

IN THE XXVI ASSISTANT CITY CIVIL COURT, CHENNAI

Present : Thiru. C.Rajasekar, B.A., B.L.,

XXVI Assistant Judge

Thursday, this the 30th day of July, 2026

E.P.No.1643/2024

in

OS.No.3514/2021

(CNR NO. TNCH01- 043222-2024)

Mr.D.Ramesh,
S/o.Late.R.Devaraj,
No.303 M.T.H Road,
Villivakkam, Chennai – 600 049.

...Petitioner/ 2nd Decree holder

... Vs ...

Mr.R.Ramadoss,
S/o.Late Ragavan,
Old No.12, New No.29
South Mada Street, Kolathur,

...Respondent/Judgment Debtor

This Execution petition has come up for final hearing before me on 23.07.2026, in the presence of Mr.G.Ilangovan, Counsel for the Decree Holder and Mr.K.Chandru, Counsel for the Respondent/Judgment debtor and enquiry is heard from both sides and upon perusing the entire records and having stood over for consideration till this day, this court delivered the following:

ORDER

1) This Execution Petition has been filed by the 2nd decree holder for the benefit of all the decree holders under Order XXI Rule 35 of Code of Civil Procedure seeking to deliver the physical possession of the suit property more fully described in the schedule A to the decree holders.

2) The Petition averments in brief:-

The 2nd Decree holder submits that the suit in O.S.No.3514/2021 was filed against the Judgment debtor and the same was decreed in favour of the decree holders on 25.07.2024. As per the decree, the Judgment debtor was directed to handover the possession of the suit property to the decree holders within 3 months from the date of the Judgment, but the Judgment debtor had not complied with the above direction. According to that, the 2nd decree holder have filed this Execution petition for the benefit of all the decree holders against the Judgment debtor and pray to deliver the physical possession of the suit property morefully described in the schedule A to the decree holders as per the decree.

3) Gist of the Counter:-

The Judgment debtor has submitted in his counter that this execution petition is not maintainable either by law or on facts. Further the Judgment debtor has submitted in his counter that the deceased Devaraj had a first wife and legal heirs, who are necessary parties to the proceedings, but the suit was prosecuted only by the persons claiming through the second wife, thereby suppressing the material facts. Further the Judgment Debtor has submitted that though the appeal has been disposed of, the JD has to approach the Hon'ble Supreme court of India by filing special leave petition and also the JD has prayed to grant reasonable time to enable for approaching the Hon'ble Supreme Court of India. Further the Judgment debtor has prayed to dismiss this execution petition.

4) No oral and documentary evidence is adduced by both sides. Enquiry is heard from both sides. Entire case records are carefully perused. While the EP is pending, this court has allowed the application in E.A.No.1/2026 and permitted the 2nd Decree holder to proceed the EP for the benefit of all the decree holders.

5) Point for consideration:

Whether the execution petition against the Judgment debtor for delivery of vacant possession under order XXI Rule 35 of CPC is to be allowed.?

6) Discussion:

06-01) The petitioner/2nd Decree holder has submitted that all the decree holders had filed the suit in O.S.No.3514 of 2021 against the Judgment debtor and the same was decreed in favour of the decree holders. But the Judgment debtor has failed to comply with the direction imposed in the decree. Accordingly, the decree holders have prayed to direct the Respondent/Judgment debtor to deliver the physical possession of the suit property more fully described in the schedule A to the decree holders.

06-02) In this regard, the Judgment debtor has submitted in his counter that the deceased Devaraj had a first wife and legal heirs, who are necessary parties to the proceedings, but the suit was prosecuted only by the persons claiming through the second wife, thereby suppressing the material facts. Further the Judgment Debtor has submitted that since the JD has to approach the Hon'ble Supreme court of India by filing special leave petition, he has prayed to grant reasonable time to enable for approaching the Hon'ble Supreme Court of India. Further the Judgment debtor has prayed to dismiss this execution petition.

06-03) Petition and entire case records are carefully perused. On perusal of the decree and entire case records, it is found that the main suit in O.S.No.3514/2021 was decreed in favour of the Decree Holders and the Judgment Debtor was directed to quit and deliver the schedule A mentioned property within three months from the date

of Judgment. Thereafter the judgment debtor had preferred an appeal in AS.No.934/2024 and the same was also dismissed on 23.01.2026. In such circumstances, the 2nd decree holder has submitted that the Judgment debtor has failed to comply with the decree and also prayed to allow this execution petition.

06-04) Regarding this execution petition, the Judgment debtor has taken two important pleas. Firstly the Judgment debtor has submitted that the deceased Devaraj had a first wife and legal heirs, who are necessary parties to the proceedings, but the suit was prosecuted only by the persons claiming through the second wife, thereby suppressing the material facts. In this regard the Hon'ble High Court of Madras has already answered in the judgment of the Appeal in A.S.No.934 of 2024 in the paragraph No.15 that **“Having joined, now the strange defence is taken as if the plaintiffs are not the legal heirs of the said Devaraj. Therefore, the said contention of the defendants cannot be countenanced for any reason.”** Since the Hon'ble High Court of Madras has already answered the above plea raised by the Judgment Debtor, this court considers that there is no necessity to discuss about the said issue in this EP. Accordingly this court answered that the first plea raised by the Judgment debtor cannot be countenanced.

Secondly, the Judgment debtor has submitted that he has to prefer a Special leave petition before the Hon'ble Supreme Court of India and prays to grant reasonable time for that. But, though the Judgment Debtor has impliedly got the time of 6 months from the disposal of the appeal in A.S.No.934 of 2024, he has not filed and numbered the Special leave petition till now.

06-05) In the judgment of **M.Sivabalan vs J.Nagalingam in C.R.P.No.4782 of 2024** dated 25.11.2024 the Hon'ble High Court of Madras observed as under:

“4. At this stage, this Court is of the view that order passed by the Executing Court does not require interference for the simple reason that mere pendency of the appeal will not operate as stay automatically. Therefore, mere pendency of the second appeal will not take away right of the decree holder to enforce the decree when it has not been stayed by the Appellate Court. Even delivery is effected, if the revision petitioner succeeds in the second appeal, he is not remedy less, it is always open for him to seek restitution invoking powers under Section 144 of CPC.”

06-06) As per the above dictum of the Hon’ble High Court of Madras, it is clarified that mere pendency of the appeal will not operate as stay automatically. According to the above conclusion, this court decides that the Respondent /Judgment debtor cannot get any advantage in the EP proceedings on the basis of the ground of mere pendency of an appeal without granting express order for stay. But, in this case the Judgment debtor neither filed the SLP nor numbered the same, though the appeal was disposed before 6 months. Hence, the 2nd plea raised by the Judgment debtor regarding preferring the Special leave petition is also not acceptable.

06-08) Accordingly, the decree in O.S.No.3514 of 2021 as well as the appeal in A.S.No.934 of 2024 has attained finality and the Decree Holders are entitled to get the relief of enforcing the decree passed against the Judgment Debtor by way of filing an execution petition.

06-09) In such circumstances, the 2nd Decree Holder has approached this court for the benefit of all the decree holders and submits that the Judgment debtor has not complied with the direction imposed in the decree. Further, the contentions raised by the Judgment Debtor in his counter are also decided by this court as not accepted. So,

this court comes to the conclusion that the Judgment Debtor has failed to comply with the direction of the decree in O.S.No.3514 of 2021 as well as the appeal in A.S.No.934 of 2024 .

06-10) Since the judgment debtor has failed to comply with the direction of the decree passed in O.S.No.3514 of 2021 as well as the appeal in A.S.No.934 of 2024 , this court decides to execute the decree by vacating the Judgment debtor and delivering the vacant possession of the suit property morefully described in the schedule A.

Hence this petition is allowed in the interest of the Justice. Accordingly, issue delivery warrant on payment of batta. Batta in 3 days. Delivery by 16.09.2026.

Dictated to steno typist, directly computerized by him, corrected and pronounced by me in the open court, this the 30th day of July, 2026.

**XXVI Assistant Judge,
City Civil Court,Chennai.**

Both side Witnesses & Exhibits : Nil

**XXVI Assistant Judge,
City Civil Court,Chennai.**

Draft/Fair Order

E.P.No.1643/2024

in

OS.No.3514/2021

30.07.2026

XXVI Assistant Court,
Chennai.