

**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 Monday, the 28th day of July 2025

On Thiruvalluvar Varudam 2056, Tamil Visuvavasu Year, Aadi Thingal 12th day

E.P.No.282/2006

in

OS.No.679/1996

N.P.Sekar

..Petitioner/Plaintiff

/vs/

G.M.Kumaravel

...Respondent/Defendant

This petition has come up on 10.07.2025 for final hearing before this court in the presence of Thiru.P.C.Palanisamy, learned advocate for the petitioner, Thiru.C.Thangavel, 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 11(2) of CPC to delivery of possession over the petition mentioned property.

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

3. It is stated that the sale deed was executed by this court as per the decree, which was mentioned in column 7 of the petition. Now the petitioner sought the relief of delivery of possession over the petition mentioned property. Hence the petition.

4. The Brief Averments of the counter filed by the Respondent are as follows:-

5. Except as to the facts that are specifically admitted herein to be true, this respondent denies all other allegations contained in the petition as false and untrue.

6. It is stated that the petition mentioned properties are Joint Hindu Undivided properties. Further, the respondent has two sons and a daughter. The respondent is entitled to the 1/5th share in the petition-mentioned properties, and the remaining 4/5 shares belong to his mother, his two sons and one daughter, each entitled 1/5th share. Therefore, the petitioner is not legally entitled to proceed with the remaining extent of 4/5th share, which the respondent does not at all have title or right over the remaining 4/5th share. Hence execution petition is not maintainable.

7. The respondent filed an application to set aside the exparte order passed in E.P.No:296/2006 and the petition has not yet been numbered. The properties and their extent described in the execution petition are not true. The extent of Punjai Acre 2.75 exists in the survey field. The properties are ancestral properties of the respondent. The respondent is entitled to the 1/5th shares in the suit properties. The remaining extent of 4/5th shares belonged to the other legal heirs of the deceased Muthusamy. The legal heirs were not impleaded in this petition, and the same is not maintainable in law. Hence, this petition is liable to be dismissed.

8. The Brief Averments of the Additional counter filed by the Respondent are as follows:-

9. It is stated that there was no decree was passed on 30.9.1999. The particulars furnished in column no 6 are not true and correct. The description of the property described in this petition was not true and correct. The survey numbers of the properties as described by the petitioner are situated at some other place, which are not connected to the suit properties. The petitioner has not taken any steps to issue notice under the proper provision of law, and hence, the procedure adopted by the petitioner to issue notice to this respondent is not according to the correct provision of execution proceedings.

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. In this instant matter, the petitioner side inquiry heard already and the matter is posted for the Respondent side inquiry, but the Respondent side has not come forward to argue the matter, but the Respondent side is much more interested in getting adjournments, and the same was not entertained by this court because this matter has been pending since 2006 onwards for mere delivery of possession over the petition mentioned property, hence the same matter was crossed about 19 years old. Therefore, based on the records, this matter has been deemed to be heard on the Respondent side. Further, this matter is taken for order on merits.

12. Now, here further in the instant matter, the Petitioner side contended to deliver the possession over the suit property as mentioned in column 7 of this petition. Whereas the other side contended that the petition mentioned properties are Joint Hindu Undivided properties were not to be raised at the stage of execution proceedings because this court cannot go beyond the decree. So, the respondent is entitled to 1/5th shares, and the remaining 4/5th shares belong to the mother, his two sons and one daughter, each entitled to 1/5th shares, which cannot be adjudicated before the execution court. Further, the petitioner is not legally entitled to proceed with the remaining extent of a 4/5th share, over which the respondent has not at all had any title or right, over the remaining 4/5th share, for which already in this subject matter of the issue that the petitioner had already got the sale deed on 25.11.2002, then above shares and nature of the Joint Hindu family properties which cannot be questionable because now this petition only filed for delivery of possession in respect of petition mentioned property, at this stage above issues cannot be relitigate before this court and the same cannot be entertained because this court cannot go behind the decree and the same cannot go beyond the decree which was mentioned above. Even this respondent raised the further contention that the extent of the suit property is not proper, and the extent of 2.75 Punjai existing in the survey field, but there are no specifications of the survey field number mentioned in an accurate manner, but the

same in an evasive manner. Therefore, the respondent issues raised in the counter are to be adjudicated before the trial court or else to be adjudicated only before the Appellate forum, but the same cannot be adjudicated before the execution court and further, now only a stage of delivery of possession, so at this stage, the issues were raised in the counter cannot be maintainable at all.

13. In addition to the above, the respondent side further contended that no decree was passed on 30.9.1999. Even if no decree was passed, then how the execution petition filed for the execution of the sale deed was filed by the petitioner side, for which no explanation from the respondent side. Therefore, the respondent has not challenged the decree in the appellate forum which is an admitted fact on both sides that cannot be denied by the respondent side. Assuming, as per the version of the respondent, if at all, no decree was passed on 30.9.1999, the onus of proof lies upon the respondent to prove his stand of the above version regarding no decree was passed, for which no proof of records was adduced by the respondent side. The respondent side further contended that the particulars mentioned in column no 6, which were not correct and true that cannot be acceptable because the petitioner has filed the E.P.R.No:296/99 filed on 11.10.1999, and the same was closed on 25.11.2022 because the sale deed filed for execution of sale deed on the petitioner side, therefore the respondent side baldly mentioned that the particulars mentioned in the column no 6 which cannot be taken into consideration, because there was no specific contentions were raised but the same in a evasive contentions that cannot be taken into consideration and no supportive proof of records established to disprove the particulars of the column no 6. Further, the respondent side contended that the description of the property is not true and correct which was mentioned in the petition, for which there is no proof of records and documents established by the respondent side. Moreover, this respondent again baldly mentioned that the survey numbers of the properties as described by the petitioner are situated in some other places which are not connected to the suit properties, then why has this respondent

not given the specific particulars of the survey numbers and the same was situated at which place for which no proof of records established by the respondent side. The respondent vaguely mentioned in the additional counter that the notice was not issued properly, for which there is no details of particulars were given by the respondent side. It is therefore, one thing is clear from the respondent side, as per the additional counter, which shows that the respondent re-litigated the matter before the execution court because all the issues were settled and adjudicated in the trial proceedings, now this execution court to implement the decree, therefore the execution court cannot go beyond the decree and cannot go behind the decree. If at all the issues are raised in the additional counter, that can be countenance only before the Appeal forum; moreover, the contentions raised in the additional counter as per Order 8 Rule 9 CPC cannot be taken into consideration because the subsequent pleas cannot be raised in the execution proceedings, because all the plea and subsequent plea can be raised before the trial court to decide and adjudicate. Whereas the execution court only implements the decree.

14. Furthermore, in the instant matter, the decree was passed on 30.9.1999 based on that the petitioner filed the EPR.No:296/1999 which was allowed for execution of the sale deed, and the EP was closed on 25.11.2002, so almost 26 years have passed since the decree was passed on 30.9.1999 and further 23 years crossed from the date of execution of sale deed dated 25.11.2002, therefore, the petition after getting the fruitful decree but the same was not enjoyed by the petitioner because the respondent adopted all the delaying tactics to prolong the matter and keeping the same matter pending forever which has successfully done by this respondent for the past 25 years because the respondent adopted all hyper technical approach of petitions filed in this matter to drag on the matter in respect what are the ways and means are available to adjourn the matter but the same cannot be entertain by this court because the fruits of the decree not to be spoiled. At this juncture, it is found beneficial to rely upon the following citations, which were rendered by our

Honourable Apex court as follows

15. In *Ishwarlal Mali Rathod Petitioner(S) v. Gopal And Others (S)* 2021 SCC ONLINE SC 921, wherein our Honourable Apex Court held that, Today the judiciary and the justice delivery system is facing acute problem of delay which ultimately affects the right of the litigant to access to justice and the speedy trial. Arrears are mounting because of such delay and dilatory tactics and asking repeated adjournments by the advocates and mechanically and in routine manner granted by the courts. It cannot be disputed that due to delay in access to justice and not getting the timely justice it may shaken the trust and confidence of the litigants in the justice delivery system. Many a times, the task of adjournments is used to kill Justice. Repeated adjournments break the back of the litigants. The courts are enjoying upon to perform their duties with the object of strengthening the confidence of common man in the institution entrusted with the administration of the justice. Any effort which weakens the system and shake the faith of the common man in the justice dispensation has to be discouraged. Therefore the courts shall not grant the adjournments in routine manner and mechanically and shall not be a party to cause for delay in dispensing the justice. The courts have to be diligence and take timely action in order to usher in efficient justice dispensation system and maintain faith in rule of law. We are also aware that whenever the trial courts refused to grant unnecessary adjournments many a times they are accused of being strict and they may face displeasure of the Bar. However, the judicial officers shall not worry about that if his conscience is clear and the judicial officer has to bear in mind his duties to the litigants who are before the courts and who have come for justice and for whom Courts are meant, and all efforts shall be made by the courts to provide timely justice to the litigants. Take an example of the present case. Suit was for eviction. Many a times the suits are filed for eviction on the ground of bonafide requirements of the landlord. If plaintiff who seeks eviction decree on the ground of personal bonafide requirement is not getting the timely justice, and he ultimately gets the decree after 10

to 15 years, at times cause for getting the eviction decree on the ground of personal bonafide requirement may be defeated. The resultant effect would be that such a litigant would lose confidence in the justice delivery system and instead of filing civil suit and following the law, he may adopt the other mode, which has no backing of law, and ultimately it affects the rule of law. Therefore, the court shall be very slow in granting adjournments and as observed hereinabove they shall not grant repeated adjournments in routine manner. Time has now come to change the work culture and get out of the adjournment culture so that confidence and trust put by the litigants in the Justice delivery system is not shaken and Rule of Law is maintained (Para No:10) In Rahul S Shah Vs Jinendra Kumar Gandhi & Ors MANU/SC/0333/2021, Wherein our Honourable Apex Court held that the Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

16. Another recent citation reiterated by our Honourable Apex Court, Bhoj Raj Garg Vs Goyal Education and Welfare Society and others MANU/SCOR/130451/2022 Wherein our Honourable Apex Court held that the Execution Court is not abiding by the directions issued by this Court in the decision in Rahul S. Shah Vs. Jinendra Kumar Gandhi & Ors., reported in (2021) 6 SCC 418. In the said decision, this Court held as follows: - "42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions: - 2. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay." This means that it becomes the duty of the Execution Court to dispose of the execution proceedings at the earliest and since this Court has directed that the Execution Court must dispose of the execution proceedings within six months from the date of filing, which can be extended only by recording reasons in writing for such delay, this direction is meant to be observed. This would mean that every effort should be made to dispose of the execution petition within the said time

limit, and the Execution Court should have reasons for not being able to dispose of the execution petition. The Execution Court is duty-bound to record reasons in writing when it is unable to dispose of the matter.

17. In Periyammal (Dead) Through Lrs & Ors. Versus V. Rajamani & Anr. Etc 2025 Live Law (SC) 293, wherein our Honourable Apex Court held that Delay in Execution of Decree – Directions, Execution proceedings should not be used to re-litigate issues already decided in the suit. The executing court's role is limited to ensuring the decree is executed, not to question its validity. The judgment underscores the importance of timely execution of decrees and prevents parties from frustrating decrees through collusive claims raised during execution proceedings. It reaffirms the principle that executing courts cannot go behind the decree or re-adjudicate issues already decided in the suit. The Court issued directions to all High Courts to monitor and expedite the disposal of pending execution petitions, emphasizing the need to avoid delays in the execution of decrees.

18. Therefore, in the instant matter, the petitioner is only seeking the delivery of possession because already execution of the sale deed completed, which was mentioned above, but the respondent has been adopting all kinds of delaying tactics for the past 26 years by way of filing of frivolous execution applications in a repeated manner and the same also disposed of, So, almost two decades have passed, hence the fruits of the decree cannot be spoiled, furthermore, directed by our Honourable Apex Court and the Honourable Madras High court to do thing in a rightful manner of need in timely justice without any kind of further delay but the same to be done expeditiously within the frame of law as was mentioned in the above precedents. Therefore, the petitioner has proved his stand of version in respect of the core issue of the matter. It is therefore that the respondent is directed to hand over the possession of the petition-mentioned property to the petitioner immediately without any kind of further delay. Given the above aspect of the reasons, this Petition stands allowed and No costs.

Having regard to the facts and circumstances of the case, upon perusal of the material on record and considering the rival contentions of both counsel as reflected in the petition and counter along with additional counter filed by the respondent side, this Petition stands allowed and No costs.

As a result, this Petition stands allowed 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 28th day of July 2025.

I Additional Subordinate Judge,
Erode.

Petitione and Respondent side Witness and Documents:

-Nil-

I Additional Subordinate Judge,
Erode.

Draft/Fair Order
EP.No.282/2006 in
OS.No.679/1996
Dated:28.07.2025
I ASJC, Erode.