

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,
Subordinate Judge,
Madurantakam.**

**Wednesday, this 17th day of September 2025
E.P No. 3/2023
in
O.S No. 22/2021
(CNR.No.TNCG13 – 000006-2023)**

Hemalatha

...Petitioner/Decree Holder

// Vs //

Jayachandra

...Respondent/Judgment Debtor

This petition coming before me on 02.09.2025 for final hearing in the presence of Mrs.ArunaMunuswamy, Counsel for the Petitioner/Decree Holder and Mr.P.Praveenkumar, counsel for Respondent/Judgment Debtor and upon hearing arguments on both sides and having stood over for consideration till this day, this court delivers the following:-

ORDER

The petitioner has filed this petition under Order XXI Rule 54 & 66 of the Civil Procedure Code praying for an order to Attachment of the schedule mentioned property of the respondent/judgment debtor and bring them for auction sale and adjust the sale amount to realize the E.P amount of Rs.9,46,257/- with subsequent interest.

2. Petitioner in brief:

Petitioner has already obtained a decree for recovery of sum of Rs. 8,34,000.00 as against the respondent. Inspite, the respondent failed to oblige the same. Hence this petition.

3. Counter of Respondent/Judgment Debtor in brief:

The respondent deny the allegations set out in the affidavit. The plaintiff filed suit as against her seeking relief of recovery of money. Respondent/defendant was taken treatment for pregnancy and the doctors advise to take treatment for test tube baby and also given a estimate for expenses of more-than Rs.15,00,000/-. Hence the respondent/defendants' husband approached the petitioner/plaintiff's husband Venkatesan for financial support. Petitioner/plaintiff's husband also paid Rs.20,00,000/- to Ragu and obtained simple registered mortgage deed from this respondent /defendant on 25.04.2018 and also obtained signature in the Rs.20/- blank stamp paper. Respondent's/defendant's husband regularly paid a sum Rs.40,000/- toward interest for every month in the 1st week. After April 2020 to March 2021 alone this respondent/defendant husband could not paid interest due to COVID pandemic period.

This respondent/defendant husband running a flower shop situate at street corner. After receiving the suit summons the petitioner/plaintiff and her husband along with village elders approached the respondent/defendant and her husband. Petitioner/plaintiff husband paid entire arrears interest to petitioner/plaintiff husband. Petitioner/plaintiff's husband promised to withdraw the above case. Believing the same the respondent/defendant could not appear before this court. Respondent/defendant's husband regularly paid the interest till November 2024. After receiving the EP notice alone this respondent/defendant came to know that the above suit was not withdraw the petitioner/plaintiff. The amount was borrowed only for the family expenses and the respondent/defendant is poor person. Hence the interest can

be claimed only 9% p.a. Petitioner/plaintiff claiming interest very exclusive and usurious and it is an offence. The interest already paid at 24% p.a has to be adjusted towards Principle. Respondent/defendant is always ready to pay the entire lone amount. Respondent/defendant already filed a necessary application to set aside the expartee decree on 28.08.2024. Hence this petition is liable to be dismissed with cost.

4. No oral or documentary evidence adduced by both parties.

5. Heard both sides. Perused the records carefully.

6. Point:

“Whether this application can be allowed or not?”

This petition is filed under Order XXI Rule 54 and 66 of the Code of Civil Procedure by the Decree Holder seeking attachment of the schedule mentioned immovable property of the respondent/Judgment Debtor, and for bringing the same to auction sale in order to realize the Execution Petition amount of Rs.9,46,257/- along with subsequent interest.

On a careful perusal of the petition, it is seen that the petitioner has obtained a decree in his favour, which has not been obliged by the respondent. As the respondent failed to satisfy the decree voluntarily, the Decree Holder seeks enforcement through attachment and sale of the immovable property belonging to the Judgment Debtor.

In the counter, the respondent/Judgment Debtor has set up a defence that the loan transaction was only for family necessities, that a registered mortgage was executed in favour of the petitioner’s husband, and that payments towards interest were regularly made till November 2024. It is further contended that there was an assurance by the petitioner to withdraw the case, which was allegedly not honoured, and that exorbitant and usurious interest has been claimed. The respondent has also stated that an application has been filed to set aside the ex parte decree.

This Court is of the considered view that the objections raised by the respondent cannot be entertained at this stage of execution. It is a settled principle of

law that the executing court cannot go behind the decree. Allegations relating to oral assurances, the rate of interest, or payments said to have been made, are all issues which ought to have been agitated before the trial court or in appropriate proceedings for setting aside the decree. Unless and until the decree is set aside or modified by a competent court, this Court, while executing the decree, has no jurisdiction to re-examine such pleas.

The respondent has not produced any documentary evidence to substantiate that the decree has been set aside, nor any material to show that the property sought to be attached is exempt from attachment under law. Mere filing of an application to set aside the decree, without any interim protection or stay, cannot operate as a bar to execution proceedings. Apart from that there is no document produced to show that the respondent had satisfy the entire decree amount without any due. There is no objections raised by the respondent in respect of the title of the property mentioned in the petition. So, there is no bar to allow this petition.

Accordingly, this Court holds that the petitioner is entitled to proceed with the attachment of the schedule mentioned property and bring the same to auction for realization of the Execution Petition amount. Hence this point is decided accordingly.

7. Result:-

In the result petition is allowed with costs. Attach by 17.10.2025. Batta in 3 days.

Dictated to the Steno Typist directly, typed by him, corrected and pronounced by me in open court this the 17th day of September 2025.

Subordinate Judge,
Madurantakam

Both sides witnesses and documents:- Nil

Subordinate Judge,
Madurantakam.

DRAFT ORDER
E.P No. 3/2023
in
O.S No. 22/2021
D.O.D. 17.09.2025
SUBORDINATE JUDGE,
MADURANTAKAM