



**IN THE COURT OF DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE NO.01,
KODAIKANAL, DINDIGUL DISTRICT**

**Present : Thiru. R. ARUN PANDIAN B.A.,B.L.,(Hons).M.L.,
District Munsif Cum Judicial Magistrate No.01,
Kodaikanal.**

Monday, the 27th day of April 2026

**E.P.No. 13 of 2005
in
O.S. No. 25 of 2000
(CNR.No.TNDG11-000092-2005)**

P.Gopal

Rep By Power Agent Mr.K,Jeyaraman

---- Petitioner

/versus/

1. T.Gunaseelan (Died)

2. Arulmary

3. G.Jeyaseelan

4. Ruth Priya @ Papu

5. G.Babu

6. G.Kutty

----- Respondents

This petition is heard in the presence of, Thiru. T.R.Thangamani the Learned counsel for the Petitioner and Thiru. R. Suresh Kumar, the Learned counsel for the Respondents. Enquiry heard on both sides and having stood over for my consideration till this day, this court delivered the following,

ORDER

1. Initially the Petitioner / Decree holder Namely P. Gopal S/o Pandurangan has instituted a Suit for Permanent Injunction against 2nd defendant Gunaseelan desisting him from constructing building in “B” Schedule Property and further Mandating the 2nd defendant to remove the temporary encroachment Structure. The encroachment is specified to be upon a 30 feet Municipality road, wherein upto 15 feet width of the Municipality road as been encroached by the 2nd defendant Gunaseelan. The Commissioner Kodaikanal Municipality who being arrayed as 1st

defendant in the Main Suit has affirmed the said encroachment, through his pleading. Further the commission report as filed in the suit also affirmed to the said encroachment, whereas the Town Planning Inspector who testified before the office of Commissioner, Kodaikanal Municipality has undertaken to remove the encroachment on order being passed (as delineated in the judgement). The Suit was allowed on 25.11.2003 and decree as prayed for. The Judgment debtor Gunaseelan having failed to abide by the decree of the Court, the E.P. No. 13 of 2005 was instituted against the legal representatives of the Judgment debtor Gunaseelan. The petitioner having obtained a decree of mandatory injunction as against the judgment debtor Gunaseelan, to remove the construction made by him in the suit schedule property, for the execution of which the present execution petition stands filed.

2. The Legal Representatives, of judgment debtors against whom the Execution taken out was put on Notice of Execution and the respondent Jeyaseelan filed a Counter, placing his Contention against the Execution Petition and its brief Contention is as follows. Though Gopal is shown as the owner of the A-Schedule property in relation to which the decree was obtained, it is specifically contended that the petitioner is no longer the owner of the said property. It is asserted that the petitioner, along with the respondents herein, had entered into a settlement, pursuant to which the petitioner alienated an extent of 2 cents out of the property in favour of the respondents, namely Ruth Priya and Ram Priya Lakshmi Priya. In view of such alienation, the petitioner contends that the Execution Petition is not maintainable, as he has divested his title over the petition-mentioned property. It is further submitted that the legal representatives of the judgment debtors and the judgment creditor had already amicably settled the dispute. Despite such settlement, the continuation of execution proceedings, allegedly with the intent of extracting money, is improper and unsustainable. It is also contended that the 4th respondent claims right over the petition property under the guise of Sale Deed bearing Document No. 1223 of 2016. On the above grounds, the Execution Petition is liable to be dismissed as not maintainable in law.

3. Regarding the contentions raised by the respondent. It is not denied that decree is passed by the trial court. It is settled principle of Law that, the executing court cannot go behind the decree nor its validity can be challenged unless there is an inherent lack in jurisdiction. This EP No.13 of 2005 seeks for enforcement of the mandatory injunction, which seeks for removal of encroachment done by the judgement debtor pertain a portion of Municipality road. The contention raised by the respondents that they have purchased a portion of the property and thereby perfected title or acquired rights over the municipal road is wholly untenable in law. The alleged encroachment

pertains to a municipal road, which is public property vested with the local authority. No private individual can claim ownership or assert perfected title over a public pathway. Any such claim is legally unsustainable and cannot be accepted as a valid justification for the encroachment in question. It is herein necessary to draw the relevant lines of the Honble Madras High Court in the case K.Ramakrishnan Vs District Collector 2019 SCC ONLine MAD 36 ” *An Encroachment is an encroachment. Encroachment can never be approved or allowed. Even a deity as a legal person, cannot commit an act of encroachment. If a deity in a temple commits an act of encroachment, that is also to be dealt with, in accordance with law and because it is a deity, the ruyle of law cannot be diluted ”*. Arriving to the EP for consideration, when the law admits of no exception even in the case of a deity, the respondent herein certainly cannot claim any higher or better standing.

4. The observations of the Honble Madras High Court in the case **A.Sarath Vs The Commissioner, Corporation of Greater Chennai (W.P. No 49192 of 2025)** are noted herein. Wherein it is stipulated that, Under Section 128 of the Local Bodies Act, it is the duty of the Commissioner to remove any encroachment from public place, that has been placed by encroaching a road, street or public place, or on a land belonging to or vested with the local body. Insofar as the immovable structures are concerned, the appropriate provision is section 128(1)(b). Under this provision, it is the duty of the Commissioner to ensure that a street or public place or the land belonging to or vested with the municipality, is kept free of any encroachment. In the main suit(OS.No. 15 of 2000) the Commissioner, Kodaikanal Municipality, Kodaikanal is arrayed as the 1st defendant who was also a necessary party to the suit. Even after the encroachment by the judgement debtor being determined, and decree for removal of the same having ordered, the Municipality (1st defendant) has not only failed to act as per the statute but has also failed to comply with the decree of this court, the same is hereby recorded.

5. For the aspects and reasons specified above, this E.P. for removal of the construction (encroachment) in conformity to the decree, is allowed. Further the municipal (public) authorities (1st Defendant) mandated to assist in enforcing the decree, as the enforcement requires demolition, removal of encroachment or other enforcement steps that fall within the municipal sphere. In view of the fact that the suit relates to removal of encroachment on public property, and in order to ensure expeditious enforcement of the decree without any further delay, it is hereby ordered that necessary police protection shall be provided, and the assistance of the revenue authorities and the electricity department shall also be extended for the effective implementation of this decree. Delivery by 17.06.2026 , batta in 3 days, call on 17.06.2026

Dictated to Steno-Typist, typed by him on computer, and pronounced in open court on
27.04.2026

**District Munsif Cum Judicial Magistrate No1,
Kodaiknal**

1. Both side Witness : Nil

2 Both side Documents :- Nil

**District Munsif Cum Judicial Magistrate No1,
Kodaiknal**

Copy to:-

1. The Commissioner,
Kodaikanal Municipality,
Kodaikanal.