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CMA No. 1039 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 01-06-2026**

CORAM

**THE HON'BLE MRS.JUSTICE R. KALAIMATHI**

**CMA No. 1039 of 2026**

**and**

**CMP Nos.10402 and 10403 of 2026**

N.K.Kaliyaperumal  
S/o.Kuppusamy,  
No.39, V.Marudur Medu,  
East Shanmugapuram Colony,  
Villupuram.

..Appellant

Vs.

R.Jayakumar  
S/o.Ramu,  
No.9, Thiruvalluvar street,  
V.Maruthur,  
Kaspa Villupuram.

..Respondent

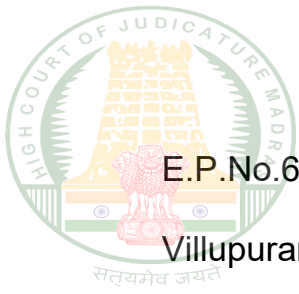
Prayer: This Civil Miscellaneous Appeal is filed under Section 96 of the Code of Civil Procedure, 1908, to set aside the fair and decreetal Order dated 30.3.2026 passed in EA.No.10 of 2025 in EP.No.61 of 2021 in OS.No.24 of 2011 on the file of the Additional District Court, Villupuram.

For Appellant : Mr.N.Suresh

For Respondent : Mr.N.Manoharan  
for Mr.D.Vasanth

### **JUDGMENT**

This Civil Miscellaneous Appeal has been preferred by the appellant / third party against the Order dated 30.03.2026 passed in E.A.No.10 of 2025 in



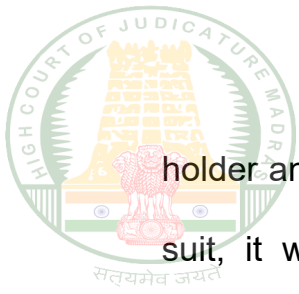
E.P.No.61 of 2021 in O.S.No.24 of 2011 by the Additional District Court,  
Villupuram.

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2. Parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the petitioner / decree holder, the petitioner is the owner of the suit property based on the sale deed executed by the Court on 16.02.2021. For recovery of possession, he took out an execution petition in E.P.No.61 of 2021. When the Senior Bailiff went to the suit property for executing the delivery warrant, the respondent, who is the third party restrained him from effecting delivery. Therefore, the decree holder filed E.A.No.7 of 2024 to order for police aid and the same was ordered in the favour of decree holder. As he resisted the execution of delivery warrant, the property was not delivered to the decree holder.

3.1. The respondent, who is the third party does not have any title to claim title over the suit property. He has produced only an unregistered and an unnamed agreement, said to have been executed by his predecessor in title Kamalanadhan. In the legal battle that has been going on between the petitioner and the respondent for fifteen years, the respondent did not produce the above said original document. The predecessor in title of the decree holder Kamalanathan executed a sale agreement in favour of the decree



holder and the decree holder instituted a suit for specific performance. In that suit, it was ordered in favour of the decree holder and in the execution proceedings, on behalf of his predecessor in title Kamalanadhan, sale deed was executed by the Executing Court. Thereafter, for recovery of possession of the said property, he has taken out the said Execution Petition.

3.2. Meanwhile, the respondent has filed a suit in O.S.No.6 of 2021 for mandatory injunction and it is pending before the Additional District Munsif Court, Villupuram, for the relief of specific performance and for permanent injunction (not to enforce the judgment and decree passed in O.S.No.24 of 2011) against the decree holder and the legal heirs of his predecessor in title Kamalanadhan and the same is pending. He has also filed yet another suit in O.S.No.309 of 2014 against him and the legal heirs of Kamalanadhan (his predecessor in title deceased Kamalanadhan) for the relief of permanent injunction and the same is pending before the Principal District Munsif Court, Villupuram.

3.3. The respondent took out an Execution Petition under Section 47 CPC in E.A.No.92 of 2015 was dismissed by the learned Principal District Judge, Villupuram on 07.09.2019. Another Execution Application filed by the respondent under Order 21 Rule 97 in E.A.No.3 of 2022 was dismissed by the Executing Court (Additional District Court, Villupuram) on 25.02.2022. Against the said Order, the respondent preferred CRP.No.775 of 2022 before this Court and it was dismissed by this Court on 29.04.2024. The Order passed in



E.A.No.3 of 2022 was consequently confirmed by the Hon'ble Supreme Court in SLP.No.39419 of 2024 preferred by the respondent herein by an Order

dated 04.10.2024. The aforesaid details of proceedings before various

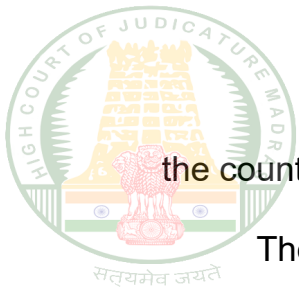
Courts are given hereunder:

|    |                                           |                                                    |                                       |
|----|-------------------------------------------|----------------------------------------------------|---------------------------------------|
| 1. | E.A.No.92 of 2015                         | Filed under Section 47 of CPC by the respondent    | Dismissed on 07.09.2019               |
| 2. | E.A.No.3 of 2022                          | Filed under Order 21 Rule 97 CPC by the respondent | Dismissed on 25.02.2022               |
| 3. | CRP.No.775 of 2022 (E.A.No.3 of 2022)     | Filed by the respondent                            | Dismissed by this Court on 29.04.2024 |
| 4. | SLP No.39419 of 2024 (CRP.No.775 of 2022) | Filed by the respondent                            | Dismissed on 04.10.2024               |

4. Thereafter, the petitioner took out an application for grant of police aid in E.A.No.7 of 2024 and the same was allowed. The said Order was challenged before this Court in CRP.No.210 of 2025 and the said revision was allowed directing the respondent to file counter and it was remitted back to the Executing Court and also the decree holder was directed to take out an application under Order 21 Rule 97 CPC was dismissed as not maintainable on 20.12.2024.

5. Therefore, the executing application was taken out to order to remove the obstructions.

6. The respondent / third party has filed his counter and the details of



the counter are given hereunder in brief:-

The respondent has been in possession and enjoyment of the suit property. Originally, the suit property belonged to Kamalanadhan. The respondent has entered into an agreement with Kamalanadhan on 21.07.2003. Based on the said document and in the capacity of owner, he has been in possession and enjoyment of the suit property. In a money deal, in order to return Rs.4,00,000/-, Kamalanadhan issued a cheque in favour of the respondent was returned as 'insufficient funds'. Based on the same, he has instituted a complaint in C.C.No.23 of 2006 against the said Kamalanadhan before the Judicial Magistrate Court No. I, Villupuram and it is pending. Kamalanadhan was inimical with him and he came to know that he was trying sell the property and hence, he issued legal notice to Kamalanadhan on 10.04.2010. At that time, on 11.08.2014, he came to know through his counsel that the present petitioner Jayakumar had filed a suit for specific performance and it is pending before the Principal District Court, Villupuram and an ex-parte decree was passed.

7. Meanwhile, the respondent filed a suit in O.S.No.309 of 2014 against the decree holder Jayakumar and Kamalanadhan before the Villupuram Principal District Munsif for an order of permanent injunction. In the said suit, for non-filing of the written statement by the decree holder Jayakumar and Kamalanadhan, they were set exparte and the exparte judgment was passed on 18.06.2015. The decree holder has filed an application to set aside the ex-parte decree and it is pending before the Supreme Court.



8. The agreement entered into between the decree holder Jayakumar and Kamalanadhan on 29.05.2009, is a forged document and created to cheat the respondent.

9. Heard the learned counsel for the appellant / respondent (third party) and the learned counsel appearing for the respondent / decree holder.

10. For proper understanding, the agreement which is relied upon by the appellant / respondent (third party) is extracted hereunder:

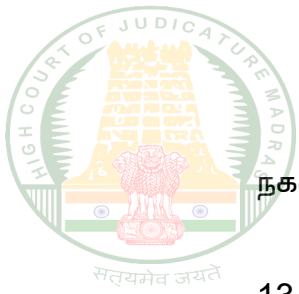
"அந்த ஆவணத்தில்நம்மில் 1 நபருக்கு கிரய பாத்தியமான இதனடியில் கண்ட சொத்தை நம்மில் 2 நபர் பயிர் சாகுபடி செய்துகொள்ள வேண்டியது. 1 வது நபர் கீழ்க்கண்ட சொத்தை விற்கமுன்வரும் காலத்தில் 2 வது நபருக்கு அப்போது உள்ள கவர்மெண்டு மதிப்பீடு மற்றும் மார்கெட் மதிப்பீடு தக்கவாறு விலை பேசி முடிவு செய்து 2 வது நபருக்கு விற்கிரயங்கள் கொடுக்க வேண்டியது. 1 நபர் விற்கமுன்வரவில்லை என்றால் 2வது நபரிடம் கடனாக பெற்ற ரூபாய் 50,000/- ஐம்பது ஆயிரம் வட்டியுடன் 1 வது நபர் கொடுத்துவிட வேண்டியது. மேற்படி தொகைக்கு 100/- க்கு ரூ.3 வட்டிவீதம் அசலும் வட்டியும் சேர்த்து கொடுத்துவிட வேண்டியது. இன்று முதல் கீழ்க்கண்ட சொத்தை சாகுபடி செய்தும் மேற்படி நிலத்தில் உள்ள சர்வீஸ் மரம் உட்பட 2 வது நபர் பொறுப்பிலனுபவித்து கொள்ளலாம் இந்தபடிக்கு நாம் இருவரும் சேர்ந்து எழுதிக்கொண்ட உடன்படிக்கை பத்திரம். 1வது நபர் அசலையும் வட்டியும் சேர்த்து திருப்பிகொடுக்கும் பட்சத்தில் 2வது நபர் உடனடியாக நிலத்தை 1 வது நபருக்கு ஒப்படைத்து விடவேண்டியது."



11. As regards the nature of document, there is no clarity in the document whether it is lease deed or sale agreement or it is security for the debt. The Executing Court passed a very elaborate Order which contains all the details of suit.

12. Based on the following grounds, the appellant / respondent (third party is non suited), i). the document dated 21.07.2003 is said to have been executed by the deceased Kamalanadhan in favour of the appellant / respondent Kaliaperumal. Originals of documents are not filed into the Court. ii). The appellant has been examined as R.W1 in the impugned execution application. During his cross-examination (Kaliaperumal), he would depose that

“நான் இந்த வழக்கிற்கு சம்பந்தப்படாத முன்றாம் நபர் என்றால் சரிதான்... நான் அந்தச் சொத்துக்களில் சுமார் 30 வருடங்களுக்கு மேல் விவசாயம் செய்து வருகிறேன் என்பதைத் தவிர, அந்தச் சொத்துக்களில் எனக்கு எந்த உரிமையும் இல்லை என்றால் சரிதான்... அவர் எழுதிக் கொடுத்தாகச் சொல்லும் ஆவணத்தின் அசல் ஆவணம் எதையும் தற்போது அல்லது இதற்கு முன்பு நான் இந்த நீதிமன்றத்தில் தாக்கல் செய்யவில்லை. அந்த ஆவணம் வேறொரு வழக்கில் (C.C.23/2006) ல் உள்ளது. அந்த ஆவணத்தை அந்த வழக்கில் 2006 ஆம் ஆண்டிலேயே தாக்கல் செய்துள்ளேன். 2006 ஆம் ஆண்டு அந்த வழக்கு முடிந்துவிட்டது. தற்போது வரையில் அந்த ஆவணத்தை நான் திருப்பி வாங்கவில்லை.... நான் இதுவரை இந்த வழக்குகளில் இந்த நீதிமன்றத்திலும் மாண்புமிகு உயர்நீதிமன்றத்திலும் இந்த ஆவணத்தின் அசல் ஆவணத்தை தாக்கல் செய்யவில்லை,

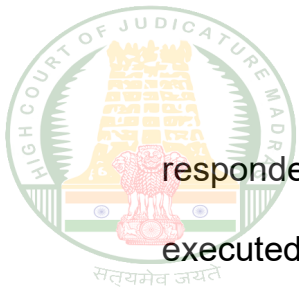


நகலைத்தான் தாக்கல் செய்துள்ளேன்."

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13. In the execution application, on the respondent side, the respondent has examined himself as R.W1, one attesor to Ex.R7 has been examined as R.W2 and the scribe of Ex.R7 is examined as R.W3. Though the respondent claims that the sale agreement executed by Kamalanadhan in favour of decree holder Jayakumar is executed in order to cheat him based on the said sale agreement, suit in O.S.No.24 of 2011 filed against Kamalanadhan was ordered in favour of the plaintiff Jayakumar by a judgment and ex-parte decree dated 12.11.2011. Thereafter, the decree holder Jayakumar took out application in E.P.No.15 of 2013 and as the respondent Kamalanadhan did not appear before the Executing Court, he was set exparte and the sale deed executed by the Executing Court itself was in favour of Jayakumar. In such circumstances, in the original suit and before the Executing Court, Kamalanadhan did not chose to appear and he remained exparte, even after the sale deed is executed by the Executing Court in favour of Jayakumar, who is the decree holder and the title to the suit property has passed on the decree holder (Jayakumar). Thereafter, the appellant has instituted a suit against Kamalanadhan and the present decree holder Jayakumar would go to show that without any basis, the appellant is only interested in filing one suit after another in order to give troubles to the respondent, which is not valid in the eye of law.

14. More so, the only document which is relied upon by the appellant /



respondent is Ex.R7, copy of document dated 21.07.2003 said to have been executed by Kamalanadhan in favour of Kaliaperumal. The appellant has not shown any interest in marking the original document dated 21.07.2003. The Executing Court has elaborately dealt with all the issues. In fine, based on Ex.R7 copy of the document dated 21.07.2003, that too after passing of decree in O.S.No.24 of 2011 for the relief of specific performance, decree dated 12.11.2011 and the said decree has been executed by the Executing Court by executing sale deed in favour of the respondent. He has become rightful owner of the suit property and the Executing Court has rightly held that the appellant / respondent has been obstructing without any right cannot be found fault with it. In such a view of the matter, Ex.R7 copy of the document dated 21.07.2003 does not confer any right over the suit property in favour of the appellant/respondent and this Court is of the considered view that the appellant / respondent does not have any semblance of right over the suit property. This Court does not find any good reason to upset the finding of the learned Executing Court.

15. Based on the aforestated narrative, this Civil Miscellaneous Appeal stands dismissed. Sequel to this, the Order dated 30.03.2016 passed in E.A.No.10 of 2025 in E.P.No.61 of 2021 in O.S.No.24 of 2021 on the file of learned Additional District Court, Villupuram stands confirmed. The Executing Court shall take all effective steps to dispose of the E.P.No.61 of 2021 preferably within a period of three months from the date of receipt of copy of



this Judgment. There is no order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

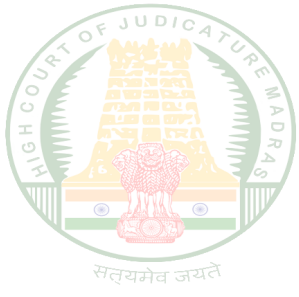
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**01-06-2026**

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

MAC

To  
1. The Additional District Judge, Villupuram.



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**R.KALAIMATHI, J.**

MAC

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and  
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