



THE HIGH COURT OF JUDICATURE AT MADRAS

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Judgment reserved on : 01.07.2026

Judgment pronounced on : 10.07.2026

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

CRP.No.2793 of 2026
& CMP.No.11519 of 2026

G.Janaki

.. Petitioner

Vs.

1.Rajeswari
2.M.S.Sekar

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the order dated 17.04.2026 in E.A.No.02 of 2026 in E.P.No.08 of 2025 in O.S.No.26 of 2012 on the file of the Principal District Court, Thiruvavur.

For Petitioner : Mr.V.Ramamurthy

For Respondents : Mr.Kanagasundaram for R1
: No appearance for R2



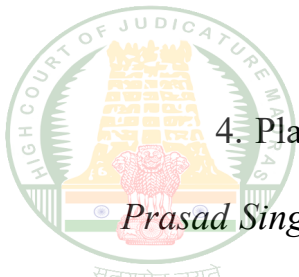
ORDER

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The revision petitioner is the judgment-debtor in E.P.No.08 of 2025. Aggrieved by the dismissal of the application in E.A.No.2 of 2025, which was filed by the revision petitioner, invoking Section 47 of the Code of Civil Procedure, the present revision petition has been filed.

2. I have heard Mr. V. Ramamurthy, counsel for the revision petitioner and Mr. Kanagasundaram, counsel for the first respondent.

3. Mr. Ramamurthy, learned counsel for the revision petitioner would mainly contend that the claim of the plaintiff was based on an unregistered mortgage, which was inadmissible in evidence and therefore, the decree itself was void and unenforceable. It is his primordial contention that the procedure for bringing the alleged mortgage property to sale has also not been complained with and no prior notice was issued to the defendants in the suit. The specific contention of the revision petitioner is that the sale was collusive and taking advantage of a power of attorney executed by the husband, as power agent, in favour of his own wife and even assuming that such sale was to set off the alleged mortgage dues, no intimation was even given to the revision petitioner with regard to the adjustment of sale consideration towards the mortgage dues.

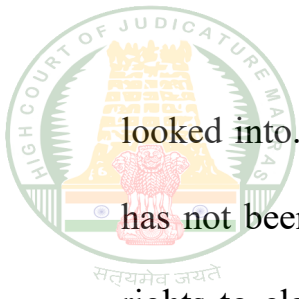


4. Placing reliance on the decision of the Hon'ble Supreme Court in *Dhurananur*

Prasad Singh Vs. Jai Prakash University and others, reported in (2001) 6 SCC 534, Mr.

V. Ramamurthy, learned counsel for the petitioner would state that the court below has unfortunately relied on the unregistered mortgage deed and failed to see that merely because the petitioner had unsuccessfully challenged the decision of the trial court up to the Hon'ble Supreme Court, it will not preclude the petitioner from invoking Section 47 of the CPC. Mr. V. Ramamurthy would further state that the petitioner continues to be in possession and he had even offered to compensate the first respondent in monetary terms during mediation talks and even now the petitioner is willing to pay a reasonable amount to compensate the losses suffered by the first respondent so that the petitioner can retain the property. He would therefore pray for the revision being allowed.

5. Per contra, Mr. Kanagasundaram, learned counsel appearing for the first respondent would state that the sale by the power agent, husband in favour of his wife was the cause of action for seeking recovery of possession and no claim was made under the unregistered mortgage deed. It is his further contention that the very same issues were agitated before the trial Court, as well as the First Appellate Court and negatived up to the Hon'ble Supreme Court. He would further state that in fact, the unregistered mortgage deed was only marked by the revision petitioner herself and the said document was also marked without any objection and in such circumstances, it is not open to the revision petitioner to now set up a case that the unregistered mortgage deed cannot be



looked into. In any event, it is his argument that the sale in favour of the decree-holder has not been challenged, despite knowledge and therefore, the judgment-debtor has no rights to claim and the Section 47 application was clearly not maintainable in law. In support of his contention, he has relied on the decision of the Hon'ble Supreme Court in *Barkat Ali and another Vs. Badrinarain (Dead) by LR's*, reported in (2008) 4 SCC 615 and *Pradeep Mehra Vs. Harijivan J.Jethwa (Since Deceased through LR's) and others*, reported in 2023 SCC Online 1395. He would therefore pray for dismissal of the revision petition.

6. I have carefully considered the submissions advanced by the learned counsel for the parties. I have also carefully gone through the order of the Executing Court dismissing the Section 47 application.

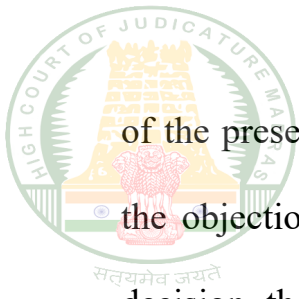
7. It is the contention of Mr. V. Ramamurthy, learned counsel for the petitioner that under Section 47 of CPC, the Executing Court can determine the validity of the sale deed executed to enforce an unregistered and inadmissible mortgage deed. However, on going through the pleadings before the trial Court and the findings of the trial Court, I find that the points, that have now been argued, were already raised during the stage of trial. Admittedly, the defence pleaded by the petitioner was unsuccessful not only before the trial Court, but also before the First Appellate Court, as well as the Hon'ble Supreme Court.



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8. The Executing Court has referred to relevant depositions, more specifically, the evidence of the petitioner herself, where there is a categorical admission that the petitioner was aware of the sale deed having been executed in furtherance of the power of attorney. Further, the petitioner has not chosen to challenge the said sale deed. In such circumstances, when the sale deed in favour of the decree-holder was only in furtherance of the power of attorney, empowering the husband of the decree-holder to alienate the suit property and such sale not being in exercise of any mortgage rights, I do not see how the decree can be termed as a void decree and consequently, unenforceable in law. The Executing Court has rightly considered the legal position and also appreciated the oral and documentary evidence adduced in the Section 47 application and come to the right conclusion that the petitioner has not made out any case, warranting interference of the decree under Section 47 of the CPC. I do not see any illegality or perversity in the findings arrived at by the Executing Court, warranting interference in this revision.

9. In *Dhurandhar Prasad Singh's case*, the Hon'ble Supreme Court discussed the expressions void and voidable and further, held that the exercise of powers under Section 47 of the CPC is microscopical in nature and the Court can entertain an objection, only if it is found that the decree is *void ab initio* and a nullity and/or not capable of being executed under law. There is no quarrel with regard to the said settled legal position of law. However, I do not see how the said ratio can be applied to the facts



of the present case to the advantage of the revision petitioner, especially in the light of the objection with regard to the executability of the decree. In fact, even in the said decision, the Hon'ble Supreme Court set aside the findings rendered by the High Court, allowing the objection under Section 47 of the CPC and only restored the dismissal of the Section 47 application by the Executing Court.

10. In *Barkat Ali's case*, the Hon'ble Supreme Court held that when a judgment-debtor had an opportunity to raise an objection which he could have raised but failed to take and allowed the preliminary stage to come to an end, then the judgment-debtor cannot raise objections subsequently and revert back to the earlier stage of proceedings, unless the order resulting in termination of the preliminary stage which amounts to a decree is appealed against and the order is set aside or modified.

11. In *Pradeep Mehra's case*, the Hon'ble Supreme Court falling back on the ratio laid down in *Dhurandhar Prasad Singh's case*, by a Three Judges Bench of the Hon'ble Supreme Court, held that under the garb of exercise of power under Section 47 CPC, the Court process cannot be abused.

12. Even on facts, the petitioner, despite knowledge of his power agent having conveyed the suit property to his wife, has not chosen to challenge the said sale deed. In evidence, the petitioner admits to the fact that the sale was only in pursuance of the



power of attorney executed by her. In such circumstances, I do not see how the petitioner thereafter, that too, invoking Section of 47 CPC, can contend that the mortgage being unregistered, the plaintiff cannot enforce any right accruing under the said unregistered mortgage.

13. Further, as rightly pointed out by Mr. Kanagasundaram, a photostat copy of the unregistered mortgage deed was produced by none else than the revision petitioner herself and was marked as Ex.B10. In such circumstances, I do not see how the revision petitioner can now contend that the decree is void and unenforceable. The Executing Court also found that in the power of attorney dated 27-06-2011, there is no mention about the mortgage deed and admittedly, the power of attorney was in force on the date of execution of sale deed and was not challenged at the appropriate time, excepting for a unilateral cancellation subsequent to the execution of sale deed, which will not in any manner affect the accrued rights of the purchaser.

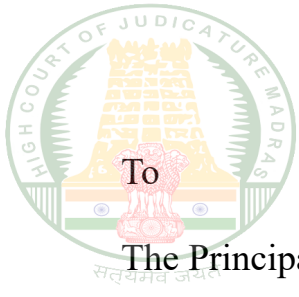
14. Also, on going through the plaint as well, I find that the relief for recovery of possession is only based on the sale deed executed in favour of the plaintiff by the defendant, through power agent. In such circumstances, there is absolutely no ground arising for interference, that too under Section 47 of CPC. As already discussed, the Executing Court has rightly applied the legal principles to the facts of the present case and I do not find any merit in the revision petition.



15. In fine, the Civil Revision Petition is dismissed. The petitioner shall vacate and hand over vacant possession of the property under her occupation, on or before 30.09.2026. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

10.07.2026

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

The Principal District Court, Tiruvarur.

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P.B.BALAJI.J.

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Pre-delivery order made in
CRP.No.2793 of 2026
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