



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 07.10.2025

Order pronounced on : 07.11.2025

CORAM

**THE HONOURABLE MR JUSTICE P.B. BALAJI**

CRP.Nos.639 & 640 of 2025  
& CMP.Nos.3870 & 13856 of 2025

CRP.No.639 of 2025:

North Arcot District Vanniyakula Kshatriya Sangam,  
Rep. by its present Secretary  
M.Subramanian,  
having office at No.1, Bharathiyar Salai,  
Vellore City, Vellore – 632 001. ... Petitioner

Vs.

1.M.Radhakrishnan  
2.Aravindan ... Respondents

*[R2 impleaded vide Court order  
dated 18.06.2025 made in  
CMP.No.13858 of 2025 in  
CRP.No.639 of 2025]*

CRP.No.640 of 2025:

North Arcot District Vanniyakula Kshatriya Sangam,  
Rep. by its present Secretary  
M.Subramanian,  
having office at No.1, Bharathiyar Salai,  
Vellore City, Vellore – 632 001. ... Petitioner

Vs



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M.Radhakrishnan

... Respondent

**Common Prayer:** Civil Revision Petition filed under Section 115 of CPC, to set aside the order and decreetal order in E.A.No.1 of 2023 and E.A.No.6 of 2024 in E.P.No.60 of 2013 in V.O.S.No.136 of 2010 dated 18.11.2024 on the file of the Sub-Judge, Ranipet.

(In both CRPs)

For Petitioner : Mr.N.Manoharan

For Respondent(s) : Mr.T.P.Prabakaran

### **COMMON ORDER**

The revision petitioner is the 1<sup>st</sup> defendant and 1<sup>st</sup> judgment debtor in

the execution proceedings initiated by the 1<sup>st</sup> respondent/decree holder.

2.I have heard Mr.N.Manoharan, learned counsel for the petitioner and Mr.T.P.Prabakaran, learned counsel for the respondents in both the revision petitions.

3.The brief facts, that are necessary to adjudicate the revision, are as



follows:

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<sup>st</sup>

(a) The 1<sup>st</sup> respondent/decree holder filed a suit in O.S.No.61 of 2005

before the Principal District Judge, Vellore, which was later transferred and renumbered as O.S.No.136 of 2010 on the file of the Sub-Court, Vellore.

The suit came to be decreed on 21.09.2013, directing the defendants to pay Rs.7,20,000/-, together with interest at 6% per annum from the date of the suit. The defendants preferred A.S.No.3 of 2012 before the I Additional

<sup>st</sup>  
District Court, Vellore. The said appeal was partly allowed and the 1<sup>st</sup> defendant alone was held to be liable and the decree against the other defendants was set aside.

(b) Subsequent to disposal of AS.No.3 of 2012, the decree holder filed E.P.No.60 of 2013 for recovery of Rs.11,96,382/- by bringing the property belonging to the petitioner Society for sale. The revision petitioner was set ex-parte in the execution proceedings on 15.04.2015 and the property came to be attached on 29.08.2015. In the meantime, he also filed Second Appeal in S.A.No.644 of 2013, challenging the decree in A.S.No.3 of 2013. The said S.A.No.644 of 2013 also came to be dismissed on 19.04.2023 and a Special



Leave Petition (c) No.21930 of 2023 was also dismissed on 15.12.2023,

**WEB COPY** pending the execution proceedings.

(c) Thereafter, the revision petitioner filed an application in E.A.No.1 of 2023 under Section 47 of CPC, questioning the executability of the decree, as against which order, CRP.No.639 of 2025 has been filed and he also filed E.A.No.6 of 2024, seeking permission to deposit a sum of Rs.15,00,781/- and aggrieved by the dismissal of said E.A.No.6 of 2024, CRP.No.640 of 2025 has been filed. Admittedly, the property has been sold on 14.08.2023.

4. Mr.N.Manoharan, learned counsel for the revision petitioner would contend that the suit promissory note having been executed by the defendants 2, 3 and 5, claiming themselves to be the President, Secretary and Treasurer of the petitioner Society, cannot make the Society liable for the borrowing made by them, when the petitioner had admittedly not executed the promissory note. He would further contend that the suit has been filed against the revision petitioner Society which is registered under the Tamil Nadu Societies Registration Act, 1975, and there has been non-compliance



of Section 20 of the Act and on this ground alone, the decree cannot be executed and even in terms of Section 18 of the Act, when the properties of the Society vest with the Committee, the legal proceedings by or against the Society can be done only by the Committee or the officer authorised in this regard in the bylaws.

5. The learned counsel for the petitioner would also refer to Section 21 of the Act, which states that the judgment passed against any officer referred to in Section 20(1) of the Act, cannot be enforced against the property or against the body of such officer, but against the property of the Society and admittedly, in the present case, according to the learned counsel for the petitioner, no decree has been passed against the officer authorised to defend the suit in the bylaws. He would therefore state that when the bylaws of the Society did not authorise anyone to prosecute or defend the proceedings and only in Ex.P2 dated 15.03.2020, clause 31 was inserted by way of amendment, authorising the General Secretary of the Society to conduct cases and the Society admittedly not being represented by any authorised person in the suit, cannot be proceeded against in order to execute the decree.



**WEB COPY** 6. It is further contended by Mr. Manoharan that the property worth more than Rs.3 crores has been sold for a paltry sum of Rs.14,10,000/- in the

Court auction sale held on 14.08.2023. He would also contend that the 5<sup>th</sup> defendant, who is an executant to the suit promissory note, died on 12.01.2008 and though his death certificate was marked as Ex.P17, the trial Court has passed a decree against the dead person and pending appeal in

A.S.No.3 of 2012, the 2<sup>nd</sup> defendant also died on 15.01.2011 and the appeal came to be partly allowed/decreed, much later on 31.01.2013 and therefore, the decree, as against the dead persons, is a nullity.

7. The learned counsel for the petitioner would further state that the decree is therefore not executable and E.A.No.1 of 2023 ought to have been allowed by the trial Court and unfortunately, on erroneous consideration and misapplication of law, the executing Court has dismissed the application. Alternatively, Mr. N. Manoharan would submit that the revision petitioner has filed E.A.No.6 of 2023, invoking Section 151 of CPC, seeking permission to deposit Rs.15,00,781/- and at least the executing Court should have



permitted deposit of the said amount and ensured that the valuable property

**WEB COPY** of the revision petitioner does not go out of its hands. He would also attack the manner in which the executing Court has proceeded to bring the property for sale, even pending the Section 47 application. He would further contend that the auction purchaser is a close aid of the decree holder and the fact that both of them are represented by the same counsel would clearly establish that all is not well with the auction sale process. In support of his contentions, Mr.N.Manoharan, would rely on the following decisions:

1. *Nani Gopal Paul Vs. T.Prasad Singh and others, (1995) 3 SCC 579.*

2. *Challamane Huchha Gowda Vs. M.R.Tirumala and another, (2004) 1 SCC 453.*

3. *Mangal Prasad (died) by LR's and another Vs. Krishna Kumar Maheshwari and others, 1992 Supp (3) SCC 31.*

4. *Uttar Pradesh Cricket Association, A Company registered under the Companies Act, 1956, rep. by its President, Shri Rajiv Shukla, having its Regd. Office at Kamla Towers, Kanpur, Uttar Pradesh Vs. the Uttar Pradesh Cricket Association, rep. by its Treasurer Shri.Imran Ullah, having its registered office at 616, Kasmanda Apartments, Lucknow, Uttar Pradesh, reported in 2007 2 L.W. 1079.*

5. *Church of North India Vs. Lavajibhai Ratanjibhai and others, (2025) 10 SCC 760.*

8. Per contra, Mr.T.P.Prabakaran, learned counsel for the respondents would submit that the sale has already been concluded and EP also has been



terminated and the petitioner has admittedly not deposited the mandatory 5%, contemplated under Order XXI Rule 89 of CPC and only in order to get over the same, the petitioner has mischievously invoked Section 151 of CPC and filed an application, as if he is ready to deposit a sum of Rs.15,00,781/-.

9. The learned counsel for the respondents would also state that the petitioner also filed an application under Order XXI Rule 90 of CPC to set aside the auction sale and till date, the same has not been withdrawn and in such circumstances, he would contend that the petitioner cannot maintain both the applications. He would place reliance on the judgment of the Hon'bls Supreme Court in *Chellamane Huchha Gowda Vs. M.R.Tirumala and another*, reported in 2003 Supp (6) SCR 506 and *Ram Karan Gupta Vs. J.S.Exim Limited and others*, reported in AIR 2013 SC 24. He would also state that there is no material brought on record by the petitioner to establish that the suit property would fetch Rs.3 crores and the claim made in the Section 47 of CPC is only self serving and remains unsubstantiated as on date. He would therefore pray for dismissal of the revisions petitions.

10. I have carefully considered the submissions advanced by the



learned counsel on either side and I have also gone through the records, **WEB COPY** including the orders passed by the executing Court, dismissing both Section 47 petition as well as the permission petition filed by the petitioner/judgment debtor 1.

11. It is an admitted fact that the revision petitioner Society suffered a decree. The decree was challenged up to this Court in Second Appeal proceedings and ultimately, the decree of the First Appellate Court holding the revision petitioner Society liable to meet the suit claim was confirmed. It is thereafter, the decree holder initiated proceedings for executing the decree and in the process of executing the decree, the property belonging to the

petitioner has been sold in public auction. The 2<sup>nd</sup> respondent has successfully bid for the property at Rs.14,10,000/- and sale was confirmed

on 18.11.2024 and a sale certificate was also issued in favour of the 2<sup>nd</sup> respondent.

12. When the petitioner seeks to set aside the sale, invoking Order XXI Rule 90 of CPC, where the judgment debtor intends to have the sale set aside



and take out an application under Section 90, the judgment debtor has to satisfy the mandate of Rule 89 first. Rule 89 mandates payment to the purchaser a sum equal to 5% of the purchase money and also payment to the decree holder, the amounts specified in the proclamation of sale, less any amount which may have been received by the decree holder, after the date of proclamation of sale. If these mandatory conditions are complied, then the judgment debtor can apply to the Court to set aside the sale, if he is able to make out any material irregularity or fraud in publishing or conducting the auction sale.

13. Order XXI Rule 92 of CPC sets out that sale shall not be set aside on the ground of irregularity or fraud, unless upon facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud. No such application can be made on any ground which was available to the judgment debtor and not taken before the proclamation of sale was drawn up. The explanation to Section 90 also sets out that mere absence of, or defect in the attachment of the property sold by itself will not afford a ground for setting aside the sale under Rule 90 of CPC.



**WEB COPY** 14. It is the specific case of the respondents that the petitioner ought to have complied with the mandate of Rule 89 within a period of 60 days and having missed the bus, the petitioner is attempting a back door entry, by filing an application under Section 151 of CPC, seeking permission to deposit the entire money. This is insofar as the attempt of the petitioner to set aside the sale on the ground of material irregularity and also collusion between the decree holder and the auction purchaser.

15. Insofar the executability of the decree by way of challenge under Section 47 of CPC, the primordial grounds of challenge are that the provisions of Societies Act have not been adhered to and the decree itself is a nullity, having been passed against dead persons. On a perusal of the orders impugned in these revisions, I find that the trial Court has not addressed any of the contentions raised by the revision petitioner, either with regard to the decree being a nullity or the inexecutability of the decree for violation of mandatory provisions of the Tamil Nadu Societies Registration Act.



**WEB COPY** 16. The executing Court has also not given any reasons whatsoever for dismissing the application in E.A.No.6 of 2024, which was filed seeking permission to deposit the entire amount into Court. The executing Court has merely extracted the chronological events that led to the filing of the execution petition and without actually addressing the legal contentions raised, the applications have been dismissed. In view thereof, I have to independently address the contentions regarding the inexecutability of the decree.

17. The main contention, attacking the executability of the decree is that the provisions of the Tamil Nadu Societies Registration Act, which are mandatory, have been flouted and in such circumstances, the decree becomes inexecutable. Under Section 18 of the Tamil Nadu Societies Registration Act, all property, movable and immovable, belonging to the Society, vests in the Committee and in any legal proceedings, the property shall be referred to as the property of the Committee.

18. Under Section 20, the legal proceedings by or against the



registered Society shall be by the Committee or any officer of the registered

**WEB COPY** Society authorised in such behalf by the bylaws. In the present case, admittedly, the bylaws initially did not authorise any person to represent the Society and hence, the Committee alone could sue and be sued insofar as any legal proceeding against the property of the Society. Section 20(2) of the Act sets out that any action or legal proceeding shall not abate or be discontinued by death, resignation or removal from any officer of the registered Society. This provision, in fact, provides a complete answer for the argument of Mr.N.Manoharan that the decree is a nullity, though the suit was filed by the decree holder against the Society and also the office-bearers and the trial Court had decreed the suit all of them, the First Appellate Court reversed the findings of the trial Court and restricted the decree only to the Society.

19. The Second Appeal as well as the Special Leave Petition, challenging the said judgment and decree of the First Appellate Court were dismissed, confirming the decree against the Society. In such circumstances, applying Section 20(2) of the Act, it is not open to the Society to contend that the decree passed against the other defendants in the suit would become



a nullity. Therefore, I am unable to accept this part of the submissions of

WEB COPY Mr.N.Manoharan.

20.Coming back to the issue of proper representation of the Society, there has certainly been a breach of the mandate of Section 20(1) of the Act, especially when under Section 18 of the Act, the property of the registered Society itself vests only with the Committee. The Society has not been represented by the Committee admittedly and further, Section 21 of the Act sets out the procedure for enforcing the judgment against an officer representing the Society and it is only the property of the Society that could be proceeded against. In other words, there can be no personal decree against the members of the Society and though the Society was represented by the Committee or the authorised officer, no personal liability can be attached as against the Committee members or the officers, who represented the Society and it would only be the properties of the Society that could be proceeded against.

21.In the present case, admittedly, the Society has not been represented by anybody. The 1<sup>st</sup> defendant is described as a Society running 14/25



an Industrial Training Institute and also a Teacher Training Institute at

**WEB COPY** Tajpura village in Arcot Taluk, Vellore District. The defendants 2 to 5 have

been arrayed in their individual capacity and the allegation in the plaint is

that the 1<sup>st</sup> defendant Society required funds for starting the Teacher Training

Institute and therefore, on behalf of the 1<sup>st</sup> defendant Society, the defendants

2 and 3 and the 5<sup>th</sup> defendant borrowed monies and executed the promissory note. At the same time, the decree holder cannot be found fault with for proceeding against the property of the Society, since the decree holder has rightly sought for sale of the property belonging to the judgment debtor/revision petitioner Society alone and not the officers of the Committee members. However, the violation of the mandatory requirement of Section 20(1) of the Act, in my considered opinion, would certainly render the decree inexecutable.

22. The executing Court has unfortunately not tested any of these objections raised in the Section 47 petition and has, without any independent reasoning or conclusion, dismissed the applications. Even with regard to the



petition seeking permission to deposit the monies payable to the auction

**WEB COPY** purchaser, the Court has simply recorded the fact that in view of Section 47

petition being dismissed, the permission petition is also dismissed. The executing Court ought to have independently gone into the merits and demerits of the application seeking permission to deposit a sum of Rs.15,00,871/- into Court.

23. Coming to the decisions that have been relied on by the learned counsel for the petitioner, in *Nani Gopal Paul's case*, cited supra, the Hon'ble Supreme Court held that when there has been illegality in bringing the properties to sale, such circumstances would be sufficient to vitiate the validity of the sale, though normally an application under Order XXI Rules 89 and 90 of CPC would have to be filed within limitation to have the sale conducted by the Court set aside, but when any illegality is brought to the notice of the Court, the Court of first instance or the Appellate Court need not remain a mute spectator to the manifest and obvious illegality committed in conducting the Court sale.



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24. In *Challamane Huchha Gowda's case*, cited supra, the Hon'ble Supreme Court held that Order XXI Rule 89 of CPC is the only means by which the judgment debtor can escape from a sale that has been validly carried out and that the object of the Rule is to provide a last opportunity to put an end to the dispute at the instance of the judgment debtor, before the sale is confirmed by the Court, in order to save his property and dispossession. The Hon'ble Supreme Court further held that Rule 89 of CPC does not provide that the application in a particular form shall be filed to set aside the sale and held that even a memo with a prayer for setting aside the sale is sufficient to compliance of Rule 89 and ultimately, the Hon'ble Supreme Court held that there was no bar for the Court in treating the objection itself as an application for setting aside the sale under Order XXI Rule 89 of CPC.

25. In *Mahboob Khan Vs. S.K.Majid Ussain*, reported in *AIR 1939 All 241*, the Allahabad High Court had held that even presentation of a tender form shows the intention of the judgment debtor to set aside the sale and after taking note of the various decisions of the High Courts as well as the Apex Court, the Hon'ble Court finally held that sale is one of the methods



employed for execution and the purpose of the Rule is to ensure that the executing proceedings come to an end. However, on facts, the Court found that within the stipulated period of one month from the date of final bid, the judgment debtor had paid the decree amount to the decree holder and also filed a memo for setting aside the sale in the form of objections and there had been proper compliance of Rule 89 of Order XXI of CPC in the facts of that case.

26. In *Mangal Prasad's case*, cited supra, the Hon'ble Supreme Court held that an application under Section 47 of CPC cannot be treated as an application under Order XXI Rule 90 of CPC and merely because a Section 47 application was pending, an application under Order XXI Rule 89 of CPC was not necessarily barred. The Hon'ble Supreme Court set aside the auction sale and directed refund of the sale consideration paid to the auction purchaser, together with interest at 12% per annum, from the deposit of the said amount, till the date of deposit.

27. This Court in, *Uttar Pradesh Cricket Association's case*, cited supra, held that a Society registered either under the Central Act or any other



State Acts is not a juristic person and has to sue or be sued in the name of any one or more of the office-bearers or trustees in the absence of bylaws, naming any authorised person to represent the Society in legal proceedings.

28. Coming to the decisions that have been relied on by the learned counsel for the respondent, in fact, the learned counsel for the respondent has also relied on the very same decision of the Hon'ble Supreme Court in *Challamane Huchha Gowda's case*, to drive home the point that the only remedy to escape sale is to comply with Order XXI Rule 89 of CPC.

29. In *Ram Karan Gupta's case*, cited supra, the Hon'ble Supreme Court held that Rule 89 of CPC is in the nature of a concession given to the judgment debtor and therefore, there should be strict compliance of deposit of 5% of purchase money to the auction purchaser and it is *sine qua non* to an application under Order XXI Rule 89 of CPC and that any deposit not made within 60 days, cannot be entertained.

30. In the light of the above, the legal position that emerges is that if the judgment debtor wants to set aside the sale, he should necessarily



WEB COPY comply with the mandate of Order XXI Rule 89 of CPC and there can be no extension of the time lines provided for deposit/payment of the amounts contemplated in the said Rule.

31. Mere filing of an application under Section 151 of CPC, within the period of 60 days, will not get the judgment debtor anywhere as the deposit itself should have been made within 60 days and the application merely seeking permission to deposit the money will not amount to compliance of the mandatory provision of the Order XXI Rule 89 of CPC. However, as already stated, the discussion with regard to the provisions of Order XXI Rule 89 of CPC are rendered merely academic, in view of I having already come to the conclusion that the decree is inexecutable and the Section 47 petition is to be entertained and allowed. However, this discussion has become necessary, since the other revision in CRP.No.640 of 2025, challenging E.A.No.6 of 2024, which has been taken out by the revision petitioner seeking permission to deposit the monies payable to the auction purchaser.

32. Further even the argument of Mr.N.Manoharan that both the decree



holder as well as the auction purchaser are hand in glove and the fact that they are represented by the same counsel, can also not be lightly brushed aside. In any event, when there is violation of mandatory conditions of the Tamil Nadu Societies Registration Act, the decree cannot be validly put to execution as against the registered Society and therefore, the decree and consequential sale will have to necessarily go. At the same time, though the application seeking permission to deposit is not maintainable, the amount paid by the auction purchaser will have to be refunded by the revision petitioner, if he is genuinely interested to save his property at least at this point of time. Hence, I am inclined to dispose of the revision petitions in the manner following:

(i) The Civil Revision Petition No.639 of 2025 is allowed and the order dated 18.11.2024 in E.A.No.1 of 2023 in E.P.No.60 of 2013 in V.O.S.No.136 of 2010 on the file of the Sub-Court, Ranipet, is set aside, subject to clause (iii) hereunder.

(ii) The Civil Revision Petition No.640 of 2025 is dismissed.

(iii) The petitioner shall refund the sale consideration of Rs.14,10,000/-, together with interest at 12% per annum from 01.09.2023 onwards, till the date of payment. If such payment to the auction purchaser is made within a period of four weeks from the date of receipt of a copy of this



order, then CRP.No.640 of 2025 shall stand allowed.

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(iv) It is also made clear that in the event of the revision petitioner not settling the amount due and payable to the auction purchaser, within the said period of four weeks, then CRP.No.639 of 2025 shall stand dismissed and it

shall be open to the 2<sup>nd</sup> respondent to proceed in accordance with law to recover the possession of the property from the revision petitioner. There shall be no order as to costs. Connected Civil Miscellaneous Petitions are closed.

07.11.2025

Neutral Citation: Yes/No

Speaking Order/Non-speaking Order

Index : Yes / No

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To

The Sub-Court, Ranipet.



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

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Pre-delivery order made in  
CRP.Nos.639 & 640 of 2025  
& CMP.Nos.3870 & 13856 of 2025

07.11.2025

23/25



**C.R.P.Nos.639 & 640 of 2025 and  
CMP Nos.3870 & 13856 of 2025**

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

Heard Mr.N.Manoharan, learned counsel for the petitioner.

2. The matter was mentioned on 12.12.2025 stating that as per direction of this Court dated 07.11.2025, instead of tendering the amount to the respondent, the amount was deposited in the Court and the Court has also received the amount. However, subsequently the petitioner has taken out a demand draft for the same amount and tendered the same. The said demand draft was not received by the respondent as there is no direction in this regard and it was therefore refused.

3. Now the learned counsel for the petitioner states that the petitioner is having a fresh demand draft and he is willing to either hand over the demand draft to be encashed by the respondents or also expressed no objection for the amount already deposited, being withdrawn.

4. Today there is no representation for the respondents ever though the respondents took time to get instructions on 12.12.2025.



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

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5. Considering the fact that the fresh demand draft is also now ready with the petitioner for the same amount and also taking into account the amount has already been deposited into Court as well, I direct the petitioner to hand over the demand draft to the Sub Court, Ranipet.

6. The Sub Court, Ranipet, shall post the matter for hearing and on that day ascertain the willingness of the respondents to either receive the demand draft in compliance of the orders of this Court or seek payment out of the amount deposited by the petitioner. Subject to the option exercised by the respondents, the petitioner/Auction purchaser will be entitled to payment out of the amount deposited or alternatively return of the demand draft.

**06.01.2026**

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**Note: Issue order copy on 07.01.2026**

**C.R.P.Nos.639 & 640 of 2025 and**  
**CMP Nos.3870 & 13856 of 2025**

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