who is the daughter of the judgment debtor, filed an application as an obstructor. In



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the said application, the Execution Court appointed an Advocate Commissioner by order dated 30.01.2025. Challenging the said order, the present Civil Revision Petition has been filed.

4. The learned counsel for the revision petitioner submitted that the Execution Court has erroneously appointed an Advocate Commissioner in an application filed by the daughter of the judgment debtor, who claims to be an obstructor.

5. It is further contended that in execution proceedings, when delivery is sought, the Ameen is required to visit the property and file a report. If any obstruction is reported, the same has to be adjudicated by the Execution Court in the manner contemplated under Order XXI of the Code of Civil Procedure. Instead of following the said statutory procedure, the Court below has appointed an Advocate Commissioner, which is not contemplated under the Code in such circumstances, particularly at the instance of a third party claiming to be an obstructor.

6. There is no representation for the first respondent.



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7. The learned Court-appointed Legal Aid Counsel for the second respondent/daughter of the judgment debtor, submitted that she had been set ex-parte before the Execution Court and that the Court ought to have considered the application to set aside the ex-parte order before proceeding further.

8. The point that arises for consideration is whether, in execution proceedings, upon an application filed by an alleged obstructor, the Court can appoint an Advocate Commissioner instead of acting upon the report of the Ameen as contemplated under Order XXI of the Code of Civil Procedure.

9. In the considered view of this Court, in execution proceedings seeking delivery of possession, the proper course is for the Ameen to effect delivery and report any obstruction. It is thereafter for the Execution Court to adjudicate the rights of the parties in accordance with the procedure prescribed under Order XXI. The appointment of an Advocate Commissioner in such circumstances, at the instance of a third



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party obstructor, is not in consonance with the procedure contemplated under the Code.

10. Accordingly, the orders, dated 29.01.2025 and 30.01.2025 passed by the Execution Court are set aside. Considering that the Execution Petition is of the year 2005, the trial Court is directed to dispose of E.P.No.236 of 2005 within a period of six months from the date of receipt of a copy of this order.

11. This Court places on record its appreciation for the valuable assistance rendered by the Court-appointed Legal Aid Counsel for the second respondent.

12. The learned Legal Aid Counsel submitted that despite the earlier order of this Court, dated 28.01.2026, he has not received remuneration from the Legal Services Committee.

13. The Legal Services Authority concerned is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only), in total, towards remuneration to the Court-appointed Legal Aid Counsel within a period



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of two weeks from the date of receipt of a copy of this order.

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14. With the above directions, this Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

No costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

The Principal District Munsif Court, Kumbakonam.



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N.SENTHILKUMAR, J.

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