

Vasanth Vs Pragalathan

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Court : Chennai

Decided On : Feb-27-2026

Judge : Honourable Mr.Justice P.B. Balaji

Appeal No. : CRP/119/2026

Appellant : Vasantha

Respondent : Pragalathan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2026

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI CRP.No.119 of 2026 &CMP.No.509 of 2026 Vasantha Petitioner(s) Vs 1.Pragalathan 2.Venkatesan 3.Rajkumar 4.Vijayalakshmi 5.Manimegalai Respondent(s)
Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decreetal order in R.E.A.No.5 of 2019 in R.E.P.No.05 of 2019 arising out of O.S.No.893 of 1996 on the file of the District Munsif Court, Ambur. For Petitioner(s): Mr.R.Subramaniam for Mr.Balasubramanian Ravi Iyer For Respondent(s): No appearance

ORDER

This revision petition has been filed to to set aside the order in R.E.A.No.5 of 2019 in R.E.P.No.05 of 2019 arising out of O.S.No.893 of 1996 on the file of the District Munsif Court, Ambur. 2.The decree holder is the revision petitioner. 3.I have heard Mr.R.Subramaniam, for Mr.Balasubramanian Ravi Iyer, learned counsel for the revision petitioner. Despite service of notice, the respondents have neither chosen to appear in person nor through counsel and hence, the respondents are called and set ex-parte.

4.The learned counsel appearing for the revision petitioner would submit that the petitioner had filed an execution petition for delivery of the schedule mentioned property, in terms of the decree passed in O.S.No.893 of 1996. He would further state that the decree was challenged not only in first appeal, but also by way of second appeal before this Court and it has attained finality. As the respondents did not come forward to deliver possession, the petitioner was constrained to move an execution petition. The 8 th respondent in R.E.P.No.5 of 2019 filed an additional counter in the execution petition, stating that the schedule property has to be amended, as it does not reflect the boundaries and survey numbers.

5.The learned counsel for the revision petitioner would further state that the suit property described in the plaint and the EP are not one and the same and in order to address the technical objection, that is now raised by the judgment debtor (8 th respondent), the petitioner took out the application to amend the schedule to incorporate

the boundaries. He would also state that when the execution petition was filed, item 2 of the property was only a tiled house in a dilapidated condition and subsequently, the superstructure has given way and it is now a vacant site. Hence, according to the learned counsel for the petitioner, the application for amendment of the execution petition was

very well in order.

6.However, the learned counsel for the petitioner states that the executing Court has dismissed the application, on the ground that the amendment would cause serious prejudice to the judgment debtors and the Court, being an executing Court, cannot go beyond the decree, dismissed the application. In support of his contention, the learned counsel for the revision petitioner would rely on the decision of this Court in Sree Sankara Rameshwarar Devasthanam Vs. Pitchaiammal and others, reported in 1999 SCC Online Mad 384 and S.F.Abdul Jaleel Vs. V.M.Abdul Majid Rowther Trust and others, reported in 2002 (2) CTC 129. He would therefore pray for the revision being allowed.

7.I have carefully considered the submissions advanced by the learned counsel for the petitioner. I have gone through the impugned order, dismissing the application for amendment.

8.It is the case of the decree holder/revision petitioner that the application for amendment was necessitated only on account of the technical objection taken by one of the judgment debtors, namely the 8th respondent and even with regard to the non mentioning of the tiled house situate in item 2, it is stated that though the tiled house was in existence at the time of filing of the EP, and subsequently, owing to its dilapidated condition, it has fallen down and now it is a vacant site. For this reason, the petitioner sought to amend the schedule in the execution petition by removing tiled house in item 2 and also by incorporating boundaries to enable the bailiff to properly identify the decreetal property.

9.As rightly contended by the learned counsel for the petitioner, the amendments do not affect the decreetal property in any manner. It is only for the purposes of clarity and property identification that the boundaries are sought to be incorporated. There is no amendment seeking to change the survey numbers and extent of the decreetal property as well.

10. In Sree Sankara Rameshwarar Devasthanams case, this Court held that when it was a case of misdescription and identity of the property was not in doubt, then the executing Court cannot refuse to delivery possession. In fact, even in the said case, this Court held that an amendment to tally with the property mentioned in the order of attachment is permissible and misdescription of property is rectifiable.

11. In S.F. Abdul Jaleels case also, this Court held that as long as there is proper description of the schedule in terms of the decree, then it cannot be contended that there is wrong description of the decreetal property.

12. In any event, the decree has become final before this Court in S.A.No.2278 of 2004. It was never the case of the defendants that there is an issue with regard to the identity of the property. Only before the executing Court, one of the judgment debtors made a feeble attempt to protract the execution proceedings, by contending that the boundaries have not been mentioned. In order to address this objection of the 8th respondent/judgment debtor, the petitioner took out the application for amendment to include the boundaries. By mere inclusion of boundaries, the property does not change. Inclusion of boundaries is only with the object of lending more clarity for identification of the property and nothing more.

13. In such circumstances, I do not see why the decree holder should not be permitted to seek amendment of the schedule to incorporate the boundaries and also to remove in item 2 all references to the tiled house, on the ground that the tiled house was already in dilapidated condition and with passage of time, it has also fallen apart and on the date of filing of the execution petition, it was only a vacant site. No prejudice would be caused to the respondents by permitting such amendment.

14.The executing Court has a duty to ensure that a decree passed by the Court is given effect to, in true letter in spirit. As already mentioned, the decree was challenged not only in first appeal, but also in second appeal, unsuccessfully. Thus, the request of the petitioner/decreed holder to incorporate boundaries and to also take note of the subsequent event with regard to the tiled house not existing and item 2 being a vacant site certainly could have been taken note of by the executing Court, by permitting amendment as prayed for. The executing Court has erroneously rejected the application on the ground that the executing Court does not have power to go beyond the decree, without noticing that the request for amendment did not alter the decreetal property in any manner.

15.In fact, in the counter filed by the 8th respondent/judgment debtor as well, I find that the 8th respondent/judgment debtor has only taken an objection that the schedule of property in the execution petition is not in consonance with the decree passed by the trial Court and confirmed by the First Appellate Court, as well as this Court in Second Appeal. The 8th respondent/judgment debtor herself has stated in para No.3 of the counter that unless the schedule is amended, the execution petition cannot be maintained and that the boundaries of the property and description of the Well have not been mentioned in item No.1 of the property and therefore, the property described in the schedule to the execution petition is not identifiable.

16.When such a stand has been taken by the 8th respondent/judgment debtor, who alone objected to the amendment application, the executing Court ought to have seen that it was not the case of the 8th respondent/judgment debtor that the property, which is sought to be proceeded against in the execution petition, is not the property which is the subject matter of the decree. The objection was only with regard to the non mentioning of particulars and therefore, when the decree holder

filed the amendment application to address these anomalies, the executing Court ought to have allowed the

amendment application, finding that no prejudice would be caused to the judgment

debtors, by proper identification of the decretal property. Procedure is only a handmaid of justice and the executing Court, without adopting a pragmatic approach, has treated the request, as if the decree holder was requesting the Court to act beyond the decree, without appreciating the nature of amendment sought for. In the light of the above, I am inclined to set aside the order in R.E.A.No.5 of 2019.

17.In fine, the Civil Revision Petition is allowed and the order in REA.No.5 of 2019 in R.E.P.No.05 of 2019 in O.S.No.893 of 1996 on the file of the District Munsif Court, Ambur, is set aside. The petitioner is directed to carryout amendments to the execution petition, within a period of two weeks from the date of receipt of a copy of this order and thereafter, the executing Court shall proceed to dispose of the EP, on merits and in accordance with law, within a period of four months from the date of

amendment being carried out, after giving an opportunity to the judgment debtors to file an additional counter, if they opt to do so. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed. 27.02.2026 ata To The District Munsif Court, Ambur. P.B. BALAJI.J, ata CRP.No.119 of 2026 & CMP.No.509 of 2026 27.02.2026

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