

IN THE COURT OF THE SUBORDINATE JUDGE, MELUR.

Present: Tmt. M. SAMUNDEESWARI PRABHA, M.A., M.L.,

Friday, the 10th day of October 2025

I.A.No.1/2024

in

CMA.No.2/2024

Velmurugan

S/o.Somu

..... Petitioner/ Appellant

// Vs //

1. Kasthuri

C/o.N.V.Ragunath

2. M.Somasundaram

S/o.Muthiah Asari

..... Respondents/ Respondents

This petition coming up for final hearing before this court on 02.08.2025 in the presence of Advocate.Mr.V.Palani, Advocate for the Petitioner and Advocate Mr.K.R.Sudharsan Prabhu, Advocate for the 1st respondent and the 2nd respondent was called absent set exparte on 04.10.2024 and upon hearing the enquiry on both sides, on perusal of the records and having stood over for consideration till this day, this court delivers the following:-

Orders

This petition has been filed Under Order 41 Rule 5 and Section 151 of CPC pass an order to stay the further proceedings of E.P.No.117/2017 in the file of District Munsif court Melur.

1. Brief averments of the petition :-

(I) The petitioner herein is the appellant in the main appeal. The petitioner is a lawful tenant under the 1st respondent herein/1st respondent in the appeal. But the 1st respondent suppressed his tenancy and his possession over the E.P. mentioned property had obtained a decree for ejectment against the 2nd respondent as if he is a lawful tenant. The petitioner further came to know that under the guise of above collusive decree the 1st respondent is attempting to disposes the petitioner from the E.P. property the petitioner came to know the illegal view when the 1st respondent was evading to receive the rent.

(ii) So the petitioner had filed the claim petition in E.A.No.9/2023 seeking declaration that the decree obtained by 1st respondent is in executable and for other reliefs unfortunately the lower court has dismissed the claim petition on 15.03.2024. Aggrieved by the above order the petitioner had preferred the appeal before this honorable court. In this circumstance the trial court pressing the EP.No.117/2017. The petitioner's prays to stay the further proceedings of E.P.No.117/2017 in the file of District Munsif court Melur. Hence this petition has to be allowed.

2. Brief averments of the counter affidavit and its adopted by the written statement by the 1st Respondent/1st Respondent:-

(I) The 1st Respondent herein and also the 1st Respondent in the main CMA filed by the Claimant/Petitioner in the execution proceedings initiated by the 1st respondent through E.P.No.117 of 2017 for delivery of the decreed property. The Stay Petition averments are all denied as false and frivolous. The alleged possession by the petitioner over the 1st respondent property as lawful tenant is denied as non-est. There is no iota of even a tip of truth in the Stay Petition averments. The Petitioner / Appellant is a stranger. He never remained as tenant to her at any point of time. It is learnt that the petitioner /appellant is the brother-in-law of the judgment debtor.

(ii) That the petitioner/claimant's claim petition in E.A.No.9 of 2024 was dismissed with cost by the Trial Court on 15.03.2024. The observations made by this court in the above claim petition in EA.No.9 of 2024 are that the Petitioner refused to appear before this Court and shun the witness box, had not marked any documents prima facie to prove his possession over the petition mentioned property as per his claim. Therefore, an adverse inference was made by this court under the provisions of the Evidence Act, resulting non made-out of prima facie case by the Petitioner Claimant that caused dismissal of the claim petition. When the facts being so, the claimant without proving his case at the executing court has once again come with the present CMA which is liable to be dismissed in-limine as no civil miscellaneous appeal lie

against an order passed in Order 21 Rule 97 CPC petition, which deems to be a decree.

(iii) It is 1st respondent submitted that where a decree is for delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged or to such person as he may appoint to receive delivery on his behalf, and, if necessary by "removing any person" bound by the decree who refuses to vacate the property. Therefore, the petitioner /stranger is coming under the purview of the above recitals of the particular provision of execution under the caption of "removing any person" that was emphasized in order 21 rule 35 of CPC. Therefore, the Petitioner had no legal sanctity to get the execution stayed for a while.

(iv) The petitioner being the 3rd party / stranger who has not chosen to come forward before the Trial Court to prove his case has no locus to file a Stay Petition. The Petitioner / Claimant being the brother-in-law of judgment debtor who is arrayed as 2nd Respondent herein, prefers this sort of litigation at the instance of his sister's husband i.e. 2nd Respondent in order to prolong the litigation and deny the fruits of justice to her. Hence, this is an another round of vexatious litigation by the petitioner with the collusion of the 2nd Respondent Judgment debtor to play foul on law. To say simply, the present litigation process of the self-styled claimant is only an abuse of process of law that entails no merits.

(v) Originally the suit in O.S.No.250 of 2006 was filed in the year 2006 for the recovery of possession of the suit property and for payment

of rent arrears from the 2nd Respondent herein and the suit was decreed on 28.07.2009 against which though Appeal was filed that dismissed for non-prosecution in the year 2017 against which a CMA was filed before the District Court, Madurai and the same was dismissed by the Ist Additional District Court, Madurai later on. Hence, no appeal was pending against the decree and judgment of the Trial Court as on date. Even after a span of 15 years, it is unfortunate that the judgment debtor denying to oblige the mandate of law and further indulging fresh rounds of litigation against the decree holder, an issueless widow ruthlessly by adopting undue process of law. Hence this petition has to be dismissed with costs.

3. The point for consideration aroused is that :-

Whether the petition has to be allowed or not ?

4. Point :-

Both sides heard. Records perused. This court finds that the petitioner is the Judgment debtor and E.P.No.117/2017 has been filed for delivery of the suit property. Already the E.A.No.9/2024 was dismissed by the court in the claim petition.

If the facts being so, the petitioner has come up with this application for stay. In fact, the CMA.2/2024 has come to the stage of 2nd respondent side arguments. Hence the petitioner can very well conduct the main CMA.2/2024 and get the orders on merits.

5. Result:-

In the result, this petition is dismissed. No costs.

Dictated to the Steno Typist by me, and typed by her directly, corrected and pronounced by me in open court, this the 10th day of October 2025.

**Sub Judge,
Melur.**

Both sides of witness and documents : Nil

**Sub Judge,
Melur.**

Draft/Fair Order
in
IA.No.1/2024
in
CMA.No.2/2024
Dt : 10.10.2025
Sub Court, Melur