

IN THE COURT OF THE SUBORDINATE JUDGE, ERANIEL

**Present : Thiru. R. Karl Marx, B. L.,
Subordinate Judge, Eraniel**

Thursday, the 13th day of August 2026

E. A. No. 07 of 2026

in

E.P. No.28/2022

in

O.S.No. 7 of 2020

1. Pavithra

2. Vidhya

... Petitioners/ 2, 3 respondents

-vs-

1. Suresh Kumar

2. Madhevan Pillai

... Respondent/decreed holder/plaintiff

... Respondent/Judgment debtor/ defendant

This petition is came up before me in this Court for final hearing on 24.07.2026, in the presence of Thiru. A. Vimalan Counsel for Petitioners/ 2, 3 respondents and Thiru. K. Mohanan counsel for the 1st Respondent and 2nd respondent called absent set exparte and after hearing both sides and upon perusing entire records and having stood over for consideration till this day, this court delivered the following:-

ORDER

The above application has been filed by the 2nd and 3rd respondents in the E.P. to review the order dated 08.08.2025, under Order 41 Rule 1 r/w. Sec 141 and 151 of CPC.

2. Point for consideration:

Whether this application is to be allowed or not?

3. Answer to the point:

Heard the arguments advanced by the learned counsel for the petitioner as well as the 1st respondent respectively and perused the entire records carefully. On perusal of the entire records, it would show that the 1st respondent in the present application has filed the above EP to sell the property which was attached in IA.2/2020. Pending the above EP for adjudication, the 2nd ad 3rd additional respondents were impleaded as per the order passed in claim petition in EA.No.3/2023 order dated 26.04.2024.

4. The learned counsel for the petitioner would submit that the petition property as well as other properties were originally belonged to the grand father's father of the Mr. Madavan Pillai and the revenue records were stands in the name of said Madavan Pillai till 2018. The said Madavan Pillai died on 25.07.1972 intestate. The said Madavan Pillai had only legal heir namely Subramania Pillai, who is the grandfather of the petitioner, and he had have inherited the said property. At present the said Subramania Pillai is no more. The said Subramania Pillai had settled the petition property as well as other properties infavour of Mr. Madavan Pillai who is the father of the petitioners and defendant in the suit dated 02.02.2018. Therefore, the Subramania Pillai had no right to execute any document in respect of the petition property. The petition property and other properties are the joint family property of the petitioner and the defendant in the suit. Therefore, the petitioners are entitled to 2/3 share. When this court attached the petition property, the petitioners have filed a claim application in EA.3/ and it was allowed on 26.04.2024, thereby the petitioners are entitled to 2/3 undivided share of the property and the respondent has not filed any appeal against the said order. The petitioners are not the Judgment Debtors and the Decree Holder has not filed an application to add the petitioners are parties to the execution proceedings. The Decree Holder in EP has filed an application in EA 5/2024 to amend the property details and the name and address of the petitioners herein and it was allowed on 11.07.2025 but the petitioners were included in the execution petition is not proper. As per order passed in EA 3/2023, the petitioners are entitled to 2/3 undivided share over the properties , but the Decree Holder has given the boundary in his own without considering the share of the petitioners, the entire

property has attached by the court vide order dated 20.05.2025, which is illegal. Hence the petitioners needs to review the order dated 08.08.2025.

5. The learned counsel for the 1st respondent would submit that the Decree Holder has given correct detail in EA 5/2024 and it was clearly stated that the property belongs to 1st respondent measuring 1.820 cent, apart from the 2/3 share of the petitioners. The attached property measuring about 1.820 cents vide order dated 20.08.2025 belongs to the Judgment debtor. The plaintiff has not claimed any right from the petitioners property. Hence prayed for dismiss.

6. On careful consideration of the above, according to the petitioners they are claiming right over the 2/3 undivided share of the petition property as per the order passed in the claim petition, but this court attached the entire property vide order dated 08.08.2025 without considering the boundaries and shares of the petitioners. On perusal of the docket, this court attached the amended EP schedule property.

7. The amended schedule would show that the property was amended as 1 cent 820 sq.links alone. Previously the schedule was 5 cent 460 sq.links, after the claim petition and after adjusting 2/3 undivided share, it was amended as 1 cent 820 links for which the petitioner would have no objection. The main objection raised by the petitioners are the boundaries were not amended and the boundaries would show that the entire property was attached. Therefore the petitioners need to review the order.

8. Admittedly the Decree Holder sought for attachment of 1 cent 820 sq.links of the property and boundaries were not amended for the reason that the property was not divided, if the Decree Holder sell the property he can sell only undivided share of the 1 cent 820 sq.links of 5 cent 460 sq.links. Sometimes, if there is any discrepancies over the identification of property the boundaries will prevail over. But the property has not divided, in such circumstances how the boundaries can be changed without dividing the properties. When the properties are not divided the Decree Holder cannot fix the place or area for boundaries. Therefore, even if the boundaries are not changed, it will not affect the rights of the petitioners. Considering

all the above as well as the provision of the Code of Civil Procedure, the boundaries given by the Decree Holder is proper since it is undivided property, hence the petitioner fails and liable to be dismissed and this point is answered accordingly.

9. **In the result**, the application is dismissed. No costs.

Dictated to the Steno typist and directly computerized by her, corrected and pronounced by me in the open court, on this 13th day of August 2026.

**Sub Judge,
Eraniel.**

Both side witnesses and documents :

Nil

**Sub Judge,
Eraniel.**