



CRP(MD). No.155 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 22.01.2026

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THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

CRP(MD). No.155 of 2026

and

CMP(MD) No.632 2026

Arulmigu Salavai Karuppanasamy Temple
Yanaikkal
Madurai through its Fit Person/Executive Officer
Arulmigu Jayaveera Anjaneyar Temple
Simmakkal
Madurai.

... Petitioner

Vs

1.S.Tamil Selvi

2.C.Thathuperumal

... Respondents

PRAYER :-Civil Revision Petition filed under Article 227 of The Constitution of India, to set aside the orders passed in E.A.No.5 of 2022 in EP.No.137 of 2017 in R.C.O.P.No.257 of 2006 dated 31.10.2025 on the file of Principal District Munsif, Madurai Town.

For Petitioner : Mr.S.Manohar



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ORDER

This Civil Revision Petition has been filed challenging the order made in E.A.No.5 of 2022 in EP.No.137 of 2017 in R.C.O.P.No.257 of 2006 dated 31.10.2025 on the file of the Principal District Munsif Court, Madurai Town.

2.The matter is listed today under the caption 'for maintainability'.

3.From the perusal of papers, it is seen that Registry of this Court has already raised an objection as how the present Civil Revision Petition is maintainable as against the order made in E.A.No.5 of 2022 in EP.No. 137 of 2017 in R.C.O.P.No.257 of 2006 dated 31.10.2025, when an appeal remedy is available under Order XXI Rule 58 of CPC.

4.When the same was put-forth before the learned counsel for the petitioner, by relying upon the judgment in ***Periyammal (dead) through legal representatives and others Vs. V.Rajamani and another*** reported in ***(2025) 9 Supreme Court Cases 568***, wherein, the following



observations were made, he would submit that the present petition is maintainable.

“46. In [Silverline Forum Pvt. Ltd. vs. Rajiv Trust and Anr.](#) reported in 1998 (3) SCC 723, a three Judge Bench of this Court has observed that a third party to the decree including the transferee pendente lite can offer resistance or obstruction and his right has to be adjudicated under [Order XXI Rule 97 of CPC](#). The relevant portion of [the said judgment](#) is reproduced below:

“9. At the outset, we may observe that it is difficult to agree with the High Court that resistance or obstructions made by a third party to the decree of execution cannot be gone into under Order 21 Rule 97 of the Code. Rules 97 to 106 in Order 21 of the Code are subsumed under the caption "Resistance to delivery of possession to decree-holder or purchaser". Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by-“any person” in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the court to proceed to adjudicate upon such complaint in accordance with the procedure laid down.

10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an



application under rule 97 or rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of property Act.

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14.It is clear that executing court can decide whether the resistor or obstructor is a person bound by the decree and he refused to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course the Court can direct the parties to adduce evidence for such determination. If the Court deems it necessary."



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54. Thus the cumulative effect of all these rights read together is that if an application under Order XXI, Rule 97 is made, then its determination will be under Rule 101 and then Rule 103 further provides that where any application has been adjudicated upon under Rules 98 or 100, the order made thereon shall have the same force and will be subject to the same conditions as to an appeal or otherwise as if it were a decree. Under [Section 47](#) of the CPC all questions relating to the execution, discharge or satisfaction of the decree, have to be determined by the executing court whereas under Rule 101 all questions including question relating to right, title or interest in the property arising between the parties to the proceedings have to be determined by the executing court. Section 47 is a general provision whereas Order XXI Rules 97 and 101 deal with a specific situation. Moreover, Section 47 deals with executions of all kinds of decrees whereas Order XXI, Rules 97 and 101 deal only with execution of decree for possession. Apart from that, earlier, i.e., prior to the amendment, every order falling under Section 47 was appealable (as the terms 'decree' included the order under [Section 47](#) of the CPC) whereas now only certain orders as provided for under Order XXI have been made appealable.

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56. This Court in [Bhanwar Lal v. Satyanarain](#), reported in (1995) 1 SCC 6, has held that even an application filed under Section 47 would be treated as an application under Order XXI Rule 97 and an adjudication is required to be conducted under Rule 98. Dispossession of the applicant from the property is not a condition for declining to



entertain the application. The relevant portion of the judgment is reproduced below:

“5. The procedure has been provided in Rules 98 to 103. We are not, at present, concerned with the question relating to the procedure to be followed and question to be determined under Order 21, Rules 98 to 102. A reading of *Order 21, Rule 97 CPC* clearly envisages that “any person” even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or set up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done. Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person.

6. When the appellant had made the application on 25- 5-1979 against Satyanarain, in law it must be only the application made under Order 21, Rule 97(1) *of CPC*. The executing court, obviously, was in error in directing to make a fresh application. It is the duty of the executing court to consider the averments in the petition and consider the scope of the applicability of the relevant rule. On



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technical ground the executing court dismissed the second application on limitation and also the third application, on the ground of res judicata which the High Court has in the revisions now upheld. The procedure is the handmaid of substantive justice but in this case it has ruled the roost.

7. In the above view we have taken, the High Court has committed grievous error of jurisdiction and also patent illegality in treating the application filed by the appellant as barred by limitation and the third one on res judicata. Once the application, dated 25-5-1979 was made, the Court should have treated it to be one filed under Order 21, Rule 97(1) [CPC](#). The question of res judicata for filing the second and third applications does not arise. Under these circumstances the appellate court, though for different reasons was justified in directing an enquiry to be conducted for removal of the obstruction or resistance caused by Satyanarain under Order 21 Rules 35(3) and 97(2) and Order 21, Rules 101 and 102 [of CPC](#).”

5.Be that as it may, there is no dispute with regard to the rights of the petitioner. However, when an appeal remedy is available under Order XXI Rule 58 of CPC as against the order impugned herein, this Court is not inclined to entertain the present Civil Revision Petition.



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6. In such view of the matter, the Civil Revision Petition stands disposed of, granting liberty to the petitioner to file an appeal, if they are so advised. No costs. Consequently, connected Miscellaneous Petition is closed.

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

The Principal District Munsif, Madurai Town.



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N.SENTHILKUMAR, J.

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