

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

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

**Monday, this 09th day of March, 2026
E.P No. 40/2025
in
O.S No. 67/2015
(CNR.No.TNCG13 – 000575-2025)**

Subbaraya Chettiyar

...Petitioner/Decree Holder

// Vs //

Raji Chettiyar

...Respondent/Judgment Debtor

This petition coming before me on 27.02.2026 for final hearing in the presence of Mr.K.Ayyasamy, Counsel for the Petitioner/Decree Holder and M/s.K.Nagarajan, J.Alexpandiyar and K.Kowsalya, counsels 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 and sale of the Respondent/Defendant/Judgment Debtor's 1/3rd share over the petition mentioned properties.

2. Petitioner in brief:

Trial court by way of decree directed the respondent to pay a sum of Rs.2,91,783.75 with subsequent interest and costs. Already the Petitioner/Decree

Holder has filed arrest E.P against the respondent/Judgment Debtor in E.P No. 57/2017. As the respondent was not found for arrest, the senior bailiff was unable to execute the arrest warrant. Hence the petitioner not pressed the execution proceedings on 24.11.2021 and the same was dismissed by this Hon'ble court on 24.11.2021.

Now the petitioner realize that the schedule mentioned properties was purchased in the name of Jayalakshmi who is the wife of Respondent/J.D. on 20.02.2014 from one Shanmugham. The Patta with respect to schedule mentioned property also stands in her name. There is a terraced house which is constructed by the Respondent and obtained electricity connection. The above said Jayalakshmi died intestate leaving behind her husband, the respondent and her children as her legal heirs. As one of the legal heir of Jayalakshmi, the respondent is entitled 1/3rd share in the schedule mentioned property. The value of the schedule mentioned property is worth more than Rs. 15,00,000/-approximately. Hence the petitioner/D.H. is filing the present E.P. for attachment of Respondent/J.D. 's 1/3rd undivided share of schedule mentioned property and to brought the same for sale in court auction to realize the E.P. amount. Hence this petition.

3. Counter of Respondent/Judgment Debtor in brief:

The respondent deny the allegations set out in the affidavit. Respondent's father Late V. Varadharajan borrowed a hand loan for a sum of Rs.50,000/-in the year of 2015. The Decree Holder/Plaintiff filed a suit with a fabricated promissory note obtained decree and filed this execution petition.

In EP 57/2017 the petitioner filed the said execution petition for arrest of the respondent, that the respondent was present and the petitioner not press the said execution petition. Now the petitioner again filed the another Execution Petition in E.P.No.40 of 2025 pending before this Court. The respondent's wife Jayalakshmi died leaving behind the respondent, her children, where each entitled to 1/3 share in the suit property. Respondent engaged Mr. Gopalakrishnan, Advocate of Mathurantagam Bar Association, who filed vakalath in the year 2015. In 2015, the

respondent's father Varadharajan died due to his illness. Thereafter the respondent unable to follow the suit proceedings.

After receiving notice for Execution Petition, he engaged another counsel and filed Vakalat before this Court. On 12.10.2015 this Court gave an opportunity for filing written statement to be filed before this Court. On 12.10.2015 respondent not follow the court proceedings due to his father's death and also respondent suffered mentally and physically due to sudden death of his father. Meantime, respondent's counsel filed a Vakalat before this Court. The Decree Holder/Plaintiff filed a execution petition for attachment of our immovable property mentioned schedule of property. The respondent's father borrowed only Rs.50,000/- for family expenses and he repaid the same after 1 year. Petitioner has filed the Execution Petition for Principal amount along with accured interest is not maintainable. Without his knowledge the Decree holder filed a Execution Petition is against principle of law and the suit is not maintainable. Hence this petition is liable to be dismissed.

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 is a petition filed under Order XXI Rules 54 and 66 of the Civil Procedure Code by the Decree Holder seeking an order for attachment and sale of the respondent's 1/3rd undivided share in the petition mentioned properties in lieu of the decree passed as against the respondent.

The Decree Holder has filed the present Execution Petition stating that a decree was passed by the trial court directing the respondent to pay a sum of Rs.2,91,783.75 together with subsequent interest and costs. According to the petitioner, the respondent has not satisfied the decree amount. It is further stated that the petitioner earlier filed an execution petition in E.P.No.57 of 2017 seeking arrest of the Judgment

Debtor, but the warrant could not be executed as the respondent was absconding and the said petition was subsequently dismissed as not pressed. The petitioner now states that the immovable property mentioned in the schedule originally stood in the name of the respondent's wife Jayalakshmi, who purchased the property on 20.02.2014 and later died intestate leaving behind the respondent and their children as legal heirs. Hence, the respondent is entitled to 1/3rd share in the said property and the petitioner seeks attachment and sale of the said share for realization of the decretal amount.

The respondent/Judgment Debtor filed counter denying the allegations and contending that the original loan transaction was only for a sum of Rs.50,000/- borrowed by his father and that the decree was obtained on the basis of a fabricated promissory note for a higher amount. It is further contended that the earlier execution petition was dismissed and that the present execution proceedings are not maintainable. The respondent also states that the schedule mentioned property originally belonged to his wife Jayalakshmi and that after her demise the property devolved upon the respondent and his children as legal heirs.

On a careful perusal of the records, it is seen that a decree has been passed in favour of the petitioner/Decree Holder directing the respondent to pay the decretal amount and the same has not been set aside by any competent court. Hence, the decree has attained finality and is enforceable in accordance with law.

Further, the contentions raised by the respondent regarding the alleged loan transaction, the circumstances under which the decree was passed and the maintainability of the decree are matters which ought to have been agitated in the suit proceedings or in appropriate legal proceedings. This Court, while exercising jurisdiction in execution proceedings, cannot go behind the decree. It is well settled that the executing court cannot travel beyond the decree and cannot re-examine the merits of the decree already passed.

From the materials placed before this Court, it is seen that the schedule mentioned property originally stood in the name of Jayalakshmi, the wife of the

respondent, and upon her death intestate, the respondent along with the other legal heirs became entitled to shares in the said property. Respondent who is the husband of the said Jayalakshmi also didn't deny the same and he even admits that he had right of 1/3rd in the petition mentioned property. The petitioner seeks attachment only in respect of the respondent's 1/3rd undivided share in the property for the purpose of realizing the decretal dues.

Therefore, this Court is satisfied that the petitioner/Decree Holder is entitled to proceed with the attachment and sale of the respondent/Judgment Debtor's 1/3rd undivided share in the schedule mentioned immovable property for realization of the decretal amount. So, there is no bar to allow this petition. Hence this point is decided accordingly.

7. Result:-

In the result petition is allowed with costs. Attach the petition mentioned properties in respect of 1/3 share of the respondent. Call on 09.04.2026. Batta in 3 days. If batta not paid within three days, this petition automatically stands dismissed.

Dictated to the Steno Typist directly, typed by him, corrected and pronounced by me in open court this the 09th day of March, 2026.

Subordinate Judge,
Madurantakam

Both sides witnesses and documents:- Nil

Subordinate Judge,
Madurantakam.

TNCG130005752025



DRAFT ORDER
E.P. No. 40 of 2025
in
O.S No. 67/2015
D.O.D. 09.03.2026
SUBORDINATE JUDGE,
MADURANTAKAM