

**IN THE COURT OF THE I ADDITIONAL SUBORDINATE JUDGE,
ERODE.**

PRESENT : THIRU.G. ASHOK PRASATH, B.A., B.L., M.S.E.N.,
I ADDITIONAL SUBORDINATE JUDGE, ERODE.

On Wednesday, the 16th day of July 2025

On Thiruvalluvar Varudam 2056, Tamil Visuvavasu Year, Aani Thingal 32nd day

E.A.No.3/2024

in

EP.No.282/2006

In

OS.No.679/1996

G.M.Kumaravel

...Petitioner/Respondent/J.D

/vs/

N.P.Sekar

...Respondent No.1/ Decree Holder

This petition has come up on 08.07.2025 for final hearing before this court in the presence of Thiru.V.Dhandapani, learned advocate for the petitioner, Thiru.P.C.Palanisamy, learned advocate for Respondent upon hearing both sides, on perusal of available materials on record and having stood over for consideration till this day, this court delivers the following:-

ORDER

This Petition has been filed Under Order 21 Rule 101 and Section 151 of CPC to hear the objections raised by the petitioner and also reconsider the valuable objections raised by the petitioner with references to the nullity of decree and judgment passed in the above suit by providing an opportunity

2. The Brief Averments of the Petition are as follows.:-

3. The petitioner states that the above respondent filed the above suit for

specific performance against the petitioner before this court in the year 1996 on the basis of the sale agreement dated 11.1.1992 alleged to be executed in between the petitioner and the respondent. The petitioner states that in that suit the petitioner as the defendant has filed the written statement in detail, stating that the suit agreement was not executed for the purpose of specific performance and it was executed for securing the loan borrowed by him from the respondent/plaintiff after the filing the written statement, the trial court passes a non speaking ex parte decree and judgment as against the petitioner on 30.09.1999. Further the sale agreement dated 02.06.1992, the recitals are clearly expressing that the petitioner alone had entered into a sale agreement under his individual/personal capacity and not as a kartha of the family. Further in that sale agreement there was no recital as to say that the sale considerations were paid for the benefits of the minor legal heirs. The petitioner further states that there was no partition made in between the petitioner and his sons and daughters at the time of execution of alleged sale agreement. Such things were not discussed by the trial court judge while passing the decree and judgment. The respondent decree holder had also filed a similar type of specific performance suit OS No.678 of 1996 against the petitioner before the subordinate judge court, Erode and in that suit the Hon'ble first additional subordinate judge court, dismissed the relief of specific performance relief and decreed the relief to refund the advance amount and the ex parte decree and judgment was passed against the petitioner on 11.04.2001 for the reasons of the fact that the respondent has not paid the balance sale consideration

within the period stipulated in that sale agreement. The petitioner further states that that the aforesaid facts clearly establishes that the respondent paid the amount only as a loan to the petitioner and the same is not for alienation of properties.

4. Under the above circumstances the executing court has failed to consider the valid objections raised in the above execution proceedings and without holding such objections that the executing proceeded further to execute the findings of the decree. Hence the petitioner hereby files this application to consider the reasonable objections submitted by him regarding the fact that the decree passed in the above suit itself is not executable in nature. The petitioner further states that the executing court itself is having inherent powers to invoke the same to consider the objections raises as against the executability of the decree while it is being a nullity. In view of the findings given by the Hon'ble High court, Chennai in CRP(NPD) No.1260 of 2014 dated 04.07.2019 and also CRP (NPD) No.1381 of 2020 dated 12.2023 against the respondent, the petitioner has filed a partition suit as against the respondent and others on OS.No.713 of 024 on the file of the Hon'ble II Additional District Judge, Erode and the suit is posted to 26.11.2024 for the appearance of the respondent. It is therefore just and necessary to pass an order to hear the objections as raised by the petitioner and also reconsider the valuable objections raised by the petitioner with reference to the nullity of decree and judgment passes in the above suit. Hence the petition.

5. The Brief Averments of the Counter are as follows:-

6. The petitioner is put to strict proof of all the allegations made in the petition except those that are all specifically admitted herein as true. This respondent filed the above suit for specific performance against the petitioner in OS.No.679/1996 before the principal subordinate judge, erode and obtained a decree dated 30.03.1999 the respondent has filed a petition for execution of sale deed in EP.NO.296/1999 and this Court has executed the sale deed dated 27.06.2002 infavour if this respondent. Subsequently this respondent has filed the EPR.282/2006 for delivery of possession against the petitioner and the same is pending. The petitioner's daughter namely suganya and two sons namely kavithiruburan and yogeswaran have filed a claim petition u/s 47 of cpc against the petitioner (Kumaravel) and the respondent (Sekar) in the EA.No.331/2000 and the same was dismissed by this court on 03.07.2012. Against the fair and decretal order the claimants have preferred and appeal before the Hon'ble II Additional District Judge, Erode in AS.No.88/2012. Since no appeal would lie against any order passed U/s 47 of CPC and hence the hon'ble II Additional District Judge, Erode has dismissed the appeal on 09.07.2013. Therefore, said claimants have preferred a revision before the Hon'ble High court of Judicature of Madras in CRP.No.1260/2014 and the Hon'ble High court has remanded the matter with a specific direction by an order dated 04.07.2019. The claim petition in EA.No.331/2008 in EPR.No.282/2006 was taken up for fresh disposal on a particular issue as per the order of the Hon'ble High Court of Judicature at Madras in CRP.No.1260/2014 and the same was dismissed by the I Additional Subordinate

judge of erode on 04.03.2020. Against the fair and final order, the claimants have preferred a revision for the second time again before the Hon'ble High court of Judicature at madras in CRP(NPD) No.1381/2020 and the same was also dismissed on 22.12.2023. In the said CRP(NPD) No1381/2020 the hon'ble lordship has extracted the relevant portions of the order passed by this trial court in EA.No.331/2008 in EP.No.282/2006 in OS.No679/1996 and referred the same in his order dated 2.12.2023 at page 10 to 16 in para 12, 13, 14 and confirmed the order passed by the I Additional subordinate judge of Erode as follows

7. Since the trial court has passed the above detailed order by taking into consideration of all the aspects raised by the revision petitioners and keeping the observation contained in the earlier order in CRP NO.1260 of 2014 this court is of the considered view that the fair and decretal order passed by the I additional subordinate court, Erode in EA No.331 of 2008 in EP.No282 of 2006 in OS.No.679 of 1996 does not warrant any interference by this court and the same is hereby confirmed. Therefore the petitioner cannot raise the same issue again with references to the maintainability of the decree and judgement passes in the OS.No.679 of 1996. Therefore the above petition is not maintainable and barred by resjudicata and also barred by limitation.

8. This respondent further submits that the petitioner has suppressed a very vital fact that on 2.04.1999 he has filed a petition in IA.No644/2000 in OS.No.679/1996 to set aside the decree dated 30.03.1999 on the file of the file of the

Principal Subordinate Judge of Erode This respondent has filed a detailed counter in the said petition. The Hon'ble Principal Subordinate Judge of erode has dismissed the said petition in IA.No.644/2000 in OS.No.679/1996 dated 30.08.2000 on merits. The petitioner did not disclose the said fact in all the above proceedings. It clearly shown his malafide intention. He has not come to the court with clean hands. There is absolutely not necessary for this Hon'ble court to hear the above objections as raised by the petitioner in the above paras for rendering reasonable decisions and to pass suitable orders because already decisions have been made by the Hon'ble High Court of Judicature at madras in CRP(NPD)No.1381/2020 dated 22.12.2023with reference to the maintainability of decree and judgment to prove the nullity of decree.

9. There are no merits in this petition. The petitioner has filed this petition only with view to protract the proceedings and to put the respondent into hardship. This respondent prays that there is absolutely no necessity to stay all further proceedings in the above execution petition as prayed by the petitioner in EA.No.4/2024.

10. Heard Both sides, No oral and documentary evidence adduced on either side, Whether the petition deserves to be allowable or not?

On Point:-

11. The petitioner side contended that the respondent filed the suit for specific performance against the petitioner based on the sale agreement dated 11.12.1992, which was an admitted fact on both sides. Further, the petitioner contended that the said sale agreement itself was false and untrue, which cannot be entertained by this

court because the above sale agreement had already been decided in the trial court. The petitioner side further stated that the sale agreement was executed in favour of the respondent as a security for the loan borrowed by the petitioner from the respondent, which cannot be acceptable because the petitioner side was once again conducting the implied manner of trial before the executing court. Moreover, the petitioner simply stated that the sale agreement was executed in favour of the respondent as a security for the loan purpose, but the same was not raised before this court because this court cannot travel beyond the decree. Assuming for a moment, if at all loan was security purpose, then where is the proof of records and evidence as stated in the pleadings of this petition, whereas the petitioner simply stated the above version in the pleadings of the petition, but there is no supporting proof of documents and records, which itself shows that the petitioner once again relitigate the matter in the execution court. Further, the OS.No:679/2006 and the same was decreed on 30.9.1999, therefore almost crossing 26 years, now here this petitioner stating that non non-speaking decree was passed by the trial court, when the trial court passed the non-speaking ex-parte decree, then why not this petitioner preferred appeal against the above decree for which there is no sufficient explanation from the petitioner side. Therefore, the trial court passed the decree, which cannot be questioned before this court because this court is an executing court; therefore, this court cannot go behind the decree or beyond the decree passed by the trial court, At this juncture it is very beneficial to this core issue of the matter, that the petitioner took a stand under order

21 rule 101 CPC exclusively, this Court relied upon Noorduiddin v. Dr. K.L Anand 1995 SCC 1 242 Wherein Our Honourable Apex Court held that thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code Amendment Act, 1976, right of suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution. 9. Adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. The object of law is to mete out justice. Right to the right, title or interest of a party in the immovable property is a substantive right. But the right to an adjudication of the dispute in that behalf is a procedural right to which no one has a vested right. The

faith of the people in the efficacy of law is the saviour and succour for the sustenance of the rule of law. Any weakening like (sic) in the judicial process would rip apart the edifice of justice and create a feeling of disillusionment in the minds of the people of the very law and courts. The rules of procedure have been devised as a channel or a means to render substantive or at best substantial justice, which is the highest interest of man and almanac (sic) for the mankind. It is a foundation for orderly human relations. Equally the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice. The court has, therefore, to wisely evolve its process to aid expeditious adjudication and would preserve the possession of the property in the interregnum based on factual situation. Adjudication under Order 21, Rules 98, 100 and 101 and its successive rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property under execution. In *Kaja Mohideen v. Rajendran* 2009 SCC ONLINE MAD 1842, wherein Our Honourable High Court of Madras held that As per Order 21, Rule 101 of the Civil Procedure Code, all questions including questions relating to right, title or interest in the property arising between the parties to the proceedings on an application under Order 21, Rule 97 or Rule 99 of the Civil Procedure Code, or the representatives to the adjudication of the application, shall be determined by the Court dealing with an application.

12. In *Haji Mohd. Shaban Ganai Another v. Mushtaq Ahmad* 2012 JKJ 3 366.

Wherein Honourable High Court of Jammu and Kashmir held that in order to attract

Order 21 Rule 101 CPC, it is necessary that the matter must be one that is to be agitated in an application under Order 21 Rule 97 or rule 99.

13. In Smt. Pooja Garg v. Satya Prakash Goyal and 3 Others 2015 AHC 43102. Wherein Honourable Allahabad High Court held that where provisions of Order 21 Rule 97 or 99 have been invoked, the procedure contemplated under Order 21 Rule 101 CPC will be attracted, which has not been complied with in this case. This argument is wholly misconceived. Since the claim of petitioner is not covered either under Order 21 Rule 97 CPC nor under Order 21 Rule 99 CPC, there was no occasion for the provisions of Order 21 Rule 101 CPC to be invoked. 6. Since the case of the petitioner is not covered either under the scope of exercise of jurisdiction under Order 21 Rule 97 nor under Order 21 Rule 99, therefore, the grievance, which is being raised by the petitioner by filing the present petition, is not worthy of any consideration. Admittedly, a decree passed by the competent court is being put to execution, which has not been stayed, and the claim of the petitioner is not covered by virtue of provisions under Order.

14. In (5) 1995 (1) CLJ Page 434. Sabhendu Gupta v. Calcutta Vyapar Pratisthan Ltd. it has been held as follows:—"In terms of Rule 101 the scope of adjudication extends to all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding, on an application under Rule 97 or Rule 99 or their representatives and relevant to the adjudication of the application and expressly takes away the right of filing separate suit for

determination of such questions. There cannot be any controversy that a person who obstructs has a right of hearing and as such falls within the category of parties to the proceeding.”

15. Therefore, it is very clear that the petition has been filed exclusively under Order 21 Rule 101 CPC, which amounts to erroneous because the petition should have been filed along with Rule 97 or 99 CPC, then it can be adjudicated all the questions relating to right, title or interest in the property arising between the parties to a proceeding.

16. Further, the Petitioner side contended that the recitals of the sale agreement dated 2.6.1992, show that the Petitioner alone had entered into a sale agreement under his individual/personal capacity and not as a Kartha of the family. Furthermore, in that sale agreement, no recitals stated that the sale consideration was paid for the benefit of the minor legal heirs. There is no partition made in between the petitioner and his sons and daughters at the time of execution of the alleged sale agreement, which was not discussed by the Trial court while passing the decree and judgment. Whereas the respondent side stated that the petitioner had entered into a sale agreement as a Kartha of the family, and the sale considerations were paid for the benefit of Minor legal heirs. Hence, it is not necessary to be discussed by the Trial Judge while passing the decree and judgment regarding any partition effected between the petitioner and his sons and daughters.

17. In addition to the above aspect of grounds, the petitioner side has

mentioned that the sale agreement was dated 2.6.1992, whereas the sale agreement mentioned 11.12.1992, so on that scope of ground itself leads to suspicion because the sale agreement was dated 11.12.1992, when the sale agreement was executed on 2.6.1992, then where is that sale agreement dated 2.6.1992 for which no explanation from the petitioner side.

18. Furthermore, more in the above aspect of grounds that the petitioner, as Kartha of the family, entered into the sale agreement in which there were no recitals that the sale consideration was paid for the benefit of the minor legal heirs. So, on that aspect of grounds, it is already very clearly discussed in Para No:9 of E.A.No:331/2008 in E.P.No:282/2006 in OS.No:679/1996. Therefore, this petitioner once again brought back the issues which were adjudicated and settled in the above-mentioned Execution Application No:331/2008. Therefore, the petitioner has the habit of repeating the same versions once again, which is only purely to prolong the proceedings of the matter and thereby to keep the matter pending always, that is the ultimate aim of the petitioner, because the above OS.No:679/1996 in which a decree was passed on 30.9.1999 and further the E.P.R.No:296/1999 was filed on 11.10.1999 and the sale deed filed and EP was closed on 25.11.2002, so almost 23 years were crossed, now here petitioner seeking the delivery of possession over the suit property, therefore, the petitioner aim to drag on the proceedings once again what are the ways and means available to keep the matter pending for further progress of the proceedings to meet the ends of justice.

19. The petitioner further contended that the decree holder also filed a similar type of specific performance suit as OS.No:678/1996 against the petitioner before the Subordinate Judge court, Erode, but the same was dismissed by the 1st ASJ, Erode in respect of the relief of specific performance and decreed relief of refund the advance amount and the Ex-parte decree and Judgment was passed against the petitioner on 11.4.2001 for the reasons of the fact that the respondent has not paid the balance consideration within stipulated period in that sale agreement. The petitioner contended again that the aforesaid facts establish that the respondent paid the amount as a loan to the petitioner, and the same is not an alienation of property. Here, the above aspect of the stand taken by the petitioner in what way is connected to the issue of this matter for which no explanation from the petitioner side; therefore, the petitioner failed to explain the specifications of issues related to the above OS.No:678/1996 was connected with the OS.No:679/1996 because here the petitioner simply stated that the respondent paid the amount only as a loan to the petitioner and the same is not for alienation of properties which is not enough to be considered one because on what way that respondent paid the amount as a loan that would affect the crux of this matter for which there is no valid proof of records connected to this issue. Moreover, the other side also stated that the decree holder filed the O.S.No:678/1996 against the petitioner before the Subordinate Judge Erode, and the same was already disposed off, so the above suit is irrelevant to discuss in this case for which no explanation from the petitioner side.

20. Moreover, the petitioner side contended that the executing court had failed to consider the valid objections raised in the above execution proceedings, and without holding such objections that the executing court proceeded further to execute the finding of the decree; hence, the executing court itself has inherent powers to invoke the same to consider the objections raised as against the executability of the decree which it is being nullity.

21. Here in the above aspect, of the stand taken by the petitioner side, this court relied upon S. Bhaskaran Sebastian (Dead) By Lrs. & Ors. CIVIL APPEAL NO. 7800 OF 2014, Wherein Our Honourable Apex Court held that it is well-settled that an executing court cannot travel beyond the order or decree under execution (see Rameshwar Dass Gupta v. State of U.P. and Another, (1996) 5 SCC 728).

22. In Mumtaz Yarud Dowla Wakf V. M/S Badam Balakrishna Hotel Pvt. Ltd. & Ors 2023 Live Law SC 920, Wherein Our Honourable Apex Court held that, This case is a classic example of the unfortunate situation taken note of and lamented by Right Honorable Sir James Colvilbe in General Manager of the Raj Durbhunga v. Maharajah Coomar Ramaput Sing, 1872 SCC Online PC 16, “These proceedings certainly illustrate what was said by Mr.Doyne, and what has been often stated before, that the difficulties of a litigant in India begin when he has obtained a Decree...”¹ The situation not only continues but has become more prevalent. The legal principle that an Executing Court cannot go beyond the decree stands fortified, subject to the rigor of Section 47 read with Order XXI of the Code. As a matter of

course, an Executing Court is enjoined with the duty to give effect to the decree. Any interference, including on a question involving jurisdiction, should be undertaken very sparsely as a matter of exception. The onus lies heavily on the judgment-debtor to convince the Court that a decree is executable. When an exercise is likely to involve a factual adjudication, it should better be avoided. One has to see the consequence while taking note of the huge pendency of the cases before various Courts in the country. There is no gainsaying that, but for the adverse decree suffered, a judgment-debtor would not have ventured to raise such a plea. It is clearly a case of an afterthought to suit his convenience. He cannot be allowed to approbate and reprobate. Though we are conscious about the earlier precedents dealing with the stage at which such a plea can be raised, much water has flown under the bridge in terms of the ground reality. *Union of India and Others v. N. Murugesan and Others*, (2022) 2 SCC 25, “Approbate and reprobate 26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has

to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.

23. It is therefore, the execution court cannot go beyond the decree, which is a well-settled principle of law.

24. Another contention of the Petitioner's side, the finding given by the Honourable High Court of Madras, Chennai, in C.R.P.No (NPD) No:1260/2014 dated 4.7.2019 and also C.R.P.No:1381/2020 against the respondent, the petitioner has filed a partition suit as against the respondent and others in OS.No:713/2024 on the file of Honourable Additional District Judge Court, Erode, and the suit is posted to 26.11.2024 for appearance of the respondent, the petitioner has chances to get suitable alternative relief in the aforesaid suit. The other side also admitted the above-mentioned Honourable High Court of Madras, Chennai, in C.R.P.No (NPD) No:1260/2014 dated 4.7.2019 and also C.R.P.No:1381/2020 against the respondent, the petitioner has filed a partition suit as against the respondent and others in OS.No:713/2024 on the file of Honourable 1st Additional District Judge Court, Erode. Further, the respondent side raised a contention that the respondent filed the suit for

specific performance against the petitioner in OS.No:679/1996 before the Principal Sub Judge, Erode and obtained a decree dated 30.3.1999. The respondent filed a sale deed in EP.No:296/1999 and this court executed the sale deed dated 27.6.2002 in favour of the respondent. Subsequently, this respondent has filed the EPR.No:282/2006 for the delivery of possession against the petitioner, and the same is pending. In the meantime, the petitioner's daughter, namely Suganya and two sons, namely Kavithiruburan and Yogeswaran, have filed a claim petition under section 47 of CPC against the petitioner as Kumaravel and the respondent as Sekar in E.A.No:331/2000 and the same was dismissed by this court on 3.7.2012. Against the fair and decretal order, the claimants have preferred an appeal before the Honourable IInd Additional District Judge, Erode in AS.No:88/2012. Since no appeal would lie against any order passed under section 47 of CPC, and hence, IInd Additional District Judge, Erode, has dismissed the appeal on 9.7.2013, therefore said claimant preferred the revision before the Honourable High Court of Madras in CRP.No:1260/2014 and the Honourable High Court of Madras has remanded the matter with a specific direction by an order dated 4.7.2019.

25. Further, the respondent contended that the 1st Additional Sub Judge, Erode, took up E.A.No:331/2008 in E.P.R.No:282/2006 for fresh disposal on the particular issue as per the order of the Honourable High Court of Madras in C.R.P.No:1260/2014 and the same was dismissed by the 1st Additional Sub Judge, Erode, on 4.3.2020. Again, the claimants preferred the revision for the second time

before the Honourable High Court of Madras in C.R.P.No:1381/2020 and the same was also dismissed on 22.12.2023.

26. The respondent side further contended that the Honourable High Court of Madras extracted relevant portions of the order passed by this court in E.A.No:331/2008 in EPR.No:282/2006 in OS.No:679/1996 and referred the same in order dated 22.12.2023 at page 10 to 16 in para 12, 13 and 14, and the same confirmed the order passed by the 1st Additional Subordinate Judge, Erode as follows
Since the trial court has passed the above detailed order by taking into consideration of all the aspects raised by the revision petitioners and keeping the observation contained in the earlier CRP.No:1260/2014, this court is of the view that the fair and decretal order passed by the 1st Additional Subordinate Court Erode, in EA.No:331/2008 in EP.No:282 of 2006 in OS.No:679/1996 doesn't warrant any interference by this court and the same is hereby confirmed.

27. From the above contention of the respondent side, it is very clear that the petitioner cannot raise the issue once again because it was adjudicated and settled already, and the same was mentioned above.

28. Moreover in the instant matter, the respondent side further stated that the petitioner has suppressed a very vital fact that on 28.4.1999, he has filed a petition in IA.No:644/2000 in OS.No:679/1996 to set aside the ex-parte decree which was under Order 9 Rule 13 of CPC on the file of Principal Subordinate Judge of Erode, this respondent filed a detailed counter in the above mentioned interlocutory application

but the same was dismissed by the Principal Subordinate Judge Erode on 30.8.2000. Therefore, the petitioner has suppressed the above facts and thereby filing this kind of petition to prolong the proceedings which is very apparently in the petition and the same was discussed above. It is therefore, all the issues already involved in this matter which were adjudicated and settled in the above-mentioned EA.No:331/2008, further this petitioner exclusively filing the petition under order 21 Rule 101 CPC which cannot be maintainable because the same was discussed above, therefore, the petitioner aim to adopt delay tactics which is very well reflected in the petition because when issues involved in this matter were settled, then how once again to be tried the same issues in this petition which cannot be entertainable at this juncture this Court relied upon *Mohanlal Goenka v. Benoy Kishna Mukherjee*, 1953 SCR 377: AIR 1953 SC 65, it was held by the Honourable Supreme Court that a decision in the previous execution case between the parties that the matter was not within the competence of the executing court even though erroneous is binding on the parties. In *Prem Lata Agarwal v. Lakshman Prasad Gupta*, (1970) 3 SCC 440 AIR 1970 SC 1525, the Honourable Apex Court held that: “The principle of res judicata applies to execution proceedings. The judgment-debtors in the present case did not raise any objection as to limitation in regard to execution of the decree before the Civil Judge at Allahabad. On the contrary the judgment-debtors asked for setting aside the sale on the basis of revival of execution proceedings. The revival of execution was not challenged, and the judgment-debtors are thereby barred by the principle of res

judicata from questioning directly or indirectly the order, dated 13th May, 1950, reviving the execution proceedings.”

29. Subsequently, by the Act 104 of 1976 (with effect from 01.02.1977), Section 11 of the CPC was amended and *Explanation VII* was added, to specifically lay down that the principle of *res judicata* was applicable to execution proceedings also. This Explanation is as under:“ *Explanation VII.*— The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.”

30. Further, this court relied upon Periyammal (Dead) Through Lrs & Ors. Versus V. Rajamani & Anr. Etc. 2025 Live law (Sc) 293 wherein our Honourable Apex Court held that these provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution, causing failure of realization of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court, and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.

31. Applying the above precedents in the instant matter, the petitioner has

already filed the EA.No:331/2008 in EP No. 282 of 2006, and the same was completely adjudicated. again, this petitioner filed this petition to delay the execution of the delivery of possession in respect of the core issue of the matter. it is very well shows that the petition filed under Order 21 Rule 101 r/w section 151 CPC, then how the same has to be entertainable one, it is therefore clear that the petitioner filing this kind of frivolous petition to prolong the proceedings of the matter and thereby keeping this matter in pending forever which is sole aim and ultimate destination of the petitioner. Further, nowadays, the petitioner side has a habit of filing again and again frivolous petitions to drag on the proceedings of the matter, because here in the instant matter, already E.A.No:331/2008 in EP.No:282/2006 in OS.No:679/1996 which were all adjudicated by this court, and the same also confirmed by the Honourable High Court of Madras in CRP.No:1381/2020 dated 22.12.2023 and then filing several applications again and again to protract the proceedings of the execution application which all would spoil the fruits of decree because all the proceedings were exhausted, then once again relitigating the matter by way of conduct the trial proceedings before the execution court which cannot be entertainable one because our Honorable Apex Court held that in so many catena of judgments and orders that it is well settled principle of law, the execution court cannot travel beyond the decree. Therefore, there is no prima facie in the petition, almost 29 years have passed since the OS.No:679/1996 filed in 1996, and the E.P.No:286/1999 which was disposed on 27.6.2002 in respect of the execution of the sale deed, now this

matter is only pending for the delivery of possession in EP.No:282/2006, for which again this petitioner doing the similar manner of another round of litigating the issues which is purely delaying tactics to prolong the matter to meet the ends of justice. Given the above aspect of the reasons, this Petition stands dismissed and No cost.

As a result, this Petition stands dismissed and No cost.

Dictated to the Steno-typist and typed by him directly in the computer, corrected and pronounced by me in open court, on this the 16th day of July 2025.

I Additional Subordinate Judge,
Erode.

Petitioner and Respondent side Witness and Documents:

-Nil-

I Additional Subordinate Judge,
Erode.

Draft/Fair Order

EA.No.3/2024 in

EP.No.282/2006

Dated:16.07.2025

I ASJC, Erode.