

**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 Friday, the 8th day of August 2025

On Thiruvalluvar Varudam 2056, Tamil Visuvavasu Year, Aadi Thingal 23rd day

E.P.No.106/2024

in

OS.No.623/1999

E.R.S.Sathish Krishna

..Petitioner/ Decree Holder

/vs/

1. Nagamanickam (died)
2. A.Radhamani (died)
3. A.Muthuvelu (died)
4. A.Karunakaran
5. A.Elangovan (died)
6. P.Kowsalya
7. K.Ravichandranathan (died)
8. K.Muthusamy (died)
9. K.M.Muruganantham
10. M.Sivakami
11. K.M.Madheswaran

...Respondent/Judgment Debtors

This petition has come up on 05.08.2025 for final hearing before this court in the presence of Thiru.P.Manickam, learned advocate for the petitioner, Thiru.Sengottuvelan, learned advocate for Respondents 9 to 11 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) and Section 151 of
E.P.No.106 of 2024 in OS.No.623 of 1999

I ASJ Court, Erode.

CPC for delivery of possession.

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

3. It is stated that the delivery of possession in respect of the petition-mentioned property, as reflected in the execution petition, in which 9 to 11 respondents failed to comply with the decree, therefore, to issue notice to the above respondents and after due notice and thereby make an order for the delivery of possession in respect of the petition-mentioned property and the possession handed over to the petitioner. Hence the Petition.

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

5. All the allegations stated in the petition were denied as false, except that a few were admitted as true.

6. It is stated that the respondents preferred the appeal against the decree and Judgment which was filed before the Honourable 1st ADJ, Erode on 15.4.2024. The Appeal as follows AS.No:31/2024 and AS.No:46/2024, which were filed before the Honourable 1st ADJ, Erode and for the same are pending onwards from 1.12.2024 and 6.8.2024 respectively. The respondent suppressed the appeal proceedings and thereby filed this petition, and the same is not maintainable. The respondent filed the two appeal petitions along with this counter, and the two appeals may be treated as part and parcel of this counter. The petitioner had appeared in AS.No:31/2024 on 27/9/2024 before the Honourable 1st ADJ, Erode, but the same was suppressed by the petitioner. The respondents have the chance of success in the appeal proceedings. It is therefore when the first appeals are pending. Hence, this petition is not maintainable and the same is liable to be dismissed.

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

On Point:-

8. The petitioner side contended that the delivery of possession in respect of the petition-mentioned property, as reflected in the execution petition, in which 9 to 11

respondents failed to comply with the decree, therefore, to issue notice to the above respondents and after due notice and thereby make an order for the delivery of possession in respect of the petition-mentioned property and the possession handed over to the petitioner. Whereas the other side contended that the respondents preferred the appeal against the decree and Judgment which was filed before the Honourable 1st ADJ, Erode on 15.4.2024. The Appeal as follows AS.No:31/2024 and AS.No:46/2024, which were filed before the Honourable 1st ADJ, Erode and for the same are pending onwards from 1.12.2024 and 6.8.2024 respectively. The respondent suppressed the appeal proceedings and thereby filed this petition, and the same is not maintainable. The respondent filed the two appeal petitions along with this counter, and the two appeals may be treated as part and parcel of this counter. The petitioner had appeared in AS.No:31/2024 on 27/9/2024 before the Honourable 1st ADJ, Erode, but the same was suppressed by the petitioner. The respondents have the chance of success in the appeal proceedings. It is therefore when the first appeals are pending. Hence, this petition is not maintainable.

9. In light of the above aspect of grounds, this court relied upon the following decisions: -

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.

11. In 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.

12. Very recently 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 the 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. 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.

13. Applying the above precedents and in light of the above aspect of grounds, the petitioner side contended that the decree was passed on 15.12.2023, even after that, the respondents have not come forward to hand over the possession of the petition-mentioned property to the petitioner. Further, the petitioner obtained the decree on the above date and thereafter filed this petition in 2024. It is therefore this petition has been pending for the past one year, but the respondents are stating that they preferred the appeal, which was numbered as AS.No:31/2024 and AS.No:46/2024 before the Honourable 1st ADJ, Erode, in which there was no stay granted by the Honourable Appellate court, which was not mentioned in the counter filed by the respondents. Here, the respondent side contended that the above appeals are pending, so this petition is not maintainable, whereas here no stay was granted, which was admitted on the respondent side, and the same was also mentioned. It is a well-settled principle of law that when an appeal is pending, which is not amount to a stay of proceedings unless a stay is granted by the Honourable Appellate Court. Moreover, the respondents did not mention the valid and prompt reasons mentioned in the counter. Although the respondents side raised that the petitioner suppressed the appeal proceedings and thereby filed this petition, which cannot be taken into consideration because the petitioner had obtained the decree in his favour, to execute the decree that he filed this petition, which cannot be curtailed because it is a fundamental right of the petitioner because the petitioner has been waiting for three months for delivery of possession over the petition mentioned property but there was no progress made by the respondents side, then the petitioner filed this petition to execute the decree, therefore the fruits of decree cannot be spoiled because the petition all along waiting more than three years from the date of decree and again the petitioner has been waiting even after filed this petition that would affect the fruits of the decree obtained by the petitioner because In India, even after obtaining the decree, the decree holder to execute the decree which is very difficult task and the same is known to everyone that cannot be denied on both sides. It is therefore

pending appeal proceedings that would not affect the execution proceedings, and further reasons stated in the counter filed by the respondent side, which are not sufficient to address the core issue of this petition. Therefore, the respondents are directed to hand over possession of the petition mentioned property to the petitioner immediately without further kind of delay. Delivery by 28/8/2025. Given the above aspect of the reasons, this Petition stands allowed and No costs.

As a result, this Petition stands allowed and No costs.

Dictated to the Steno-typist and typed by him directly in the computer, corrected and pronounced by me in open court, on this the 08th day of August 2025.

I Additional Subordinate Judge,
Erode.

Petitioner and Respondents side Witness and Documents:

-Nil-

I Additional Subordinate Judge,
Erode.

Draft/Fair Order
EP.No.106/2024 in
OS.No.623/1999
Dated:08.08.2025
I ASJC, Erode.