

**IN THE COURT OF SUBORDINATE JUDGE OF PERUNDURAI**

**PRESENT: THIRU. M.ASHFAQ AHAMED,B.A.B.L.,  
Subordinate Judge, Perundurai.**

wednesday, the 18<sup>th</sup> day of March 2026  
**EP.No 76/2018 in O.S.No.124/2017**

S. Raja

.... Petitioner/ Decree holder

/Vs/

1. Vennila (Died)

(Amended as per order in E.A.No.5/2024 dated 30.01.2025)

2. P. Rajendran

3. Krishna Ganesh

(Amended as per order in E.A.No.5/2024 dated 30.01.2025 and  
2, 3 respondents are impleaded as per order in E.A.No.4/2024  
dated 27.09.2024)

.... Respondent /Judgment Debtors

This petition came before me for final hearing on 10.03.2026 in the presence of Advocates Thiru. S.Devarajan for petitioner and S.Balakrishnan for Respondents 2 and 3 and 1<sup>st</sup> respondent died and upon hearing the arguments of both sides, this Court doth deliver the following:

**ORDER**

I) The petitioner/ DH has filed the present application under Order 21 Rule 34 and 35 CPC for execution of sale deed and delivery of possession.

**II) The contents of the affidavit filed by the petitioner read as:**

The petitioner has obtained a decree for specific performance on 23.07.2018 and balance sale amount was also deposited in the court. As per the decree the respondent is bound to execute sale deed. Since the respondent has not come forward to execute the sale

deed the execution petition was filed. The 1<sup>st</sup> respondent though appeared through counsel set exparte for non filing counter and pending petition she died and respondents 2 and 3 entered appearance after execution of sale deed by the court and at the stage of delivery of possession after amendment of the petition.

**III) The counter filed by the 2<sup>nd</sup> respondent and adopted by 3<sup>rd</sup> respondent read as:**

The petition is not sustainable. One Palanisamy and 1<sup>st</sup> respondent are husband and wife respectively. The said Palanisamy died in the year 2013. The 1<sup>st</sup> respondent purchased the property by way of sale deed dated 08.06.1992. The petitioner has entered into a registered sale agreement with the 1<sup>st</sup> respondent on 16.04.2015. There is no intention for the 1<sup>st</sup> respondent to sell the properties to the petitioner. Utilizing the innocence of the 1<sup>st</sup> respondent the sale agreement was fabricated. The petitioner filed the suit in O.S.124/2017 for specific performance and obtained a decree by playing fraud. There is no service effected on 1<sup>st</sup> respondent through court and post . On the strength of the decree the petitioner filed the above execution petition and obtained the sale deed dated 06.10.2023 from this court and registered the same as Doc.No.6840/2023 on the file of Sub-Registrar, Perundurai. No order was passed for execution of sale deed and without any order of the court sale deed was executed in favour of the petitioner. Thereafter the petitioner filed application for break open and police aid and only then the respondents came to know about the fraud committed by the petitioner. The 1<sup>st</sup> respondent died on 30.05.2022 and the petitioner without reporting the death of 1<sup>st</sup> respondent and bringing on record the legal heirs of 1<sup>st</sup> respondent attempted to knock away the properties after the

death of 1<sup>st</sup> respondent. The petitioner has not approached the court with clean hands. The petitioner has made misrepresentation and obtained sale deed. Challenging the same the respondents have also filed a suit in O.S.28/2025 to set aside the decree and the same was pending. The petitioner is not entitled for delivery of possession. There is no merits in the petition and prays for dismissal.

**IV) Points for consideration is**

**1) Whether the petitioner is entitled for delivery of possession?**

**2) Whether the sale deed obtained by the petitioner after the death of judgment debtor is valid?**

**V) POINTS 1 and 2:**

a) This Court carefully considered the submissions of the both sides. Admittedly execution petition was filed for registration of sale deed and delivery of possession. Before going into the merits of the petition certain material facts are relevant for disposal of this petition. The suit was originally filed for specific performance by the petitioner against the sole 1<sup>st</sup> respondent herein and a decree for specific performance was granted on 23.07.2018. There was no appeal against the decree and the perusal of the decree shows it is an exparte decree. Though it is an exparte decree, the decree was not challenged by the respondent and it attains finality. As per the decree the petitioner is directed to deposit the balance sale consideration of Rs.50,000/- within one month and within three months from the date of deposit, the judgment debtor is directed to execute the sale deed.

b) the date of decree and the respondent/judgment debtor entered appearance through counsel and adjournments were taken for settlement of the matter before Lok Adalath and finally on **09.03.2020** when the counter was not filed, the respondent was set exparte. Thereafter the case proceedings was pending for clarification and further proceedings from 08.04.2020 to 16.09.2022. In the mean while the court has called for encumbrance certificate and for filing draft sale deed. The draft sale deed was filed the before the court only on **16.09.2022** and on **28.09.2022** the court has endorsed for registration of sale deed. The petitioner has deposited Rs.24,500/- for NJS on **19.04.2023** and registration of sale deed was effected on **06.10.2023**. Since the execution petition is also for delivery, court ordered notice of delivery on batta to the respondent by 30.11.2023 and delivery batta was returned and possession could not be delivered for want of break open and police aid. Thereafter the petitioner has filed E.A.2/2024 and E.A.3/2024 for break open and police aid in which notice was ordered and the same was returned with endorsement respondent died. Subsequently the petitioner not pressed the above E.A.2/2024 and E.A.3/2024 and the respondents 2 and 3 were impleaded and the execution petition was amended.

c) It is pertinent to note the respondent died on 30.05.2022 which was not disputed by the petitioner. Though the respondents 2 and 3 in their counter have raised challenge regarding the decree passed in the suit, when the respondent/judgment debtor has not chosen to challenge the same, the grounds raised by the respondents 2 and 3 does not requires any consideration. Even the suit filed by respondents 2 and 3 challenging the

decree as stated by them will not serve any purpose. The valid ground raised by the respondents with regard to the execution of the sale deed by the court is by following the legal procedures or not has to be looked into. As rightly pointed out by the counsel for the respondents 2 and 3, admittedly there is no order of court that the judgment debtor neglects or refuses to obey the decree and that the judgment debtor is bound by the decree and there was reasons to believe that the judgment debtor is not prepared to comply the decree and there is necessity for execution of sale deed by the court on behalf of the judgment debtor.

d) This court is of view that Order 21 Rule 34 CPC clearly prescribes the modes of execution of decree directing execution of document or endorsement of negotiable instrument. Order 21 Rule 34 CPC prescribes where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment debtor neglects or refuses to obey the decree, the decree holder may prepare a draft of the document in accordance with the terms of the decree and deliver the same to the court. Order 21 Rule 34(2) CPC says the court **shall** thereupon cause the draft to be served on the judgment debtor together with a notice requiring his objections (if any) to be made within such time as the court fixes in this behalf and sub clause (3) prescribes where the judgment debtor objects to the draft, his objections shall be stated in writing within such time and the court shall make such order approving or altering the draft and sub clause (4) details the decree holder to deliver the court the copy of the draft with such alteration as the court may have directed upon the proper stamp paper and the judge or officer shall execute the document so delivered and sub clause (6) (a) prescribes where the registration of the

document is required, shall cause the document to be registered in accordance with such law.

f) From the reading of the above provisions it is clear where the decree is for execution of a document and the judgment debtor neglects to execute document and thereby refuses to obey the decree, the decree holder may prepare draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the court. The court thereupon, has to cause the draft to be served on the judgment debtor together with notice requiring him to make his objections if any within such time as the court may fix in that behalf. If the judgment debtor objects to the draft, he has to state his objections in writing and the court has to make such order approving or altering the draft **after hearing the parties to the execution proceedings**. Upon finalization of the draft, the decree holder has to deliver the court a copy of the draft with such alterations upon proper stamp paper and the judge or officer as may be appointed in this behalf has to execute the document so delivered and where registration is required the court has to execute the document and registered the same in accordance with law.

g) Now when the facts of the present case is analysed it is clear the draft sale deed was filed before the court only on 16.09.2022 (i.e.) after 4 months from the death of judgment debtor. The court after receiving the draft sale deed has not issued any notice to the judgment debtor calling for objections for draft sale deed. Without any notice to the judgment debtor and calling for objections for the draft sale deed, the sale deed was executed by the court on 06.10.2023. Therefore it is apparent on the face of the record that

the sale deed was executed by the court to the petitioner on behalf of the deceased judgment debtor. The sale is nothing but a sale on behalf of a dead person. There is no explanation by the petitioner as to why the procedures contemplated under Order 21 Rule 34 was not followed. The learned counsel for the petitioner is not in a position to give clear and vivid explanation for failure to comply with the requirement. It is needless to mention the trouble arises only after the decree and at the stage of execution. The procedures of law has been laid down only to protect the interest of the parties and no one should be prejudice by the act or mistake of the court. In the present case if the notice under Order 21 Rule 34 CPC after draft sale deed has been complied, then the death of the judgment debtor could have brought to the notice of the court and there cannot be any occasion for the court to execute sale deed on behalf a dead person.

h) In the present case the non issuance of notice under Order 21 Rule 34 CPC had violated the rights of the parties and it had caused prejudice to the legal heirs of the deceased judgment debtor. Therefore this court is of view the objections raised by the respondents 2 and 3 regarding the execution of sale deed by the court would have resulted in serious prejudice and the same is not in accordance with law. The petitioner cannot take advantage of the sale deed executed by the court on behalf of dead person and also cannot seek delivery of the possession. There was ample evidence of patent error as to procedural irregularity which cannot be corrected. Accordingly this court is of view the sale deed executed by the court on behalf of deceased judgment debtor dated 06.10.2023 is ordered to be recalled and the said sale deed has no legal implications in the eye of law.

The sale deed dated 06.10.2023 is ordered to be recalled and necessary intimation is also to be served on the concerned Sub-Registrar. It is open for the petitioner to file a fresh execution petition for execution of sale deed in terms of the decree and get the sale deed from the legal heirs of 1<sup>st</sup> respondent/judgment debtor who are bound by the decree and on their failure to execute the document invoke the provisions of Order 21 Rule 34 CPC and get the sale deed through court in the manner known to law.

**In the result, the execution petition stands dismissed. The sale deed executed by the court on 06.10.2023 under Doc.No.6840/2023 before the office of Sub-Registrar, Perundurai on behalf of deceased judgment debtor is not valid and the same is ordered to be recalled. The petitioner is at liberty to apply for fresh execution of the sale deed in the manner known to law and seek reliefs accordingly. No costs.**

Dictated to Steno Typist and computerized by her directly in the Computer, corrected and pronounced by me in open court, the 18<sup>th</sup> day of March 2026.

**Subordinate Judge,  
Perundurai.**

**Petitioner and Respondents side witnesses and Documents: Nil.**

**Subordinate Judge,  
Perundurai.**