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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:18.08.2026	Pronounced on:11.09.2026

CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

CRP. No.2269 of 2023 and 1146 and 1147 of 2024
and CMP. Nos.5918 & 5920 of 2024

CRP. No.2269 of 2023:-
1.S.Sundaramoorthy
Subbathal (Died)
2.Anuradha ..Petitioner

Vs

Balusami

..Respondent

PRAYER: This Civil Revision Petition has been filed under Section 115 of the CPC, to set aside the fair and decreetal order dated 28.04.2023, passed in I.A. No.419 of 2019 in O.S. No.91 of 2012, on the file of the II Additional District and Sessions Court, Tiruppur.

CRP. No.1146 of 2024:-

Balusamy ... Petitioner

Vs.

1.A.Anandhan
2.S.Sundaramoorthy
3.S.Anuradha ... Respondents

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PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 01.12.2023 made in E.A. No.2 of 2021 in E.P. No.35 of 2019 in O.S. No.91 of 2012 on the file of the II Additional District and Sessions Judge, Tiruppur.

CRP. No. 1147 of 2024:-

Balusamy ... Petitioner

Vs.

1.S.Sundaramoorthy

Subbathal (Died)

2.S.Anuradha ...Respondents

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 01.12.2023 made in E.P. No.35 of 2019 in O.S. No.91 of 2012 on the file of the II Additional District and Sessions Judge, Tiruppur.

For Petitioner(s): Mr.T.P.Manoharan,
Senior Counsel for
Mr.T.M.Naveen
Petitioner in CRP. Nos.1146 & 1147 of 2024
Respondent in CRP. No.2269 of 2023

For Respondent(s): Mr.K.Govi Ganesan,
Petitioner in CRP. No.2269 of 2023
Respondents 2 & 3 in CRP. No.1146 of 2024
and Respondents in CRP. No.1147 of 2024
Mr.S.Balasubramanian for
R1 in CRP.No.1146 of 2024

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COMMON ORDER

CRP. No.2269 of 2023 is filed by the defendants, challenging the order in I.A. No.419 of 2019 in O.S. No.91 of 2007, which was filed under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 567 days in filing the Application to set aside the exparte decree dated 17.08.2017.

2. CRP. Nos.1146 and 1147 of 2024, have been filed by the decree holder seeking to set aside the order in E.A. No.2 of 2021 in E.P. No.35 of 2019 and the detailed order in E.P.No.35 of 2019, both dated 01.12.2023.

3. I have heard Mr.T.P.Manoharan, learned Senior Counsel for Mr.T.M.Naveen, learned counsel for the revision petitioner in CRP. Nos.1146 and 1147 of 2024 and respondent in CRP. No.2269 of 2023, Mr.K.Govi Ganesan, learned counsel for the petitioner in CRP. No.2269 of 2023 and appearing for the second and third respondents in CRP. No.1146 of 2024, respondents in CRP. No.1147 of 2024 and Mr.S.Balasubramanian, learned counsel for the first respondent in CRP. No.1146 of 2024.

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4. The brief facts that may be necessary for decision in all these revision petitions are as hereunder:-

For the sake of convenience, the revision petitioner in CRP. Nos.1146 and 1147 of 2024, shall herein after be referred to as the plaintiff, the revision petitioners in CRP. No.2269 of 2023, shall herein after be referred to as defendants and the first respondent in CRP. No.1146 of 2024, herein after be referred to as purchaser.

5. The plaintiff filed O.S. No.91 of 2012 on the file of the II Additional District and Sessions Judge, Tiruppur seeking specific performance of an agreement of sale dated 08.09.2005. In the said suit, the defendants had filed a written statement and in view of the defendants not coming forward to contest the suit by participating at trial, the Trial Court decreed the suit on 17.08.2017, granting two months time to the plaintiff to deposit the balance sale consideration of Rs.60,00,000/- and on such deposit, the defendants were called upon to execute a sale deed in favour of the plaintiff. An Application in I.A. No.419 of 2019 came to be filed, to set aside the said exparte decree under Section 5 of the Limitation Act, seeking to condone a delay of 567 days.

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6. It is the submission of Mr.Govi Ganesan, learned counsel for the defendants, who are revision petitioners in CRP. No.2269 of 2023, that the suit was posted for trial on 27.03.2017 and the learned counsel who had been appointed by the defendants had reported no instructions, which resulted in the suit being decreed on 17.08.2017, exparte. Mr.Govi Ganesan, learned counsel would further state that the first defendant was looking after the case and was regularly instructing his Counsel, but however, in April 2017, the first defendant was affected with jaundice, for which he was taking native treatment and therefore, for about three months, he was not in a position to move about freely and in any event, he was under impression that the case would be pending and therefore, he did not take any steps to contact the Counsel. Mr.Govi Ganesan, learned counsel would further state that only on receipt of notice in E.P. No.35 of 2019 on 05.04.2019, the defendants even came to know of the fact that the suit has been decreed on 17.08.2017. The learned counsel would therefore state that the defendants immediately filed I.A. No.419 of 2019, for condonation of delay along with an application to set aside the exparte decree.

7. It is the submission of Mr.Govi Ganesan, learned counsel that even in the written statement, the defendants had denied the very genuineness of the sale agreement and therefore, a fair opportunity should be given to the

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defendants to contest the suit on merits. As regards the delay, it is his submission that sufficient reasons had been assigned despite which, the Trial Court has erroneously held that the defendants have not made out sufficient cause. He would therefore, pray for the revision being allowed.

8. Per contra, Mr.T.P.Manoharan, learned Senior Counsel would state that the delay of 567 days, has not been sufficiently explained and the Trial Court rightly found that sufficient cause has not been made out by the defendants, warranting exercise of discretion in their favour. He would therefore pray for the dismissal of the revision petition in CRP. No.2269 of 2023.

9. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the impugned order in I.A. No.419 of 2019, dated 28.04.2023.

10. It is an admitted fact that the suit summons were served on the defendants and they also entered appearance and even filed a written statement. It was after commencement of the trial alone, that they did not choose to diligently defend the suit, which necessitated their Counsel to report no instructions. From the affidavit filed in support of the condone delay

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application, it is seen that the first defendant takes up the responsibility on himself by contending that he was taking care of the matter and was in regular touch with the Counsel. But however, in April, 2017, the first defendant was affected with jaundice, for which he was taking native treatment and was not able to move about for three months and he was under the bonafide impression that his Counsel would be taking care of the matter. It is further contended that only on receipt of notice in the Execution Proceedings on 05.04.2019, post decree that the first defendant even came to know about the exparte decree.

11. Even according to the first defendant, mobility was restricted only for a period of three months and at best, even assuming that the first defendant suffered because of jaundice and was immobile for three months, though there was no proof of treatment, since native treatment alone was taken, there is no explanation as to why the first defendant did not follow up the case after the period of three months i.e., atleast from July or August 2017. No steps have been taken by the first defendant or the other defendant for close to two years, to even enquire as to the status of the suit. It is not as if the defendants were not aware of the seriousness of the matter. They were facing a suit for specific performance, which if decreed would result in valuable rights in immovable property of the defendants being lost. In such circumstances, the very casual

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manner in which, the reasons are assigned cannot be countenanced.

12. Further, the Trial Court has also rightly found that despite sufficient opportunities for cross examination of P.W.1, the defendants did not come forward to proceed with the trial and after examination of P.W.1 and P.W.2 alone, the suit was decreed on 17.08.2017. In order to execute the decree, E.P. No.35 of 2019 was filed and in the interregnum period, the defendants sold the property to a third party viz., the first respondent in CRP. No.1146 of 2024. This also weighed in the mind of the Trial Court, against the defendants. In view of the above, having found that the defendants were not serious in contesting the suit and on the contrary, they have even proceeded to alienate the suit property, despite having filed a written statement and contested the suit for specific performance, I do not see the reasons assigned by the defendants meriting acceptance. As the litigants and the property owners, a duty is cast upon the defendants to follow up the case diligently. Even giving the benefit of a three month period, as contended by the defendants themselves, there is no explanation for the long silence from July/ August, 2017, till the application was filed on 08.04.2019, which is almost two years.

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13. In such circumstances, I do not see any infirmity in the order of the Trial Court, finding that the petitioners have not shown any sufficient cause. Consequently, there is no merit in the revision. Accordingly, ***CRP. No.2269 of 2023 is dismissed.***

14. Coming to CRP. Nos.1146 and 1147 of 2024, these revisions are at the instance of the successful plaintiff/decree holder. CRP. No.1146 of 2024, is challenging an order in E.A. No.2 of 2021, filed by the purchaser (1st respondent in CRP. No.1146 of 2024). The said E.A. No.2 of 2021, was filed under Order 21 Rule 58 CPC, read with Section 47 and Section 151 CPC, seeking dismissal of the Execution Petition. The case of the purchaser in the said E.A. was that he is a third party/bonafide purchaser of the suit property, from the defendants, under a registered sale deed dated 22.01.2016, in Doc. No.743 of 2016 on the file of the Sub Registrar Office, Avinashi, for consideration.

15. According to the purchaser, after the said purchase he has formed a layout and plots have been sold to various third parties. The subject matter of the purchase of the petitioner is 1.5 acres, out of a total three acres, which is subject matter of the decree for specific performance. At this juncture, it would be relevant to record the fact that in respect of the remaining 1.5 acres, which is

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the subject matter of the decree for specific performance, it is the contention of the defendants as well as the purchaser that the said 1.5 acres, belonged to the sister of the first defendant and the sister had appointed the first defendant as her duly constituted power of attorney agent and in turn, as power agent, the first defendant has executed a sale deed in favour of his own wife in respect of the remaining 1.5 acres as well.

16. In short, according to the defendants and the purchasers, no lands are available to enure to the benefit of the plaintiff/decree holder in the suit for specific performance. It is also contended by the purchaser that the sale agreement in favour of the plaintiff is void and not enforceable under the law and since there was an attempt made by the plaintiff to trespass and encroach into the suit property, the purchaser had preferred a police complaint and thereafter, he came to know about the pendency of the EP proceedings before the District Munsif Court, Tiruppur.

17. The defendants in O.S. No.91 of 2012 (specific performance suit) along with their mother, Subbathal filed O.S. No.217 of 1997 before the District Munsif, Tiruppur for permanent injunction. The said suit was decreed, as against which A.S. No.16 of 1981, filed by the defendants in the said suit in

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O.S. No.217 of 1997, was allowed on 20.03.1982. Aggrieved by the same, the defendants 1 and 3 and their mother, Subbathal, filed a Second Appeal in S.A. No.1463 of 1982 and according to the purchaser, this Court in the Second Appeal Judgment had rendered the sale agreement between the plaintiff and the defendants, which is the subject matter of O.S. No.91 of 2017, as void and unenforceable.

18.The learned counsel for the Purchaser also contended that in order to settle the dispute and the claim of the plaintiff, the first defendant approached the purchaser and requested him to pay Rs.30 lakhs to the plaintiff and that a sum of Rs.5,00,000/- was paid on 09.02.2016 by cheque and an amount of Rs.25,00,000/- was paid on 05.03.2016 and Rs.5,00,000/- on 02.06.2016, the last two transaction of Rs.25 lakhs and Rs.5 lakhs, being by way of cash. The purchaser further contended that the plaintiff has given an assurance that he would withdraw the specific performance suit, in view of the settlement reached.

19. It is further contended by the purchaser that the suit itself was barred by limitation, which was not considered by the Trial Court. On these grounds, the application under Order 21, Rule 58 read with Section 47 CPC and 151

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CPC, came to be filed. The said application was resisted by the plaintiff/decree holder contending that the application by a purchaser that too, *lis pendens,* was not maintainable under Section 47 CPC and even invocation of Order 21, Rule 58 CPC was improper. It is further contended by the plaintiff that the sale in favour of the purchaser is an invalid document, since the first defendant in O.S. No.91 of 2012 had appeared in the suit for specific performance and was aware of the same and the collusive sale deed is void and not binding on the plaintiff, who has a valid decree in his favour, prior to the execution of the sale deed in favour of the purchaser.

20. Insofar as the claim of the purchaser that the parties had negotiated for settlement of Rs.30 lakhs and the plaintiff had refuted the said claim of the purchaser and denied any such settlement, the plaintiff admitted a payment of the Rs.5 lakhs cheque alone, however, contending that it was repayment of loan that the petitioner had borrowed in December 2016. The plaintiff contended that it was a loan transaction, which had nothing to do with the suit sale agreement or any alleged settlement. The plaintiff also denied the factum of receipt of the cash payments as alleged by the purchaser. The Executing Court finding that this Court in S.A. No.1463 of 1982 had invalidated the suit sale agreement, proceeded to hold that the decree has become non est and cannot be

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executed and thereby allowed E.A. No. 2 of 2021.

21. In view of the E.A. No.2 of 2021, being allowed the Executing Court dismissed the E.P. No.35 of 2019, which is under challenge in CRP. No.1147 of 2024.

22. Mr.T.P.Manoharan, learned Senior Counsel appearing for the plaintiff/revision petitioner, contends that application under Order 21, Rule 58 CPC was wholly inapplicable to the fact situation as there was no order of attachment in the first place. He would therefore state that the application should have been dismissed at the very threshold as not maintainable.

23. As regards Section 47 CPC, Mr.T.P.Manoharan, learned Senior Counsel, referring to provisions of Section 47 CPC, would contend that the purchaser clearly claims under the defendants/judgment debtors in the suit and therefore he cannot have any better or independent right to challenge the executability of the decree under Section 47 CPC. In this regard, he would also invite my attention to the provisions of Order 21, Rule 102 CPC as well, which imposes a bar for a person claiming under the judgment debtor to resist or obstruct execution of the decree. The learned Senior Counsel has relied on the

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following decisions:-

(i) *Nawab Shaqafath Ali Khan and others vs. Nawab Imdad, Jah Bahadur and others,* reported in, *(2009) 5 SCC 162;*

(ii) *B Renushree vs. G Karthikeyan and others,* reported in, *2018 SCC OnLine Mad 12978;*

(iii). *Usha Sinha vs. Dina Ram & Others,* reported in, *(2008) 7 SCC 144;*

(iv) Pradeep Mehra vs. Harijivan J. Jethwa (Dead) & Others, reported in, *(2023) SCC Online SC 1395;*

(v) *Rafique Bibi (Dead) vs. Sayed Waliuddin (Dead) & Others,* reported in, *(2004) 1 SCC 287*;

(vi) *K.N. Aswathnarayana Setty (Dead) & Others vs. State of Karnataka & Others,* reported in, *(2014) 15 SCC 394;*

(vii) *Danesh Singh & Ors. vs. Har Pyari (Dead) Thr. Lrs. & Ors.,* reported in, *(2025) SCC Online SC 2805*;

(viii) *Alka Shrirang Chavan & Ors vs. Hemchandra Rajaram Bhonsale & Ors,* reported in, *(2026) SCC Online SC 55*;

(ix). *K.S. Ravi vs. K.P. Manickam & Ors.,* reported in, *2018 (4) CTC 613; and*

(x) *P. Daivasigamani vs. S. Sambandan*, reported in, *(2022) 14 SCC 793.*

24. Per contra, Mr.Govi Ganesan, learned counsel appearing for the defendants and Mr.Balasubramanian, learned counsel appearing for the purchaser would only rely on the judgment of this Court in S.A. No.1463 of 1982, which has been the basis on which E.A. No.2 of 2021, has been allowed and consequently, E.P. No.35 of 2019, has been dismissed.

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25. It is the submission of the learned counsel for the defendants and the purchaser that the very suit filed by the plaintiff was belated and beyond the statutory period prescribed under the Limitation Act. They would therefore contend that the discretionary relief of specific performance ought not to have been granted in the first place. They would also point out that there has been a delay in depositing the balance sale consideration as well and therefore, the Court ought to have refused the relief of specific performance and should have held that the plaintiff was not entitled to the equitable discretionary relief of the specific performance.

26. It is also contended by the purchaser and the defendants that now admittedly, the third parties are in possession, being bonafide purchasers of various plots for valuable sale consideration and out of the three acres originally agreed to be sold under the suit sale agreement, 1.5 acres has been plotted out and the remaining extent did not even belong to the defendants, to enable them in the first place to agree to convey the same. The learned counsel therefore states that the Executing Court has rightly dismissed the E.P. by allowing E.A. No.2 of 2021 and the plaintiff is not entitled to execute the decree for specific performance.

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27. I have already confirmed the dismissal of Section 5 Application filed by the contesting defendants in the suit for specific performance. Thus the decree for specific performance has become final. Admittedly, today the plaintiff has, with the permission of the Court, deposited the balance sale consideration as well. Issues of any delay or lack of bonafides should have been agitated at the appropriate time or atleast by contesting the suit on merits which has not been done in the present case.

28. The decree has also not been challenged by way of a statutory First Appeal as well, which option was also available to the defendants and in such event, they may have had a reasonable chance of success, citing limitation as a bar for decreeing the suit for specific performance. Therefore, today all the avenues open to the defendants to set aside/challenge the decree for specific performance have been lost.

29. Now, what remains is only the question of challenge to the executability of the decree. The only ground on which the Executing Court has allowed the objection application filed by the purchaser is that this Court in Second Appeal has nullified the suit sale agreement. I have gone through the

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judgment of this Court in S.A. No.1463 of 1982. On going through the said judgment, I find that it was a suit filed by Subbathal, as plaintiff for a bare injunction. The Trial Court decreed the suit. However, the First Appellate Court has reversed the decree and dismissed the suit. The same was challenged in Second Appeal before this Court. At the first instance, this Court remanded the matter to the Trial Court for fresh disposal, by judgment dated 30.03.2001. The said order of remand was challenged before the Hon'ble Supreme Court in Civil Appeal No.7620 of 2002. The Hon'ble Supreme Court, however remanded the matter back to this Court, permitting the plaintiff to add the relief of declaration and after affording an opportunity to lead additional evidence, this Court was directed to decide the appeal afresh.

30. Pursuant to the directions of the Hon'ble Supreme Court, the amendment application filed by the plaintiff was allowed. The plaintiff had a sister who was the second respondent in the Second Appeal and the brother in law of the plaintiff, Subbathal was the first respondent in the Second Appeal. The respondents 5 and 6 in the Second Appeal are sons of the respondents 1 and 2, in the Second Appeal, who were impleaded after the demise of respondents 1 and 2. This Court ultimately found that the plaintiff was not entitled to a permanent injunction against a co-owner, especially taking note of the

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admission of the plaintiff that her sister was a co-sharer. It is only on this ground that the plaintiff, Subbathal was non suited to the relief of injunction. I do not find any reference whatsoever to the suit sale agreement in the entire judgment in S.A. No.1463 of 1982, which was disposed of by this Court. As already stated hereinabove, the only ground on which, the injunction has been refused is that the plaintiff herself had admitted her sister, the second respondent in the Second Appeal to be a co-sharer and since no injunction can be granted against the co-owner, the relief has been refused.

31. In such view of the matter, the Executing Court has grossly fell in error in relying on something which is not there in the judgment in the S.A. No.1463 of 1982. Therefore, the findings of the Executing Court allowing the Application under Order 21, Rule 58 and Section 47 and 151 CPC, are consequently erroneous and liable to be set aside, subject to the other objections that have been canvassed before me, which are to be considered hereinafter.

32. According to Mr.Balasubramanian, learned counsel for the purchaser, the purchaser was entitled to step into the shoes of the defendants in the suit for specific performance and take up all defences open. I have no quarrel with regard to the said proposition. However, it is to be seen whether such an avenue

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is open to a *pendente lite* purchaser, that too, in execution proceedings. As rightly pointed out by Mr.T.P. Manoharan, learned Senior Counsel, Order 21, Rule 58 CPC, only deals with adjudication of claims or objections to attachment of properties. In the present case, there is no order of attachment, but the subject matter of the dispute is only a sale agreement and a suit for specific performance for enforcement of the said sale agreement. Therefore, I do not see how the purchaser can take advantage of Sub Section (2) of Rule 58 CPC, to contend that he being a representative of one of the parties, he is entitled to object. If the objections are relating to any attachment, then no doubt, the purchaser can claim benefit being a representative under the defendants in the suit for specific performance. Therefore, I do not see Order 21, Rule 58 CPC being available to the purchaser to object to the execution of the decree for specific performance.

33. Coming to Section 47 CPC, it contemplates all questions arising between the parties to the suit in which, the decree was passed, or their representatives and relating to execution, discharge or satisfaction of the decree to be determined by the Executing Court and not by a separate suit. Sub Section (3) of Section 47, confers the power upon the Executing Court to decide even the question as to whether any person is, or not a representative of a party and

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Explanation 2, also deems a purchaser of property at a sale in execution of the decree to be a party to the suit in which the decree is passed and all questions relating to delivery of possession of such property to such purchaser or his representatives, shall also form part of the enquiry contemplated within the meaning of Section 47. Admittedly, the purchaser in the present case, is not a purchaser in execution of a decree for him to claim to be a representative, of the defendant. Therefore, I do not see how the purchaser can claim to be a representative within the scope of Section 47 of CPC. In fact, under Order 21, Rule 97 CPC, when there is resistance or obstruction to delivery of immovable property, then it is open to the decree holder or purchaser of such property sold in execution to complain of such resistance or obstruction. The manner of adjudication of such complaint has been set out in Rules 98 to 101. Rule 102, specifically excludes application of Rule 98 and 100, to a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed. Admittedly, in the present case, the sale in favour of the purchaser was after institution of the suit. Therefore, there is a clear bar under Rule 102, for the purchaser to offer any resistance or obstruction to the execution of the decree in the first place.

34. The Hon'ble Supreme Court in *Brahmdeo Chaudhary Vs. Rishkesh*

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Prasad Jaiswal and Another, reported in *1997 (2) Supreme 660,* held that even a person in possession being a third party can claim independent right and file an obstruction application under Order 21, Rule 97 and it is not necessary for him to wait for the decree holder to take out an application under Order 21, Rule 97 CPC. Therefore, even assuming the objection of the purchaser under Order 21, Rule 58 CPC, or Section 47 CPC can be treated as one under Order 21, Rule 97 CPC, even then in terms of Rule 102 of Order XXI,, there is a clear bar which takes away the right of a purchaser to resist or obstruct the execution of the decree.

35. Coming to the decisions that have been relied on by the learned Senior Counsel for the revision petitioner in *Usha Sinha*'s case, (referred herein supra), the Hon'ble Supreme Court held that a decision of the Court in a suit shall be binding not only on the litigating party, but also on those who derive title under them, by alienations made pending the suit, whether such alienees had or had not notice, of the pending proceedings. The Hon'ble Supreme Court further held that a purchaser during pendency of litigation has no right to resist or obstruct execution of the decree passed by a competent Court and that no independent right is available to such purchaser.

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36. In *Pradeep Mehra*'s case (referred herein supra), the Hon'ble Supreme Court held that the Executing Court cannot go behind the decree and examine the validity of the decree of the Court which permitted the execution of the decree, in the absence of the Court passing the decree itself having no jurisdiction. That is not the objection of the defendants or the purchaser in the present case. In such circumstances, the very scope of Section 47 being microscopic in nature and there is nothing brought on record to show that the decree is not capable of execution or that the decree is inexecutable on account of any law promulgated after the date of passing of the decree, I do not see how the application under Section 47 was maintainable in the first place.

37. In *Rafique Bibi*'s case (referred herein supra), the Hon'ble Supreme Court again dealt with a decree passed by a Court having no jurisdiction, which is a nullity and consequently, such decree passed not being executable as against a decree which is merely illegal or not passed in accordance with the procedure laid down by the law. After discussing the distinction, the Hon'ble Supreme Court, held that the decree suffering from illegality or irregularity of procedure would not be inexecutable by the Executing Court and the remedy of a person aggrieved by such a decree is only to have it set aside in a duly constituted legal proceedings by a superior Court.

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38. In *K.N.Aswathnarayana Setty*'s case (referred herein supra), the Hon'ble Supreme Court applied Section 52 of the Transfer of Property Act, 1882 (Doctrine of *lis pendens*) and held that a transferee *pendente lite* is bound by the decree passed by the Court.

39. In *Danesh Singh*'s case (referred herein supra), the Hon'ble Supreme Court, held that a right of a *pendente lite* transferee from the judgment debtor cannot be recognised, whether it was made as an application under Rule 99 of Order 21 or under Section 47 CPC or in a separate suit.

40. In *Alka Shrirang Chavan*'s case, (referred herein supra), the Hon'ble Supreme Court held that on a combined reading of Section 52 of the Transfer of Property Act, read with Section 19(b) of the Specific Relief Act and Section 47 CPC, along with Order XXI, Rules 97, 98 and 101, title of a transferee *pendente lite* purchaser cannot supersede the decree and a right of a transferee *pendente lite* purchaser would be subject to the decree and the transferee would be bound by the decree in the suit.

41. In fact, the Hon'ble Supreme Court in the said case, even directed

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delivery of actual physical possession of the suit property to the decree holder, despite equity being raised by the transferee *pendente lite* purchasers having invested huge amounts by putting up construction/development of the property. This Court in *K.S. Ravi*'s case (referred herein supra), held that in a Section 47 application, the Executing Court cannot revisit the objections that have already decided by the Competent Court, besides also holding that a transferee *pendente lite* purchaser cannot maintain a petition under Order 21, Rule 97 CPC, in view of the bar under Rule 102 of Order 21 CPC.

42. In *B.Renushri*'s case, (referred herein supra), this Court held that when the subject adjudication is not on or against an order of attachment, an Order 21, Rule 58 CPC, application cannot be taken out by transferee *pendente lite* purchaser, seeking to adjudicate his right/title and interest in the subject property.

43. In *P.Deivasigamani*'s case, (referred herein supra), the Hon'ble Supreme Court, held that the rule of equity that exists in England does not apply in India to suits for specific performance and therefore, when a suit for specific performance is filed within the period of limitation, delay cannot be a ground to refuse the leave for specific performance to the plaintiff. I do not see any

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necessity arising to even refer to the ratio laid down in this case, for the simple reason that the decree for specific performance has become final and the same has been put to execution. The attempt to set aside the exparte decree by the contesting defendants has been unsuccessful with the dismissal of CRP. No.2269 of 2026. In such view of the matter, it is not open to the purchaser or the defendants to now re-agitate the objections that may have been available or open to them before the Trial Court.

44. In view of the foregoing and applying the discussed and summarised hereinabove, the revision petitioner, viz., the plaintiff is entitled to succeed. The revision petitions in ***CRP. Nos.1146 & 1147 of 2024, are allowed.*** The orders in E.A. No.2 of 2021 in E.P. No.35 of 2019 in O.S. No.91 of 2012 is set aside and accordingly, E.P. No.35 of 2019, is also restored to file. The Executing Court shall proceed with the Execution Petition in the manner known to law and as contemplated under Order XXI CPC, the Execution Petition shall be disposed of within a period of three (3) months from the date of receipt of the copy of the order. No costs. Consequently, connected Miscellaneous Petitions are also closed.

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Index: Yes
Speaking order
Neutral Citation: Yes
RKP

To

The II Additional District and Sessions Judge, Tiruppur.

P.B.BALAJI, J.

RKP

Pre-delivery Order in
CRP. No.2269 of 2023 and 1146 and 1147 of 2024
and CMP. Nos.5918 & 5920 of 2024

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