



C.R.P.(MD)No.3856 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 10.02.2026

PRONOUNCED ON : 24.02.2026

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)No.3856 of 2025

and

C.M.P.(MD)No.20282 of 2025

1.Josephine Parimala
2.Maria Mathilin Mathi
3.Judit
4.Mickeal Senthorian
5.Viji Health Bai

... Petitioners

Vs

1.Arnald Arasu
2.Muthukumar

... Respondents

PRAYER :-Civil Revision Petition filed under Section 115 of the Constitution of India, to set aside the docket order, dated 27.11.2025 made in E.A.No.06 of 2025 in E.P.No.77 of 2025 in O.S.No.54 of 2010 on the file of Sub Court, Valliyoor and consequential order, dated 27.11.2025 passed in E.P.No.77 of 2025.



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For Petitioners :Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates
For R1 :Mr.H.Arumugam
for Mr.M.Subbiah
For R2 :Ms.Shiyamala Gowri

ORDER

The present Civil Revision Petition has been filed to set aside the order passed by the learned Subordinate Judge, Valliyoor in E.A.No.06 of 2025 in E.P.No.77 of 2025 in O.S.No.54 of 2010, dated 27.11.2025 and the consequential order passed in E.P.No.77 of 2025, dated 27.11.2025.

2.Heard Mr.M.Ajmal Khan, learned Senior Counsel for the petitioners, Mr.H.Arumugam, learned Counsel for the first respondent and Ms.Shiyamala, learned Counsel for the second respondent.

3.The first respondent, as plaintiff, has originally filed a suit in O.S.No. 54 of 2010 before the Subordinate Court, Valliyoor, against the petitioners and the second respondent herein, for the relief of declaration and for recovery of possession. The said suit was decreed by the trial Court, vide judgment and



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decree, dated 28.02.2025. Thereafter, the petitioners herein have filed an appeal along with an application in I.A.No.1 of 2025 before the Principal District Court, Tirunelveli, to condone the delay of 5 days in filing the appeal and in that application, notice was ordered. In the meanwhile, the first respondent/plaintiff/decree holder has filed an Execution Petition in E.P.No.77 of 2025 before the Subordinate Court, Valliyoor. On 25.09.2025, the Executing Court has passed an order of delivery and thereafter, the petitioners herein have filed an application in E.A.No.6 of 2025 in E.P.No.77 of 2025 to stay the execution proceedings. The learned Subordinate Judge, Valliyoor, vide impugned order, dated 27.11.2025, had dismissed the said application by holding that since delivery was effected and possession was handed over the decree holder, the present petition has become superfluous and infructuous. and has also terminated the Execution Petition. Challenging the same, the present Civil Revision Petition has been filed.

4.Mr.M.Ajmal Khan, learned Senior Counsel for the petitioners submitted that the petitioners herein as well as the second second respondent are the defendants in the suit initiated by the first respondent in O.S.No.54 of



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2010. The said suit was filed for declaration and for recovery of possession. He submitted that since the said suit was decreed, the petitioners herein have filed an appeal along with a delay condonation application in I.A.No.1 of 2025 in A.S.No.(unnumbered) of 2025 and in that application, notice was also ordered to the first respondent. However, after filing of the appeal along with an application for delay condonation, the first respondent herein has filed an execution petition in E.P.No.77 of 2025 stating that no appeal has been filed by the defendants. Hence, the learned Senior Counsel for the petitioners submitted that very numbering of the execution petition itself is an abuse of process of law.

5.The learned Senior Counsel submitted that the Executing Court ought to have refrained from ordering delivery of possession, until the disposal of the delay condonation application, since already notice was served on the first respondent. He also submitted that the Executing Court, on the very same day of filing of the Execution Petition, without even ordering notice to the judgment debtors, has passed an order of delivery, which is *per se* illegal and *non est* in the eye of law. He also submitted that the Executing Court has



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failed to grant sufficient opportunity to the petitioners to put forward their case and without ordering notice to the judgment debtors, the Executing Court has mechanically ordered the execution of the decree for recovery of possession.

6.It is his further contention that the first appeal is the continuation of the suit and therefore, the Executing Court ought to have waited for the outcome of the appeal and that ordering delivery of possession before the disposal of the appeal is an abuse of process of law, which needs interference of this Court. It is his further contention that the household articles of the petitioners are still inside the suit properties and without disposing the same, the Court Amina has mechanically sought the police protection and with the aid of the Police officials evicted the petitioners from the suit property and the delivery of possession was effected and therefore, consequential terminating the Execution Petition on the same day also is illegal and the same is also liable to be set aside. The learned Senior Counsel also submitted that the learned Principal District Judge, Tirunelveli, has numbered the first appeal preferred by the petitioners herein in A.S.No.12 of 2026.



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7.The learned Senior Counsel for the petitioners contended that the act of the first respondent by wrongly stating that no appeal has been filed by the judgment debtor, which is utter falsehood, is misleading the Court. He also contended that the act of the Amina in seeking police protection, even though the petitioners informed the Amina about the filing of the stay application before the Executing Court, the Amina has proceeded to take possession by keeping the household articles inside the suit properties, which itself condemnable. For all the above reasons, he seeks interference of this Court.

8.In support of his contention, the learned Senior Counsel for the petitioners has relied upon the following judgments:

(1)The order of this Court reported in **2006 (2) CTC 211** in the case of ***Abdul Sukhure Bhai vs Durai Kuppusway***, wherein, the learned Single Judge of this Court has held as follows:

13. The lower Courts are frequently confronted with the question of issuing police protection. Since the issuance of police aid is often raised in one way or other, by the lower Courts it is appropriate to issue the following guide lines:

- In appropriate cases, Civil Court has the power to issue suitable directions to police officials as servants of law to extend their aid and assistance in the execution of decrees and*



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orders of Civil Courts or in implementing an order of injunction passed by it. (1992 TLNJ 120).

- *Ordering police protection has got serious consequences, impinging on the rights of the parties.*
- *Police aid is not to be granted simultaneously with an order of injunction.*
- *In cases where the lower Courts order police protection/police aid in the execution of decrees and orders of the Civil Courts or in implementing an order of injunction passed by it, the Court is to record reasons as to how and why the case is the appropriate case to order police aid and for what purpose the police aid is ordered.*
- *Police protection/police aid may not be ordered by a non-speaking order. Order of Court for police aid might give room for the parties to take law into their own hands. The party having the order of Court for police aid, might try to disturb the status quo either by trying to take possession or trying to dispossess the opponent.*
- *Order of the Court for police protection is to specifically indicate in precise terms the purpose for which police protection is ordered.*

14. In this case, there is no proper exercise of discretion in granting police aid. The learned District Munsif has not recorded any reason as to the necessity in ordering the police protection and the reasons for finding that the case in hand was appropriate case for ordering police protection. There is improper exercise by the learned District Munsif in granting the police aid. The impugned order suffers from material irregularity and infirmity and cannot be sustained and is to be set aside.”

(2)The judgment of this Court in **S.A.No.797 of 2017**, dated 08.03.2024, in the case of **R.Karuppannan vs Natarajan (Died) represented by Legal**



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Heirs and others, wherein, the learned Single Judge of this Court has held as follows:

“4.It is the specific case of the petitioner's that the defendant was fully aware of the proceedings and despite the same, he has sold the property to the petitioners, after receiving the entire sale consideration on 13.12.2002. According to the petitioners, they are bonafide purchasers having no notice about the suit or the execution proceedings, much less the attachment proceedings. According to the petitioners, the 2 nd respondent has also handed over the possession of the suit property to them and the petitioners have also effected mutation of revenue records in their names. Thereafter, they have also put up additional constructions in the suit property and they have been in absolute possession and enjoyment of the same. While so, on 29.03.2004, the Court Bailiff along with police personnel came to the suit property and informed the petitioners about the purchase of the suit property by the auction purchaser; the 3rd respondent and the petitioners were threatened with dispossession. As the Court Bailiff did not give any time to the petitioners, they had no other option, but to remove the belongings and deliver possession. Thereafter, with the assistance of their Advocate, they verified the Court papers and came to know about the auction sale in favour of the 3 rd respondent from 24.10.2002 for a sale consideration of Rs. 6,53,000/- and that the sale was also confirmed on 07.01.2003. The petitioners also noted irregularities in the legal process adopted by the decree holder and therefore, moved the Executing Court for conducting enquiry and to put the petitioners in possession of the suit property.

5.The auction purchaser filed a counter affidavit stating that he is a bonafide purchaser who has purchased the property in Court auction and it is the Court which executed the Sale Deed in his favour and therefore, following the due process of law, the auction purchaser has taken delivery of the suit property and on these grounds resisted the applications filed by the petitioners. The Executing Court, after discussing the rival contentions of the parties, found that the respondents had colluded to defraud the petitioners



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and therefore, the petitioners are entitled to redelivery of the property along with compensatory cost of Rs.3,500/-.

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31.Further, admittedly, the possession was taken only from the contesting respondents herein subsequent to their purchase from the judgment-debtor and not from the judgment-debtor himself. This procedure again appears to be highly irregular and without following the procedure as contemplated under Order 21 to take possession from the third parties who are in possession of the suit property in question. The decree holder cannot claim to have validly taken possession, at the time of executing the decree. The averments in REA.No.137 of 2004 is that without any notice and personal visit by the Court Bailiff to the suit property, orders of Police aid and break open have been ordered and possession was taken from the contesting respondents herein cannot be brushed aside rightly.

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33.Surprisingly, I do not find the signature of the judgment debtor in Ex.P30. It is a receipt which has been signed only by the auction purchaser which is nothing but a self serving document. The proper procedure to be adopted by the Court Bailiff was to obtain signature of the judgment-debtor to confirm the fact that he has vacated and delivered the possession of the suit property in compliance with the decree.”

9.*Per contra*, Mr.H.Arumugam, learned Counsel for the first respondent submitted that only after the statutory period of 30 days, the first respondent herein has initiated Execution Proceedings and that mere filing of an appeal will not entitle the petitioners herein to stall the execution proceedings, as the petitioners have approached the appellate Court with a delay of 5 days and



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even the delay condonation application is also pending at the time of passing of the impugned orders. The learned Counsel also submitted that mere filing of an appeal without getting an order of stay, will not stall the execution proceedings. It is his vehement contention that the executing Court has no power to stay its own execution proceedings and that only the appellate Court can grant an order of stay of the execution proceedings, however, without getting an order of interim stay of the execution proceedings before the appellate Court, the petitioners have filed the present stay application, even after the delivery was effected, which has been rightly dismissed by the Executing Court.

10.The learned Counsel for the first respondent also submitted that as per the order of the Executing Court, the Amina has approached the Police officials for police protection and at that time, the Police officials informed the Amina that the Police attached to Panagudi Police Station has gone for bandobast and that with a help of one woman police and the Village Administrative Officer, the Amina has gone to the suit property and when the same is under lock, he has informed the petitioners and thereafter only, the



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Amina has executed the warrant and recovered the possession, which does not warrant interference of this Court. The learned Counsel also submitted that the petitioners herein have not produced any order of interim stay of the execution proceedings and mere filing of an appeal with delay condonation application will not prevent the Executing Court from executing the decree.

11.The learned Counsel also relied upon the order passed by the Executing Court, dated 25.09.2025, wherein, it has been held as follows:

"Records perused. EP is filed within 2 years of the decree. Hence as per the dictum of the Hon'ble High Court of Madras in CRP NPD No.3309 of 2009 Aswini Kumar Vs Maheswari dated : 10.06.2010 and as per O.XXI R.21 of cpc notice to respondent dispensed. Decree was neither set aside nor stayed so far. Decree remains intact and unsatisfied. Hence it is just necessary and proper to have it executed. Hence it is ordered that the judgment debtor is directed to handover the possession of schedule property. Process for delivery batta within 3 days. Call on 31.10.2025. Fresh notice to the Respondents through Court and post call on 31.10.2025. By Mr.S.Kalyanakumar, Advocate for petitioner. U/o 21 R 35 CPC."

12.By relying on the above, the learned Counsel for the first respondent submitted that based on the above order, the judgment debtors were directed to hand over the possession to the decree holder. Even thereafter, the petitioners



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have not produced any order of stay and that the Executing Court has effected the delivery of possession and has terminated the execution petition. Hence, he seeks dismissal of this petition.

13. In support of his contentions, he relied upon the following judgments:

(1) The judgment of the Hon'ble Supreme Court in the case of ***Sanjiv Kumar Singh vs the State of Bihar and others***, reported in ***2023 SAR Online (SC) 91***, wherein, the Hon'ble Supreme Court has held as follows:

“3. In a matter where the petitioner was before the High Court seeking a direction to the respondent no.2/ District Magistrate, East-Champaran, Motihari, Bihar to grant ‘No Objection Certificate’ (NOC) for starting MS/HSD retail outlet dealership over land situated in Khata No.544, Plot No.1077, Thana No. 196, Tauzi No. 951, Ward No.37 in Mauza Chhota Bariyarpur, Police Station Chhatauni, Motihar, District-East Champaran, Bihar; the District Magistrate had rejected the request of the petitioner for issue of NOC. The said order being assailed before the High Court, the High Court has also dismissed the petition only on the ground that the respondents herein had contended that as against the decree passed in favour of the petitioner in respect of the said judgment and decree dated 25.08.2021, an appeal has been filed before the High Court and the same is yet to come up for hearing. From the documents produced along with the counter affidavit, the respondents have produced the extract of the present case status of FA-16/2022. It is pointed out that the appeal is filed on 11.03.2022 which was



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registered on 15.03.2022 and the scrutiny for posting the appeal before the Court is yet to be completed.

4. Though, such contention is put forth by the respondents, keeping in view the provisions as contained in Order 41 Rule 5 of CPC, unless the appeal is listed and there is an interim order, the mere filing of the appeal would not operate as a stay. If that be so, the judgment and decree dated 25.08.2021 would enure to the benefit of the petitioner as on today and the rejection of the NOC only on the ground that the appeal has been filed, would not be justified. In that view, the High Court was also not justified in rejecting the petition.”

(2)The judgment of this Court reported in **2014 (1) CTC 246** in the case of **G.Arumugam vs P.Jayraman**, wherein, the learned Single Judge has held as follows:

7.In Girdharilal Chandak and Bros. (HUF) v. S. Mehdi Ispahani, 2011 (5) CTC 252, this Court (V. Ramasubramanian, J.) has held that Order 41, Rule 5(1), C.P.C., makes it clear that preferring an Appeal shall not operate as a stay of the proceedings under a Degree or Order appealed, only the Appellate Court is empowered to pass the Order. Hence, the Execution of a Decree shall not be stayed merely by reason of an Appeal having been preferred against the Judgment and Decree as per Order 41, Rule 5 of the Code. In the absence of stay of further proceedings relating to a Decree or Decretal Order of the Appellate Court, the execution of Decree cannot be stayed by the Executing Court.”

(3)The judgment of this Court in **C.R.P(MD)No.2327 of 2019**, dated 18.03.2020 in the case of **Mani vs Ponnuchamy Chettiar (Died) and others**,



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wherein, the learned Single Judge has as follows:

“6. Admittedly, in this case, Decree-Holder died and Judgment Debtor also died and the legal heirs of the Decree Holder subsequently, filed restoration application and proceed with the Execution Petition and impleading the legal heirs of the Judgment Debtor. Subsequently, both the legal heirs have proceeded with the Execution Proceedings. The Execution Court after giving opportunity, delivery was ordered on 16.07.2019. Subsequently, a warrant was issued to Amin. Amin also taken the property from the legal heirs of the Judgment Debtor and delivered to the legal heirs of the Decree Holder. That order was not challenged by the Revision Petitioner. Even though the Revision Petitioner challenged the order of restoration of the Execution Proceedings, had not challenged the order of delivery and by way of this revision Petition he has challenged the termination order passed by the Execution Court and returned the warrant to the Execution Court. Since the report of the Amin was recorded by the Execution Court and the Execution Petition was terminated on 20.09.2019. Therefore, this Court is now informed that the property was delivered and the respondents herein the legal heirs of the Decree Holder taken delivery of the property. Therefore, without challenging the order of delivery, consequential order of termination cannot be challenged, is not maintainable. Therefore under these circumstances, there is no merits in this Revision Petition and the Civil Revision Petition is liable to be dismissed.”

14. This Court considered the submissions made on either side and perused the materials available on record.

15. It is not in dispute that the first respondent herein has filed a suit in



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O.S.No.54 of 2010 before the Subordinate Court, Valliyoor, against the petitioners and the second respondent herein, for the relief of declaration and for recovery of possession. The learned Subordinate Judge, Valliyoor, vide judgment and decree, dated 28.02.2025, had decreed the suit. Subsequently, the petitioners herein have filed an appeal along with an application in I.A.No.1 of 2025 before the Principal District Court, Tirunelveli, to condone the delay of 5 days for filing the appeal. The decree holder, who is the first respondent herein, has filed an Execution Petition in E.P.No.77 of 2025 before the Subordinate Court, Valliyoor. After the Executing Court passed an order of delivery on 25.09.2025, the petitioners herein have filed an application in E.A.No.6 of 2025 in E.P.No.77 of 2025 to stay the execution proceedings. The learned Subordinate Judge, Valliyoor, vide impugned order, dated 27.11.2025 had dismissed the said application and has also terminated the Execution Petition, as delivery has been effected.

16.In the delay condonation application in I.A.No.1 of 2025 in A.S.SR.No.1149 of 2025, the first respondent herein had received the notice on 28.08.2025, whereas, in the Execution Petition filed by him on 22.09.2025, he



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had stated that no appeal as against the judgment and decree in the original suit has been preferred by the judgment debtors. This reflects that though an appeal was filed on 22.09.2025, on the basis of the advance hearing application the Execution Petition, the E.A.No.6 of 2025 was taken up on 27.11.2025 and the said application was dismissed on the ground that delivery has been effected and the execution petition was terminated. When the first respondent had received the notice in the delay condonation application on 28.08.2025, but in the execution petition in E.P.No.77 of 2025 before this Executing Court, he has stated that no appeal has been preferred. Such a misleading fact has led the Court to terminate the execution petition. It is also surprising to see how the Executing Court has shown much enormous interest in advancing the execution petition and terminate the same.

17.On a bare reading of the Amina's report and the order passed by the Executing Court, it is to be seen that the Executing Court had only directed to effect delivery on 25.09.2025. However, the Executing Court vide order, dated 31.10.2025, has *suo motu* order for taking steps for Police protection. Thereafter, the Amina has gone to Panagudi Police Station on 21.11.2025 and



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sought police protection and due to bandobast duty, the Police could not accompany to Amina and thereafter, on 24.11.2025, the Amina was accompanied by a woman police and the Village Administrative Officer. The Amina's report is highly questionable, as Amina has shown extreme interest to execute delivery, without even knowing whether there could be an obstruction by the obstructor, namely, the revision petitioners, the Amina has rushed to the Police Station and sought police aid on the date of delivery, though the suit property was locked. The Amina has called the Revision Petitioners and informed about the execution order for delivery of possession and without even waiting for the outcome of the appeal, which is pending, in which the first respondent was served notice for the condonation of delay, the Amina has locked the premises and also valued the property.

18.The entire exercise shown by the Amina and by the Executing Court is absolutely a glaring procedural violation. The Hon'ble Supreme Court time and again held that if there is no stay granted by the appellate Court, then the Executing Court shall proceed further. But in the present case, having received the notice, dated 07.08.2025 in I.A.No.1 of 2025, for the condonation of delay,



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the first respondent had stated that no appeal has been filed, is nothing but misleading the Court and suppression of facts, which warrants interference of this Court. The first respondent was served notice with regard to the condonation of delay. The said factum was not brought to the knowledge of the Executing Court, which warrants the Executing to pass an order of delivery of possession. The suppression of facts and misleading the Court is also a fraud played by the first respondent herein.

19.This Court in a reported judgment in **2006 (2) CTC 211** (referred supra) has stated that even the police protection should not be granted mechanically, unless it is called for. Here, in this case, there is no order with regard to the police protection and the Amina himself gone to the police station and there is no evidence produced to show that what prompted the Amina to seek for police protection even at the first instance without knowing whether there is an obstruction. Therefore, the Amina has exceeded all his limits in executing the warrant, which otherwise handover possession to the first respondent.



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20.It is also to be noted that the judgments relied upon by the learned Counsel for the first respondent is applicable to the facts of the present case.

21.In view of the foregoing reasons, the Civil Revision Petition is allowed and the impugned order passed by the learned Subordinate Judge, Valliyoor in E.A.No.06 of 2025 in E.P.No.77 of 2025 in O.S.No.54 of 2010, dated 27.11.2025 and the consequential order passed in E.P.No.77 of 2025, dated 27.11.2025, are hereby set aside. The first respondent is at liberty to file a fresh execution petition, after the outcome of the interlocutory application for stay of the judgment and decree in O.S.No.54 of 2010. The first appellate Court shall dispose the interlocutory application for stay of the judgment and decree in O.S.No.54 of 2010, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. Till the disposal of the said interlocutory application, the parties are directed to maintain status-quo ante to the order passed by the Executing Court ordering delivery of possession, dated 25.09.2025. No costs. Consequently, connected miscellaneous petition is closed.

22.This Court placed its appreciation on the learned Court appointed



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Legal Aid Counsel for the second respondent, who has rendered her effective submission for arriving at the appropriate decision. The High Court Legal Services Committee attached to this Bench shall pay a sum of Rs.10,000/- in *toto* as remuneration to the learned Court appointed Legal Aid Counsel, who is appearing for the second respondent, within a period of two weeks from the date of receipt of a copy of this order.

24.02.2026

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

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To

The Subordinate Judge, Valliyoor.



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N.SENTHILKUMAR, J.

cmr

Order made in
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