

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 17.08.2026**

CORAM

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

WEB COPY

**CRP No.251 of 2026  
& CMP.No.1185 of 2026**

G.Arumugam

..Petitioner

Vs

1.D.Palanimuthu  
2.P.Rajeshwari

..Respondents

**Prayer:** Civil Revision petition filed under Section 115 of CPC, to set aside the order passed against the petitioner herein by the I Additional Subordinate Judge, Salem, in E.A.No.4 of 2022 in E.P.No.46 of 2018 in O.S.No.423 of 2012 dated 19.09.2024 and permit the petitioner to contest E.P.No.46 of 2018.

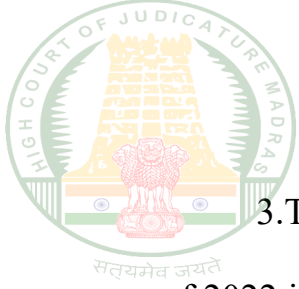
For Petitioner: Mr.T.S.N.Prabhakaran

For Respondents: Mr.P.K.Harinath Babu

### **ORDER**

This revision petition has been filed to set aside the order dated 19.09.2024 in E.A.No.4 of 2022 in E.P.No.46 of 2018 in O.S.No.423 of 2012 by the learned I Additional Subordinate Judge, Salem.

2.I have heard Mr.T.S.N.Prabhakaran, learned counsel for the revision petitioner and Mr.P.K.Harinath Babu, learned counsel for the respondents.

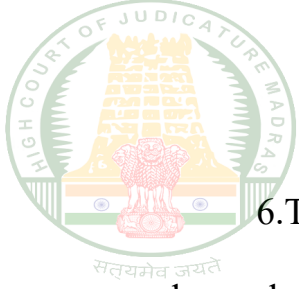


WEB COPY

3.The revision petitioner seeks to set aside the ex-parte order in E.A.No.4 of 2022 in E.P.No.46 of 2018, on the file of the I Additional Subordinate Court, Salem. The petitioner was set ex-parte in the execution petition and an application by the petitioner to set aside the ex-parte order under Order XXI Rule 106 of CPC has been erroneously dismissed according to the learned counsel for the petitioner. The learned counsel for the revision petitioner, relying on my order in *Subbathal (Died) and others Vs. Narayanasamy and others*, reported in 2025 MHC 2603, would contend that the petitioner is entitled to even challenge the executability of the decree under Section 47 of CPC. He would therefore pray for the revision petition being allowed, in order to give an opportunity to the petitioner to challenge the executability of the decree.

4.However, the learned counsel for the respondent would state that till date, the petitioner has not invoked Section 47 of CPC and has merely chosen to seek for setting aside the ex-parte order in the execution proceedings. He would also state the decree has become final and the same has not been challenged by way of first appeal, till date. He would therefore pray for dismissal of the revision petition.

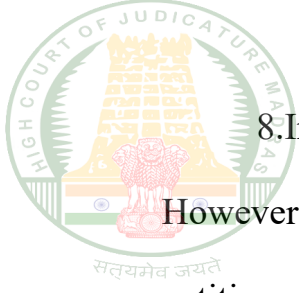
5.I have carefully considered the submissions advanced by the learned counsel on either side.



WEB COPY

6.The suit for mandatory injunction and delivery of possession has been decreed ex-parte. Since the execution petition was instituted after a period of two years, notice was issued in the execution proceedings and insofar as the petitioner, the petitioner did not come forward to file his counter and contest the EP, which resulted in the ex-parte order being passed by the Executing Court. In order to set aside the ex-parte order, the petitioner filed E.A.No.20 of 2012. The Executing Court has dismissed the said application, saying that no sufficient reasons have been assigned by the petitioner for not filing counter, despite sufficient indulgence / opportunities being given by the Court.

7.On going through the order, I do not see any illegality or perversity in the findings of the Executing Court. The Court has discussed the entire facts, relevant dates and circumstances in coming to the conclusion that the petitioner has not made out just or sufficient cause to set aside the ex-parte order in E.P.No.41 of 2011. However, at the same time, as rightly contended by the learned counsel for the petitioner, the petitioner being set ex-parte in EP, it does not preclude the petitioner from filing an application under section 47, which is challenging the very executability of the decree. The scope of such an application under Section 47 of CPC is entirely different from the scope of an enquiry under Order XXI Rule 106 of CPC.



WEB COPY

8. In the light of the above, the Civil Revision Petition is dismissed.

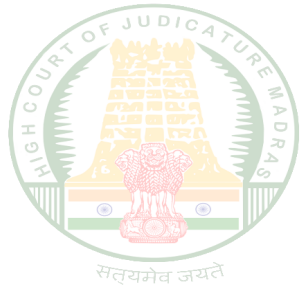
However, the dismissal of this revision shall not come in the way of the revision petitioner moving necessary Section 47 application. In the event of any such application being filed, within a period of two weeks, from the date of receipt of a copy of this order, then, such an application shall be decided, after affording an opportunity to the respondent, within a period of three months. It is needless to state that if the Section 47 application is not filed, taking advantage of the liberty granted by this Court, within the time stipulated, it shall be open to the decree holder to proceed with the EP. No costs. Connected Civil Miscellaneous Petition is closed.

**17.08.2026**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No  
ATA

To

The I Additional Subordinate Judge, Salem.



WEB COPY

**P.B.BALAJI, J.**

**ATA**

**CRP No.251 of 2026**

**17.08.2026**