

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF,
AT KANCHEEPURAM.

PRESENT: Tmt.Fanny Rajan, B.A.,B.L.,(Hons),
Principal District Munsif, Kancheepuram.

On Monday, this the 13th day of July 2026

E.P. No. 7 of 2025

in

O.S.No. 28 of 2013

CNR No. TNKP08-000029-2025

Mr. K. Ramalingam

....Petitioner/Decree holder

/Versus/

1. Mrs. S. Suseela

2.Mr. S. Sekar

...Respondents/Judgment Debtors

This petition is coming on this day for final hearing before me on 09.06.2026 in the presence of M/s. A.K. Ramesh learned counsel for the Decree Holder and M/s. T.A. Sudarsan learned counsel for the 1st Judgment debtor and 2nd judgment debtor was called absent set exparte on 21.01.2026, upon hearing the rival submissions and perusal of the records, having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition is filed under Order XXI Rule 35 CPC debtors to remove the construction measuring of the below schedule of Property and failing which the same may be done through the process of this Hon'ble court by doing any other act necessary for remove the Respondent/ Judgment Debtor in possession and thus render justice.

2. CASE OF THE DECREE HOLDER: The Decree Holder has filed a suit for recovery of vacant possession and permanent injunction against the defendants. The same was decreed in favour of the Decree Holder in OS No. 28 of 2013 on 30.11.2018 directing the Defendants to hand over vacant possession within 2 months, permanent injunction not to interfere with possession and damages of Rs.200/- per month until vacated.

3. Thereafter an appeal in A.S. No. 10 of 2019 was filed and dismissed on 31.10.2022. However, as the Judgment Debtor failed to handover the vacant possession after removal of the superstructure, this petition is filed. Hence, this Execution petition is filed for removal of the Judgment Debtor from possession of the schedule property.

4. CASE OF THE 1st JUDGMENT DEBTOR: The 1st respondent had averred that the EP is not maintainable. The suit was filed for recovery of possession, decreed in OS No.28/2013 and appeal dismissed on 31.10.2022. Due to financial constrain, they could not establish their case. The Decree Holder taking advantage of his situation and inability forcibly filed E.P.No.6 of 2025 and lodged police complaint. The Police threatened him to vacate.

5. He is not in possession of the suit property but a small portion of government land. The Petitioner with evil intention trying to grab the suit property which belongs to the Government. Using Police power already possession was taken.

Hence there is no necessity for this petition. The Petition is covered with malafide and has to be dismissed with costs.

6. Upon perusal of records, it is noted that the notice to the 2nd respondent herein was served and she was called absent and set exparte on 21.01.2026.

7. **POINT FOR CONSIDERATION:** Whether the decree holder is entitled for the removal and handing over of the suit property as prayed for or not?

8. No one is examined and no documents were exhibited on either side. Heard the submissions made by the learned counsel for decree holder and Judgment Debtor and also, perused the records.

9. **Discussion and Findings:** This Court upon perusal of the material records and the pleadings, arguments finds that the decree in question emanates from the Judgment and Decree dated 30.11.2018 in O.S.No.28 of 2013. A thorough perusal of the Decree would indicate that this Court had ordered for the mandatory injunction directing the Judgment Debtor to handover vacant possession in 2 months and permanent injunction not to disturb and damages of Rs.200/- from 01.12.2012 to date of vacating.

10. The main contention of the learned counsel for the 1st Judgment Debtor is that the schedule property is a property of the government. A forcible attempt was made by the Petitioner to vacate him and already possession is taken over by the Petitioner. However, there is no single material facts regarding the date of taking

over possession, when the alleged possession was taken over, by whom it was done.

11. The Judgment Debtor having raised such a contention the burden of proof regarding this particular fact would lie with the Judgment Debtor under Section 106 of the Bharathiya Sakshya Adhiniyam. In the absence of lack of material facts and evidence regarding the alleged forcible taking over of possession, this court considers that the averments of the 1st Respondent cannot be entertained. Further, it can be inferred that the 1st respondent is unwilling to hand over possession. Whereas, the 2nd respondent has chosen to remain exparte.

12. The merits regarding the ownership and the lawful possession are matters to be decided in the suit. The said issue cannot be reagitated in the Execution Petition. In fact the first appeal against the Judgment and Decree dated 30.11.2018 in O.S.No.28 of 2013 was filed by the Judgment Debtors herein in A.S.No.10 of 2019 and it was also dismissed on 31.10.2022. There is no material pleadings or record filed by the Judgment Debtors to establish that a second appeal has been filed against the above decrees.

13. There is no material on record to substantiate any proceedings questioning the validity or legality of the Judgment and Decree 30.11.2018 in OS No.28 of 2013, Judgment and Decree dated 31.10.2022 in A.S.No.10 of 2019 or stay of the same in second appeal. Therefore, this court is of the considered view that the 1st

Judgment Debtor cannot dispute the executability of the Judgment and Decree dated 30.11.2018 in OS No.28 of 2013 unless and until the same has been questioned or stayed by the appropriate forum and reversed.

14. The manner in which the Judgment Debtor had remained silent without filing an second appeal would only amount to constructive estoppel of the Judgment and Decree dated 30.11.2018 in OS No.28 of 2013. The Judgment and Decree dated 30.11.2018 in OS No.29 of 2013 was confirmed by the Judgment and Decree dated 31.10.2022 in A.S.No.10 of 2019. In fact more than 7 years have lapsed since the expiry of the 2 month period mentioned in the Judgment and Decree dated 30.11.2018 in O.S.No.28 of 2013.

15. This court opines that in the absence of any material regarding the stay or appeal, there is no impediment to proceed with this Petition. Therefore, this Court is of the considered view of that the Judgment and Decree dated 30.11.2018 in OS No.28 of 2013 is the still binding on the judgment debtors. Hence in the interest of justice and for providing an opportunity to the Decree Holder to enjoy the fruits of the Decree, this Court is inclined to allow this petition. Thus the point for determination is answered in favour of the decree holder.

Result:

In the result, this execution petition is hereby allowed. Delivery of the petition property after removal of the construction by the Senior Bailiff of this Court on or before 15.09.2026, on payment of batta in 3 days. Call on 15.09.2026.

Dictated to the steno typist partly, who directly typed the same in her Computer and partly typed by me, corrected and pronounced by me in open court, this the 13th day of July 2026.

**PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM**

DECREE HOLDER SIDE WITNESSES & EXHIBITS:- Nil

JUDGMENT DEBTOR SIDE WITNESSES & EXHIBITS:- Nil

**PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM**