

IN THE COURT OF THE SUBORDINATE JUDGE, POLLACHI

PRESENT: Thiru. **M.Manikandan**, M.A., M.L., PG.D.C.F.Sc.,
Subordinate Judge, Pollachi

Wednesday, the 25th day of February 2026
(2056, Thiruvalluvar Andu, Visuvavasu Varudam, Maasi Thingal 13th day)

EA No.6/2025 in EP No.51/2024 in OS No.150/1986

1. Valliammal (Died)
2. Balasubramaniam (Died)
3. Parthiba Anandakrishnan ..Petitioners/Judgment Debtors
/vs/

1. Rajammal (Died)
2. Gomathi .. Respondents/Decree Holders

This petition is coming on 18.02.2026 for final hearing before me in the presence of Thiru.K.Sethuram, Advocate for the Petitioners/Judgment Debtors, Thiru.S.Suresh, M.A., B.L., Advocate for the Respondents/Decree Holders and upon perusing documents, upon hearing the both side arguments, this court delivered the following

ORDER

The petitioner filed this petition under Section 151 of CPC praying to take the maintainability of the Execution Application EP No.51/2024 and pass such other orders and thus render justice.

1. The averments in the petition is as follows:

The petitioners have filed counter statement in the main Execution petition on 11.03.2025. The petitioners had reserved right to file additional pleadings after getting the certified copy of the decree dated 31.07.1989 on the file of Sub Court, Udumalpet at para No.6 challenging the averments made in Col.3 of the Execution

Petition. The petitioners had applied for a copy of the order on 11.06.2025 and the copy of the order was delivered on 24.06.2025. The decree of the Sub Court referred in col.3 contains an order of dismissal and no relief has been granted to the respondent in this petition and he cannot maintain an execution petition as contained in clause 3 of the Execution Petition. In this case, in Col.3 the decree that is sought to be executed is described : 31.07.1989 Sub Court, Udumalpet. The petitioner advised to submit that there is no executable part in the decree of the Sub Court. The execution petition is not maintainable as per col.3 in the Execution Petition. The executability of the decree may be taken as a preliminary issue before deciding Sec.47 application filed by the petitioner. Hence the petition.

2. The averments in the counter statement filed by the respondent is as follows:

The petition is false, frivolous, vexatious and not maintainable either on law or on facts of the case. The framing of the cause title itself is not legally valid on account of the fact that the first and second petitioners are dead persons and in fact, they were added as the party in the main execution petition only on account of the fact that they were parties in the appeal filed against the suit. The contention of the dependent that he applied for the copy of the order and the same was delivered in June 2025, and the copy of the decree has been filed along with the application is concerned is meaningless on account of the fact that only on the basis of the trial court decree and the appellate court decree the main execution petition has been filed. The contention in Para 3 of the affidavit that the suit has been dismissed by the Sub

Court, Udumalpet is not disputed. However the appeal has been preferred before the Hon'ble High Court of Judicature Madras and the decree and judgment of the trial court has been set aside and the appeal has been allowed in favour of the plaintiff/decreed holder, and as such only the main execution petition has been filed. The suit has been dismissed by the trial court and as such the decreed holder cannot maintain an execution petition is highly untenable.

2.2) The contention in para – 4 of the affidavit is in respect of the question of law, namely in respect of order XXI Rule 10 of cpc and Rule 11 (2) of CPC. The decretal clause in the trial court is that the suit is dismissed and the plaintiff has to pay the cost is concerned it has been mentioned in the affidavit that it is not an executive decree, the deponent failed to mention that the appeal has been allowed by the Hon'ble High Court and as the decree of the first appellate court is merged with the trial court decree and as such the decree is an executable one. The petitioner purposely misleading in filing the affidavit by surprising about the col.4 as well as the details of the first appellate court decree in col.8. The col.4 is very clear that as against the decree and judgment of the Sub Court, Udumalpet an appeal has been filed before Hon'ble High Court, Madras in A.S.No.652/2008 and the appeal has been allowed on 16.06.2022, and in fact, the details of the first appellate court decree has been clearly mentioned in col.8 of the execution petition. The main suit has been filed before the Sub Court, Udumalpet and the same was dismissed on 31.07.1989. As against the decree and judgment passed in OS No.150/1986, the decreed holder

preferred AS No.652/2008 before the Hon'ble High Court of Madras and on 16.06.2022 the appeal has been allowed. As against the decree and judgment passed by the first appellate court, the defendants have not preferred any appeal or SLP and as such it has reached finality.

2.3) The petitioner entered appearance in the execution petition and got adjustments for very many hearings by not filing the counter statement and later on he was set exparte and delivery of possession was also ordered. The petitioner later on filed an application in E.A. No.3/2023 to set aside the exparte order and in order to avoid the delay, the respondent has endorsed no objection and later on the main execution petition was posted for the enquiry. Only in order to delay the proceedings and as a tactics the present application has been filed to take up the issue of maintainability of the execution petition. The intention of the 3rd petitioner who is the fourth judgment debtor is very clear that he wants to prolong the issue. Hence this petition is to be dismissed with costs.

3. In this petition no oral and documentary evidence were adduced on both side.

4. Both side arguments heard.

5. **POINT FOR CONSIDERATION** in this petition is

Whether this petition is to be allowed or not?

6. **POINT:**

In this petition, on behalf of either side, no witnesses were examined and no documents were marked.

a) Upon careful perusal of the petition, the petitioner has stated that the decree of the Sub Court, Udumalpet, referred to in Column No. 3, contains an order of dismissal and no relief has been granted to the petitioner. Hence, the petitioner contends that the respondent cannot maintain an execution petition. Further, the petitioner has referred to Order XXI Rule 11(2) and Order XXI Rule 2(c) of the Code of Civil Procedure, stating that when an application is filed, the date of decree must be mentioned as per Order XXI Rule 2(c). Further, as per the order of the Sub Court, Udumalpet dated 31.07.1978, the suit was dismissed. Hence, the petitioner submits that there is no executable portion in the decree. Based on the same, the petitioner contends that the decree cannot be executed through the present execution petition. Further, stating that the petition itself is not maintainable, the petitioner seeks that the question of maintainability of the execution petition be taken up as a preliminary issue.

b) Per contra, the respondents have filed a counter statement denying all the averments made in the petition. It is admitted that the suit had been dismissed by the Sub Court, Udumalpet. However, an appeal was preferred before the Hon'ble High Court of Madras, and the judgment and decree passed by the trial court were set aside. The appeal was allowed in favour of the decree holder. Based on the said appellate decree, the execution petition has been filed. Hence, the stand taken by the petitioner that the execution petition is not maintainable is untenable. The respondents contend that the petitioner has deliberately misled the Court by filing the

affidavit and stating that the particulars mentioned in the execution petition are incorrect. It is further contended that Column No. 4 clearly mentions that, as against the judgment and decree of the Sub Court, Udumalpet, the appeal in A.S. No. 652/2008 was allowed by the Hon'ble High Court of Madras on 16.06.2022. Further, the operative portion of the appellate decree has been clearly mentioned in Column No. 8 of the execution petition. Hence, the allegations made in the petition are untenable. It is further submitted that against the judgment and decree passed by the appellate court, no appeal or Special Leave Petition has been filed by the petitioner. Further, the third petitioner herein has filed a petition under Section 47 of the Code of Civil Procedure, which is pending before this Court. It is contended that, in order to drag on and protract the proceedings, the present petition has been filed solely to delay the execution proceedings. Therefore, dismissal of the petition is sought.

c) Considering the rival submissions, this Court has carefully perused the execution petition filed before it. In Column No. 3 of the execution petition, the date of decree is mentioned as 31.07.1989 passed by the Sub Court, Udumalpet. In Column No. 4, under the appeal proceedings, it is stated that A.S. No. 652/2008 filed by the petitioner was allowed on 16.06.2022. Further, in Column No. 8, the operative portion of the appellate court decree is mentioned. Based on the execution petition and the arguments advanced by the petitioner, it is contended that since Column No. 3 mentions the original date of decree as 31.07.1989 passed by the Sub Court, Udumalpet, and since the said decree was modified by the appellate court in A.S. No.

652/2008, which was allowed on 16.06.2022, the particulars mentioned in the execution petition are incorrect. Hence, it is argued that the execution petition is not maintainable and that the issue of maintainability must be decided at the first instance.

d) Per contra, the learned counsel for the respondent argued that in Column No. 3 of the execution petition, the original date of decree, namely 31.07.1989 passed by the Sub Court, Udumalpet, has been correctly mentioned. In Column No. 4, the appeal proceedings are clearly stated, mentioning that the appeal was allowed by the Hon'ble High Court of Madras. The operative portion of the appellate decree has been mentioned in Column No. 8. Therefore, the execution petition has been properly filed. It is further argued that the present petition has been filed only to protract and delay the proceedings. Hence, the petition need not be entertained at this stage. The execution petition has been filed in the proper manner and is liable to be proceeded with in accordance with law.

Further on behalf of the petitioner and he argued and cited some Judgment's

AIR 1974 SUPREME COURT 1380, it is stated that

“to set aside decrees” which are operative, that is, capable of execution. Where the decree of the trial court is carried in appeal and the appellate court disposes of the appeal after a contested hearing, the decree to be executed is the decree of the appellate court and not of the trial court.

Further in **(2008) 8 MLJ 218** it is stated that

(A) Code of Civil Procedure (5 of 1908) Order 21 Rule 10, 11(2), 32, Order 39, Sections 2, 51, 151 – Decree for permanent injunction is certainly an executable decree and the holder of permanent injunction has to necessarily file an execution petition under Order 21, Rule 11(2) – Application for execution cannot be filed straightaway – Execution petition is necessary – Procedure adopted not proper – Directions given suitably.

Further, the learned counsel for the petitioner argued that an execution petition under Order XXI Rule 11(2) of the Code of Civil Procedure cannot be filed straightaway and that the procedure adopted in filing the present execution petition is not proper. It was contended that the execution petition filed by the respondent herein is not in proper form and, therefore, is not maintainable. The learned counsel further submitted that since the appeal was allowed by the Hon'ble High Court of Madras, only the appellate decree ought to have been mentioned in Column No. 8. According to him, the contention that the decree of the first appellate court merges with that of the trial court is not correct. Hence, it was argued that the execution petition framed by the respondent/decree holder is defective and not maintainable. Therefore, it was prayed that this petition be allowed and that the issue of maintainability be decided at the first instance.

e) Considering the rival submissions and the pleadings advanced on either side, this Court has carefully perused the execution petition. In Column No. 3, the decree

of the Sub Court, Udumalpet dated 31.07.1989 is mentioned. The particulars of the appeal are mentioned in Column No. 4, and the modified/operative portion of the appellate court decree is set out in Column No. 8. In view of the arguments advanced by the learned counsel for the respondent, this Court is of the considered opinion that the present petition has been filed only to drag on and protract the proceedings. The reasons stated in the petition do not merit acceptance at this stage. Accordingly, this petition is devoid of merits and is liable to be dismissed. Hence, the petition is dismissed.

7. In the result, this petition is dismissed. No cost.

The order is dictated to the steno-typist, transcribed and typed by her in the computer, corrected and pronounced by me in open court, dated this the 25th day of February 2026.

Subordinate Judge,
Pollachi.

Both side Exhibits & Evidences: Nil

Subordinate Judge,
Pollachi.

Fair / Draft Order
EA No.6/2025
in
EP No.51/2024
in
OS No.150/1986
SJ Pollachi.