

**IN THE COURT OF THE DISTRICT MUNSIF,
ERANIEL.**

**Present: Thiru. S. Jothi Kailash, B.A., B.L.,
District Munsif, Eraniel.**

Wednesday, the 12th day of November 2025

EA.No.6 of 2024 and EA.No.7 of 2024

in

E.P.No.15/2014

in

O.S.467/1995

Bennet S/o.Chellaiyan

Power of attorney holder for the 2nd petitioner

Vijin, S/o.Ayyappan

... Petitioner/Power holder/Decree
Holder No.2

vs.

1.Chellammal W/o.Ayyappan

2. Vithya Rani, D/o.Ayyappan

3. Nagakanni, D/o.Ayyappan

(Minor petitioners 2 to 4 represented by their Mother Legal Guardian,
first petitioner)

4. Gopalan, S/o.Swamikannu Nadar

(Lrs respondents 3 to 7 impleaded as the legal heirs of Gopalan (R1) in
this E.P. as per order in E.A.No.1/2019 dt.03.02.2021)

5. Pachimal, S/o.Swamikannu Nadar

6. Thangam W/o.Gopalan (Addl.R3)

7. Kumutha, D/o.Gopalan (Addl.R4)

8. Dalmi alias Sivakrishnan, S/o.Gopalan (addl.R5)

9.Dokkara Alias Sivaraman, S/o.Gopalan (addl R6)

10. Lal S/o.Gopalan (Addl.R7)

....Respondents /defendants/ decree
holder No.1,3,4/Judgment Debtors.

This petition is coming before me for final hearing in the
presence of Mr.S.Krishna Prasad, learned counsel for the Petitioner

and Tr.John Xavier, learned counsel for the 5th respondents and Mr.Jebarlin, learned counsel for the 6 to 10 respondents and 4th respondent died and 1 to 3 respondent were dismissed as not pressed and upon hearing both side and on perusal of the case records and having stood over for consideration till this day, this court delivered the following

COMMON ORDER

EA.No.6 of 2024

1. This petition is filed under Order XXI Rule 35(3) Section-151 of Code of Civil Procedure to order the court Amien to break open the lock in the door of the building and deliver the actual and physical possession of items 1 and 2 properties.

EA.No.7 of 2024

2. This petition is filed under Section-151 of Code of Civil Procedure to direct the Superintendent of Police, Kanyakumari District to render necessary men and women police help to the Amien of this court to execute the warrant issued to the Amien in this execution petition.

3. The petitioner has stated that the Petitioner herein and the power of attorney holder of 2nd petitioner in the execution petition. This execution petition was field for delivery of the EP schedule property. That the real facts in this proceedings are known to me through the 2nd petitioner.

3.1. That a partition suit was filed by one Gopalan as plaintiff/respondent against the father of the 2nd petitioner/decreed holder Ayyappan in O.S.No.467/1995 before this Honourable Court for partition and in this suit a preliminary decree was passed on 04-02-1997. Therefore, the father of the 2nd petitioner filed a final decree application along with commission application in [L.A.No.](#) 614/2001 in [O.S.No.](#) 467/1995 and the Honourable court passed a final decree on 30-10-2003 by allotting item Nos. 14 &15 in resurvey No.154/20 and 156/3C2 to the father of the 2nd petitioner. In item No.15, resurvey No. 156/3C2 having an extent of 1,250 cents with buildings allotted to the 1st defendant/ decreed holder towards his 1 /3rd share. The commissioner's report and plan was attached in the final decree.

3.2. That in this E.P. the Honourable court passed an order of delivery of the petition schedule property. Accordingly, the petitioners along with me and Amien reached to the decreed scheduled property for delivery and requested to vacate the property and to deliver the actual and physical possession of the decreed scheduled property. The respondents never allowed the Amien to enter into the decreed scheduled property, quarreled on the spot and locked the building in E.P. schedule property. So the Amien has no other option to return without effecting delivery of the scheduled property and filed the report before the Honourable Court.

3.3. As such delivery of the decree schedule property can be effected only after break open the lock in the building and delivery can be effected only with the help of the local police and the Village Administrative officer. The separate petition for the same is herewith filed which may be allowed.

4. The 5th respondent counter contented that the petition deserves from devoid of merits. The power holder of the petitioner without the knowledge and consent of the co decree holders in order to achieve wrongful gains has been involving in ultra virus activities.

3.1. As contended in the 3rd paragraph of the affidavit by the final decree item No. 14 & 15 were not allotted to the father of the 2nd petitioner. It cannot be done. The real problem in extending the decree is that the decree schedule property is not within the village of Thalakulam as per the decree, the extent of the decree schedule property is 1.500 cents. Within the 1.500 cents property this respondents vendee has his own 5 stories building available.

4.1. Any of the respondents never registered anybody to execute the decree because the decree is not enforceable. The amien never saw any of the respondents on the spot. The decree schedule property is not at all in possession of either the petitioner or the respondents as alleged in the affidavit.

4.2. The preliminary and final decrees are under challenge in O.S.No.85/2019 of Sub Court Eraniel. The case is in an end stage. The plaintiff in that case is not impleaded in the execution petition. He is in actual possession of the property. The decree doesn't contain the correct details of the property. So it is impossible to execute the decree. The E.P subject matter was already settled between the parties. It is accepted by High Court the petitioner without disclosing the real facts in order to achieve wrongful gains and harass the respondents has been taking spontaneous steps to execute the decree obtained by playing fraud on court proceedings.

4.3. Without correcting the decree properly it cannot be executed. Even police officials can also not able to extend their help. Non of the respondents have any right ones the property. So they never involved any ultra virus activities. Considering the facts and circumstances of the case the petition may be dismissed.

5. The point for consideration is whether the both petitions are to be allowed or not?

5.1. The petitioner has filed the present petition seeking a direction to the Superintendent of Police, Kanyakumari District, to render necessary police assistance both men and women police to the Amien of this court for executing the warrant issued in the execution proceedings. The petitioner has averred that when the Amien,

accompanied by the petitioner, proceeded to the decree schedule property for effecting delivery and requested the respondents to vacate and hand over actual and physical possession, the respondents obstructed the process, refused to cooperate, engaged in quarrel at the site, and locked the building situated in the execution petition schedule property. Consequently, the Amien was left with no option but to return without executing delivery.

5.2. The respondents, in their counter, have contended that the decree is unenforceable and that none of the respondents were present at the site during the attempted delivery. They further assert that the decree schedule property is not in possession of the petitioner, contrary to the averments made in the affidavit.

5.3. Upon careful consideration of the records available and the report submitted by the Amien, this court is of the considered view that the decree for possession, having attained finality, must be executed effectively in accordance with Order XXI Rule 35(1) and (3) of the Code of Civil Procedure. The executing court is empowered to deliver possession and, if necessary, remove any person who refuses to vacate, including removal of constructions, so as to ensure that the decree holder enjoys the fruits of the decree.

5.4. The conduct of the respondents, particularly their absence during execution and the locking of the premises, appears to be a deliberate attempt to frustrate the lawful process of this court. In the interest of justice, this petition is allowed. The Superintendent of Police, Kanyakumari District, is hereby directed to instruct the Inspector of Police, Eraniel, to provide necessary police assistance to the Amien for executing the warrant of possession.

5.5. The Amien is further directed to proceed with the execution of the warrant in E.P.No.6 of 2024 and is authorised to use necessary force, including breaking open the lock of the building situated in the petition schedule property in E.P.No.15 of 2014, and deliver actual and physical possession to the petitioner.

6. In the result, both petitions are allowed.

Dictated by me, typed by Typist in computer, corrected and pronounced by me in open court, on this 12th day of November 2025.

(Sd)/-
District Munsif,
Eraniel.

Petitioner side witnesses and documents – Nil
Respondent side witnesses and documents - Nil

(Sd)/-
District Munsif,
Eraniel.