



CRP(MD). Nos.499 and 500 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 26.02.2026

CORAM

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

**CRP(MD). Nos.499 and 500 of 2026
and CMP(MD).Nos.2201 and 2202 of 2026**

1. Sreekumari
2. G.S.Vinoth
3. G.S.Manoj
4. G.S.Santhosh
5. G.S.Anubama

... Petitioners in
both CRPs

Vs.

1. Selvi
2. Vasudevan Pillai
3. Indira Amma
4. Vilasini
5. Pankajam
6. Raveendran
7. Latha Kumari,
8. Shaji,
9. Vasumathi Amma,
10. Ammukutty Amma,
11. Sahadevan Panicker,
12. Chellappan Nadar
13. Thankappan Nadar
14. Lekshmi Pillai
15. Appukuttan Nair
- Thankappan Pillai (Died).
16. Raghavan @ Reghuvaran Nair,S,
17. Lalitha
18. Surekha
19. Sujithra



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20. Iswariya

... Respondents
in both CRPs

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COMMON PRAYER: Civil Revision Petitions filed under Section 115 of Civil Procedure Code, to set aside the Delivery Order passed in EP No.15 of 2024 in OS No.1516 of 1969 and the order passed in E.A.No.14 of 2026 in E.P.No.15 of 2024 in O.S.No.1516 of 1969, dated 12.02.2026 respectively on the file of the Principal District Munsif Court, Kuzhithurai.

For Petitioners : Mrs.J.Anandhavalli

For respondents : Mr. V. Meenakshi Sundaram
(in both CRPs)

COMMON ORDER

These Civil Revision Petitions have been filed challenging the Delivery Order passed in E.P. No.15 of 2024 in O.S. No.1516 of 1969 and the order passed in E.A. No.14 of 2026 in E.P. No.15 of 2024 in O.S. No.1516 of 1969, both dated 12.02.2026, on the file of the Principal District Munsif Court, Kuzhithurai, and seeking to set aside the same.

2.Originally the suit was filed for partition and redemption in O.S.No.1516 of 1969. Against which appeal suit was also filed in A.S.No.9 of 2025. In the meanwhile, the execution petition was also filed



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in E.P.No.15 of 2024 for eviction proceedings and to deliver the possession. In which an application was filed by the petitioners in E.A.No.14 of 2026 contending that the Judgment and decree in A.S.No.9 of 2025 was passed on 27.01.2026 and the certified copies are yet to be received and was not made available, therefore, sought stay of execution proceedings in E.P.No.15 of 2024. The trial Court dismissed the E.A.No. 14 of 2026 and ordered delivery of property in E.P.No.15 of 2024 in favour of the respondents herein. Mrs.J.Anandhavalli, learned counsel appearing for the petitioners further contended that for filing second appeal as against the judgment in A.S.No.9 of 2025, which was delivered on 27.01.2026, they have a statutory period of 90 days for filing appeal. Even if the limitation starts from 28.01.2026, they have much more time for filing the appeal. Apart from the merits of the case the execution court ought to have awarded the statutory appeal period, which is available to the revision petitioner herein.

3.Per contra, the learned counsel appearing for the respondents, Mr. D. Nallathambi, submitted that the caveat petition has been filed by the respondent in E.A.No.14 of 2026. But, without noticing the caveat



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petition, the interim stay was granted to the petitioner. Admittedly, there are two revision petitions; one is challenging the order passed in E.P.No. 15 of 2024, wherein delivery was ordered in favour of the respondent, and the other one is against the order passed in E.A.No.14 of 2026, which was filed by the revision petitioner and was dismissed by the trial court. He would further point out that the suit is of the year 1969 and has crossed five decades. This appeal was noticed by the Honourable Supreme Court as this case had reached the Honourable Supreme Court therefore any delay caused by the executing Court will prejudice the third plaintiff, who is now aged about 90 years. Therefore, there is no infirmity in dismissing E.A.No.14 of 2026 and allowing E.P.No.15 of 2024. He further contended that the revision petitioner is not helpless or powerless as per Section 144 of C.P.C., which has inherent power to set aside any order obtained from the highest forum and get status quo ante in favour of the succeeded at the final stage.

4.The learned counsel for the respondent also pointed out that the Judgment of the first appellate Court on 27.01.2026 was uploaded in the portal at 05.42 p.m. on the same day and there is no embargo on the



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revision petitioner to challenge the same.

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5.He also relied upon the Judgment of the Honourable Supreme Court in Civil Appeal No.5026 of 2023, dated 14.05.2024, paragraphs 13, 14, 15, and 16, which are extracted hereunder: -

“13. In the matter of Binayak Swain (supra), this Court held that the obligation for restitution arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored to the same position they were in at the time when the Court by its erroneous action had displaced them from.

14. Drawing the distinction between a decree holder who himself is the auction purchaser and a third-party auction purchaser, this Court in Binayak Swain (supra) approved an earlier judgment of Privy Council in the matter of Zain-Ul- Abdin Khan vs. Muhammad Asghar Ali Khan¹⁰ to reiterate that “great distinction between the decree-holders who came (1888)ILR 10 ALL 166 (PC) in and purchased under their own decree, which was afterwards



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reversed on appeal, and the bona fide purchasers who came in and bought at the sale in execution of the decree to which they were no parties, and at a time when that decree was a valid decree, and when the order for the sale was a valid order”. It is categorically held that where the decree holder is himself the auction purchaser, the sale cannot stand, if the decree is subsequently set aside.

15. In the matter of Chinnamal (supra), this Court again dealt with the distinction between the decree holder who purchased the property in execution of his own decree, which is afterwards modified or reversed, and a person who is not a party to the decree. This Court held thus in paras 10 and 11:

“10. There is thus a distinction maintained between the decree holder who purchases the property in execution of his own decree, which is afterwards modified or reversed, and an auction purchaser who is not party to the decree. Where the purchaser is the decree holder, he is bound to restore the property to the judgment debtor by way of restitution but not a stranger auction purchaser. The latter remains unaffected and does not lose title to the property by subsequent reversal or modification



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of the decree. The courts have held that he could retain the property since he is a bona fide purchaser. This principle is also based on the premise that he is not bound to enquire into correctness of the judgment or decree sought to be executed. He is thus distinguished from an eo nomine party to the litigation.

11. There cannot be any dispute on this proposition, and it is indeed based on a fair and proper classification. The innocent purchaser whether in voluntary transfer or judicial sale by or in execution of a decree or order would not be penalised. The property bona fide purchased ignorant of the litigation should be protected. The judicial sales in particular would not be robbed of all their sanctity. It is a sound rule based on legal and equitable considerations. But it is difficult to appreciate why such protection should be extended to a purchaser who knows about the pending litigation relating to the decree. If a person ventures to purchase the property being fully aware of the controversy between the decree holder and judgment debtor, it is difficult to regard him as a bona fide purchaser. The true question in



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each case, therefore, is whether the stranger auction purchaser had knowledge of the pending litigation about the decree under execution. If the evidence indicates that he had no such knowledge he would be entitled to retain the property purchased being a bona fide purchaser and his title to the property remains unaffected by subsequent reversal of the decree. The court by all means should protect his purchase. But if it is shown by evidence that he was aware of the pending appeal against the decree when he purchased the property, it would be inappropriate to term him as a bona fide purchaser. In such a case the court also cannot assume that he was a bona fide or innocent purchaser for giving him protection against restitution. No assumption could be made contrary to the facts and circumstances of the case and any such assumption would be wrong and uncalled for.”

16. Whether a third-party auction purchaser who had the knowledge of the pending proceedings can resist restitution has been answered against such auction purchaser in paras 14, 16 & 17 of Chinnamal (supra)

“14. This proposition, we are, however, unable



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to accept. In our opinion, the person who purchases the property in court auction with the knowledge of the pending appeal against the decree cannot resist restitution. His knowledge about the pending litigation would make all the difference in the case. He may be a stranger to the suit, but he must be held to have taken calculated risk in purchasing the property. Indeed, he is evidently a speculative purchaser, and, in that respect, he is in no better position than the decree holder purchaser. The need to protect him against restitution, therefore, seems to be unjustified. Similarly, the auction purchaser who was a name lender to the decree holder or who has colluded with the decree holder to purchase the property could not also be protected to retain the property if the decree is subsequently reversed.

16. This is also the principle underlying Section 144 of the Code of Civil Procedure. It is the duty of all the courts as observed by the Privy Council “as aggregate of those tribunals” to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the court. The above passage was



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quoted in the majority judgment of this Court in A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602, 672: 1988 SCC (Cri) 372] . Mukharji, J., as he then was, after referring to the said observation of Lord Cairns, said: (SCC p. 672, para 83) “No man should suffer because of the mistake of the court.

No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. Ex debito justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied.”

17. It is well to remember that the Code of Civil Procedure is a body of procedural law designed to facilitate justice and it should not be treated as an enactment providing for punishments and penalties. The laws of procedure should be so construed as to render justice wherever reasonably possible. It is in our opinion, not unreasonable to demand restitution from a



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*person who has purchased the property in court
auction being aware of the pending appeal
against the decree.”*

6.The Honourable Supreme Court has discussed the scope and power of Section 144 of C.P.C and lamented that the parties are not left with any right if they succeeded finally. In view of the same, there is no infirmity in the order passed by the trial Court.

7.However, in reply, the learned counsel for the petitioner submitted that while preferring a second appeal, it is appropriate for them to file a certified copy. It is made only on 23.02.2026. Though once the High Court has given a circular to file any document based on the online copy, there is no embargo. However, in the present case, the statutory period is 90 days, which has not yet come to an end. Thus it is left open for the revision petitioner to work out his remedy in the manner known to law.

8.However, the executing Court shall maintain the status quo till the statutory period of 90 days and await the orders in the second appeal.



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WEB COPY 9. With this observation, both the civil revision petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

26.02.2026

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To

1. The Principal District Munsif Court, Kuzhithurai.
2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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N.SENTHILKUMAR, J.

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