



C.M.A(MD)No.104 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.04.2026

Pronounced on : 17.06.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.104 of 2025

and

C.M.P.(MD)No.1729 of 2025

1.S.Pandi

2.P.Dhanalakshmi

3.Pavitra @ Theertham

4.P.Manonmanoyam

: Appellants/Petitioners/
Respondents/Defendants

Vs.

J.Rajasekaran

: Respondent/Respondent/
Petitioner/Plaintiff

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 of C.P.C., against the fair and decreetal order in E.A.No.5 of 2023 in E.P.No.28 of 2022 in O.S.No.198 of 2013, dated 23.10.2024 on the file of the District Munsif Court, Vadipatti.



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For Appellants : Mr.S.RAmsundar Vijayraj

For Respondent : Mr.S.Vellaichamy.

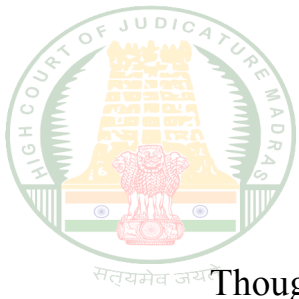
J U D G M E N T

The Civil Miscellaneous Appeal is directed against the order passed in E.A.No.5 of 2023 in E.P.No.28 of 2022 in O.S.No.198 of 2013, dated 23.10.2024 on the file of the District Munsif Court, Vadipatti.

2. This case exhibits a classic example, as to how the tenant has been abusing the process of the Court and the law, thereby dragging on the eviction proceedings and preventing the landlord from getting possession of the leased out property.

3. For the sake of convenience and brevity, the parties herein after will be referred as per their ranking/status before the trial Court.

4. The respondent as plaintiff has filed a suit in O.S.No.198 of 2013, seeking eviction of the petitioners/defendants and claiming arrears of rent.



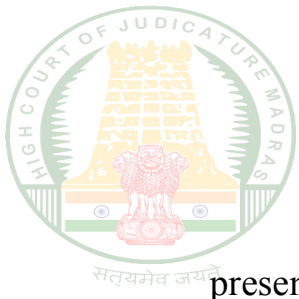
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Though the petitioners/defendants have entered into appearance through their counsel, subsequently remained ex-parte and an ex-parte decree, dated 18.11.2014, came to be passed, directing the petitioners/defendants to vacate the suit property and hand over the vacant possession of the same within a period of three months and also to pay a sum of Rs.3,000/- towards rent arrears.

5. The respondent/decreed holder, alleging that the decree has not been complied with, laid an execution petition in E.P.No.28 of 2022, seeking delivery of the leased out property.

6. It is evident from the records that since the petitioners/judgment debtors had refused to receive the notice, the Executing Court passed an order, dated 23.12.2022, setting them ex-parte. It is further evident that the Executing Court, after hearing the petitioner's side and on perusing the decree passed in O.S.No.198 of 2013, directed the petitioners/defendants to deliver the suit property and posted the matter for delivery by 20.06.2023. When the execution petition was pending for effecting delivery of the suit property, the petitioners, invoking Order 21 Rule 106 of C.P.C., filed the



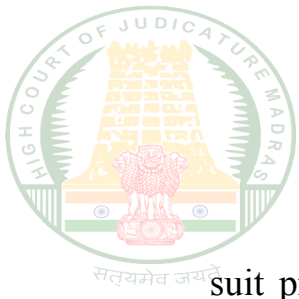
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present petition in E.A.No.5 of 2023 for setting aside the ex-parte order, dated 23.12.2022 in E.P.No.28 of 2022 on 09.12.2023.

7. The case of the petitioners canvassed in the petition filed under Order 21 Rule 106 of C.P.C., is that the first petitioner was affected by jaundice for more than six months from 02.11.2014 and took country medicine; that the respondent, taking advantage of the petitioner's situation, had filed the false suit; that the first petitioner was affected by mental trauma because of the order passed in Execution Petition; that the non appearance of the petitioners in the main petition is neither wanton nor willful and that the petitioners will be put to loss and hardship, if the petition is not allowed.

8. The defence of the respondent/plaintiff is that the petitioners had complete knowledge of the ex-parte decree passed in the main suit; that after passing of the order of delivery, the Court staff went to the suit property for taking possession, but the petitioners quarreled with the staff and hence, the respondent was constrained to take necessary steps; that thereafter, the matter was posted to 09.12.2023 for taking possession of the



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suit property with the aid of Village Administrative Officer and Surveyor and with police help and only at that juncture, the petitioners have filed the above petition for setting aside the ex-parte order and that the above petition, is devoid of merits and is liable to be dismissed.

9. The Executing Court, after enquiry passed the impugned order, dated 23.10.2024, dismissing the said petition. Challenging the dismissal, the present Civil Miscellaneous Appeal has been filed.

10. No doubt, the petitioners/defendants have taken a stand that they have purchased the suit property from the respondent as a vacant site through a registered agreement, dated 17.07.2005 and they had built a house on the said site and were residing therein. They have also taken a stand that the first petitioner was affected by jaundice from more than six months from 02.11.2014 and was taking country medicine and that the respondent taking advantage of the petitioners' situation, filed the above suit and obtained ex-parte decree.



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11. It is not the case of the petitioners that they have filed an application for setting aside the ex-parte decree nor preferred any appeal challenging the said decree. In the absence of any challenge, the ex-parte decree, dated 18.11.2014 had already attained finality and that therefore, the petitioners have no *locus standi* to question the ex-parte decree in the present proceedings. Moreover, it is well settled that the Executing Court cannot go behind the decree.

12. The only reason canvassed for setting aside the ex-parte order, dated 23.12.2022 is that the first petitioner was affected by mental trauma because of the ex-parte order passed on 23.12.2022 and that his non appearance on that date is neither willful nor wanton . Except the above, the petitioners have not elaborated anything further.

13. More importantly, the first petitioner who filed the affidavit in support of the petition under Order 21 Rule 106 of the CPC, has not stated anything about the other three petitioners. It is not the case of the petitioners that the petitioners 2 to 4 were also prevented from entering into appearance before the Executing Court.



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14. As rightly contended by the learned counsel for the respondent, it is pertinent to note that, after the petitioners/judgment debtors were set ex-parte on 23.12.2022, the execution petition was adjourned from time to time and was ultimately taken up on 27.04.2023. On that day, the Executing Court, upon perusing the decree passed by the competent Civil Court and after hearing the arguments of the decree holder, ordered delivery of possession.

15. As rightly pointed out by the learned counsel for the respondent, when the Court staff attempted to effect delivery, the petitioners raised objections and obstructed the process. Consequently, at the instance of the respondent/decreed holder, the matter was posted for effecting delivery with the assistance of the Village Administrative Officer, Surveyor and Police protection. It was only thereafter that the petitioners came forward with the present application seeking to set aside the order dated 23.12.2022, by which they had been set ex parte.



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16. As rightly observed by the learned Judge, Executing Court, the petitioners have not assigned any valid or sufficient reason for their non-appearance on 23.12.2022. The explanation offered by them is neither convincing nor acceptable.

17. When the appeal was taken up for final disposal, the learned counsel for the respondent submitted that the respondent had already taken possession of the suit property through Court on 18.12.2024 and that, only because of the pendency of the present Civil Miscellaneous Appeal, the execution proceedings have not yet been formally terminated.

18. It is pertinent to note that the respondent had obtained an ex parte decree as early as on 18.11.2014. Thereafter, he secured an order for delivery from the Executing Court on 27.04.2023, after a lapse of more than eight years, and ultimately obtained actual delivery of possession on 18.12.2024.



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19. Considering the above facts, and as rightly contended by the learned counsel for the respondent, the petitioners/judgment debtors have successfully protracted the proceedings for nearly thirteen years and prevented the landlord/decreed holder from enjoying the fruits of the decree for more than ten years. This Court is therefore constrained to observe that the conduct of the petitioners amounts to an abuse of the process of Court. Consequently, this Court finds that the order of the Executing Court dismissing the application filed under Order XXI Rule 106 CPC is perfectly justified and warrants no interference. This Court therefore concludes that the Civil Miscellaneous Appeal is devoid of merits and is liable to be dismissed. Having regard to the facts and circumstances of the case, this Court further holds that the respondent/decreed holder is entitled to costs throughout.

20. In the result, the Civil Miscellaneous Appeal stands dismissed with costs and the decretal order passed in E.A.No.5 of 2023 in E.P.No.28 of 2022 in O.S.No.198 of 2013, dated 23.10.2024, on the file of the District Munsif Court, Vadipatti, is confirmed. The Executing Court is directed to



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record the delivery already effected and to close / terminate the execution proceedings in accordance with law. The respondent/decreed holder shall be entitled to costs throughout. Consequently, the connected Miscellaneous Petition is closed.

17.06.2026

NCC : Yes/No

Index : Yes/No

Internet : Yes/No
das

To

- 1.The District Munsif Court, Vadipatti.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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