



**IN THE COURT OF THE DISTRICT MUNSIF AT UDHAGAMANDALAM,
THE NILGIRIS**

**Present: Thiru. L. PRAKASH, B.Sc., B.L.,
DISTRICT MUNSIF, UDHAGAMANDALAM.**

Monday, the 29th day of June 2026

E.A. No. 02 of 2026

in

EP. No. 01 of 2026

(C.N.R. No. TNNS030 - 00018 - 2026)

in

R.C.O.P. No. 23 of 2017

1. A.R. Abdul Majeeth (Since Deceased)

... Petitioner/ Respondent/Judgment Debtor

2. Zubare

... Petitioner/Respondent/Lr of Judgment Debtor

/Vs/

1. Marilingaiah (Since Deceased)

... Respondnet/Petitioner/Decree Holder

2. M. Sivaraj

... Respondent/Petitioner/Lr of Decree Holder

This petition came on 29.06.2026 for final hearing before me in the presence of Mr. M. Santhosh Kumar Galada, learned Counsel for the Petitioners and of Mr. Puneeth K.G., learned Counsel appearing for the Respondents, upon hearing both sides and upon having stood over for consideration till this day, this court delivered the following:

ORDER

1. This petition is filed under Section 47 R/w Section 151 of the Code of Civil Procedure, praying to hold the order sought to be executed is a nullity and



non-est in law and dismiss the Execution Petition as not maintainable and declare that the proceedings are vitiated by fraud, impersonation and suppression of material facts.

Gist of Petition and Affidavit:

2. The 2nd petitioner/2nd respondent in the above execution petition states that, the present petition challenges the executability, legality and validity of the decree sought to be enforced in the execution petition. It is contended that the execution petition is not maintainable because the Rent Control Appeal order became unenforceable after the decree holder failed to bring the legal representatives of the deceased landlord on record within the prescribed time, resulting in abatement and dismissal for default. Since no petition was filed to set aside the abatement, the order has attained finality and remains unenforceable, making the execution petition unsustainable in law. The entire proceedings are vitiated by fraud, impersonation and suppression of materials facts, contending that the alleged landlord/decreed holder is not the true owner of the property.

3. It is further contended that, the registered Sale Deed dated 23.12.1955 to assert that the property stands in the name of Marilingai Gowder, S/o. Karia Gowder, who is a different individual belonging to a different lineage. The decree holder and his son deliberately misrepresented their identity, suppressed the Sale Deed, and failed to produce the relevant Will at the appropriate stage to mislead the Court. The 2nd petitioner also questions the genuineness of the Will, alleging that it was prepared by the decree holder's counsel, who has thereby become a material witness, making his continued appearance contrary to the Bar Council of India Rules. On these grounds, it is contended that the Rent Control and Appellate orders are null and void, having been obtained by fraud and misrepresentation, and that the execution petition is also liable to be dismissed for non-joinder of all the legal representatives of the



deceased judgment debtor.

4. The 2nd petitioner further contends that the execution petition is void and not maintainable as it was filed against the deceased person without impleading all the legal representatives. The execution proceedings constitute an abuse of the process of the Court, initiated with the ulterior motive or unlawfully claiming rights over property belonging to another person. Accordingly, the 2nd petitioner/2nd respondent prays to declare the decree sought to be executed as null and void, dismiss the execution petition as not maintainable, and hold that the proceedings are vitiated by fraud and misrepresentation.

Gist of Counter Statement:

5. On the other hand of the respondent/Lr. of decree holder filed a detailed counter opposing the petition, it is contended that, the petition under Section 47, the execution petition is not maintainable or that the decree has become unenforceable/abated are totally false and untenable. He submits that the execution petition is legally maintainable and has been filed within the prescribed period of limitation by the lawful legal representatives of the deceased landlord. The allegations of fraud, impersonation, and identity mismatch raised in the Section 47 petition are denied as false and an afterthought. It is stated that the original owner of the property, Marilingai Gowder, lawfully bequeathed the property under a registered Will dated 02.05.1985 to Marilingaiah, son of Siddey Gowder, who thereby became the absolute owner of the petition schedule property. It is further contended that the identity of the landlord and the existence of the landlord-tenant relationship were conclusively adjudicated in the main R.C.O.P. proceedings. The judgment debtor having failed in the R.C.O.P. proceedings cannot now reinvent or re-litigate the title or identity of the landlord at the execution stage, as an executing court cannot go behind the decree.



6. Further, the allegations of suppression of the 1955 Sale Deed, manipulation or non-production of the Will, and misconduct by the decree holder's Counsel are categorically denied as false, malicious, and intended only to intimidate counsel and delay execution. It is further asserted that the property description and boundaries correctly correspond to the petition schedule property, and that the reliance on Rule 13 of the Bar Council of India Rules is wholly misconceived. the decree holder also denies the allegations that the Rent Control order is void or obtained by fraud, maintaining that the orders were passed on merits after giving the judgment debtor full opportunity to contest the proceedings, and that the section 47 petition is merely an abuse of the process of the Court.

7. The decree holder denies the allegations of non-joinder of necessary parties and contents that the execution petition was validly instituted against the surviving legal representatives who are in possession of the petition schedule property, with all procedural requirements under the Civil Procedure Code duly complied with. It is further submitted that the allegations of abuse of process, ulterior motive to grab the property, and the proposed limitation of perjury or criminal proceedings are false, defamatory and frivolous. It is the judgment debtor who is misusing the legal process to continue unlawful occupation of the premises despite the eviction decree. It is also argued that the petition under Section 47 of the Code Of Civil Procedure raises no issue relating to the execution, discharge, or satisfaction of the decree, but is merely an attempt to reopen the merits of the case and challenges the validity of the decree itself, which is impermissible in execution proceedings. Hence prays for dismissal of the petition.

**Points for Determination:**

8. Heard both sides, petition, counter statement and the case records perused carefully. The point that arises for determination is whether the present petition filed under Section 47 read with Section 151 of the Code of Civil Procedure is maintainable in law.

Discussion:

9. The present petition has been filed under Section 47 read with Section 151 of the Code of Civil Procedure seeking to declare that the decree sought to be executed is a nullity and non-est in law, to dismiss the Execution Petition as not maintainable and to declare that the execution proceedings are vitiated by fraud, impersonation and suppression of material facts.

10. The records disclose that the above Execution Petition has been filed by the respondent herein, being the legal representative of the original landlord in R.C.O.P. No. 23 of 2017, seeking delivery of vacant possession of the petition schedule property through due process of Court from the legal representatives of the respondent/tenant in R.C.O.P. No. 23 of 2017, including the present petitioner. On receipt of notice in the execution proceedings, the present petitioner entered appearance and filed a detailed counter statement in the main Execution Petition on 23.03.2026. Thereafter, the Execution Petition was posted for enquiry on 01.04.2026 and subsequently on 09.04.2026, granting a last chance with a specific endorsement that no further adjournment would be granted.

11. At that stage, on 09.04.2026, the present petitioner presented a petition under Section 47 read with Section 151 of the Code of Civil Procedure questioning the executability of the decree. Since the petition, on the face of the averments,



sought to challenge the validity of the decree itself and not any question relating to execution, discharge or satisfaction of the decree, the same was returned by this Court on the very same day as not maintainable. Thereafter, the main Execution Petition was again posted for enquiry as a last chance without further adjournment.

12. Aggrieved by the return made by this Court, the petitioner preferred C.R.P. No. 2606 of 2026 before the Honourable High Court of Madras. By order dated 28.04.2026, the Honourable High Court set aside the order of return passed by this Court. Though the order of the Honourable High Court refers to the date of return as 01.04.2026 instead of 09.04.2026, the operative portion of the order directed this Court to receive the petition on its re-presentation, number the same, afford opportunity to both parties to address arguments specifically on the question of maintainability and thereafter pass appropriate orders on merits in accordance with law. The Honourable High Court further directed this Court to dispose of the petition within four weeks from the date of its re-presentation.

13. Pursuant to the said directions, the petitioner re-presented the petition on 04.06.2026. This Court numbered the petition and posted the matter on 09.06.2026 for filing of counter statement by the respondent. Thereafter, at the request of the respondent, adjournments were granted from time to time and ultimately the respondent filed a detailed counter statement only on 29.06.2026. In strict compliance with the directions issued by the Honourable High Court, this Court afforded full opportunity to both the learned counsels to address elaborate submissions exclusively on the question regarding the maintainability of the present petition under Section 47 of the Code Of Civil Procedure.

14. The learned counsel appearing for the petitioner submitted that the person who instituted R.C.O.P. No. 23 of 2017, namely Marilingaiah, son of Siddey



Gowder, was not the original owner of the petition schedule property. According to him, the original owner was Marilingai Gowder, son of Karia Gowder, as evidenced by the registered Sale Deed bearing Document No. 1802 of 1955. It is contended that by taking advantage of the similarity in names, Marilingaiah, son of Siddey Gowder falsely represented himself to be the owner of the petition schedule property and thereby obtained an order of eviction by practising fraud upon the Rent Controller. Since the present Execution Petition has been filed by one of his legal representatives, it is argued that the decree obtained by fraud is a nullity in the eye of law and, therefore, incapable of execution. In support of the said contention, the learned counsel relied upon the judgment of the Honourable High Court of Madras in **N. Devarajan and Others vs. M/s. Nirmal Industries**, reported in **2017-5-L.W. 80**, and submitted that a petition under Section 47 of the Code Of Civil Procedure is maintainable where the decree is alleged to be a nullity.

15. Per contra, the learned counsel appearing for the respondent submitted that the very foundation of the petitioner's argument is factually incorrect. According to him, the original owner, namely Marilingai Gowder, son of Karia Gowder, had executed a registered Last Will and Testament bearing Document No. 10 of 1985, whereby he bequeathed the petition schedule property, among other properties, in favour of Marilingaiah, son of Siddey Gowder. Consequently, Marilingaiah became the absolute owner of the petition schedule property much prior to the institution of R.C.O.P. No. 23 of 2017. It is further submitted that during his lifetime, Marilingaiah executed another Will in favour of the present respondent and, therefore, the respondent has lawfully succeeded to the property. It is argued that the allegation of fraud is wholly baseless and was never pleaded or raised during the pendency of the Rent Control proceedings. On the contrary, the respondents in R.C.O.P. No. 23 of 2017 had admitted both the landlord-tenant relationship and the quantum of rent.



16. Therefore, after suffering an eviction order, they are estopped from disputing the title of the landlord or the jural relationship at the stage of execution. It is further submitted that no appeal was preferred against the eviction order passed in R.C.O.P. No. 23 of 2017 and the decree has attained finality. Consequently, the present petition under Section 47 of the Code Of Civil Procedure is nothing but an attempt to reopen concluded issues and is therefore not maintainable.

17. In order to substantiate their respective contentions on the question of maintainability, the petitioner marked the certified copy of the registered Sale Deed bearing Document No. 1802 of 1955 as Ex.P-1. On the side of the respondent, the registered Last Will and Testament bearing Document No. 10 of 1985 was marked as Ex.R-1, the Death Certificate of Marilingai Gowder, son of Karia Gowder was marked as Ex.R-2 and the certified copy of the eviction order passed in R.C.O.P. No. 23 of 2017 was marked as Ex.R-3. These documents have been considered only for the limited purpose of deciding the preliminary issue regarding the maintainability of the present petition under Section 47 of the Code of Civil Procedure in compliance with the directions issued by the Honourable High Court of Madras.

18. Section 47 of the Code of Civil Procedure empowers the executing Court to determine only those questions which arise between the parties to the suit or their representatives and which relate to the execution, discharge or satisfaction of the decree. The scope of the provision is confined to questions concerning the manner of execution of the decree. It is well settled that an executing Court cannot sit in appeal over the decree or reopen the findings already recorded by the Court which passed the decree. Unless the decree is shown to be a nullity for want of inherent jurisdiction or is otherwise inexecutable on the face of the record, the executing Court is bound to execute the decree as it stands.



19. The Honourable Supreme Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi and Others (2021) 6 SCC 418** has categorically held that execution proceedings should not be permitted to become another round of litigation. The Apex Court has noticed the tendency of judgment debtors to file repeated and frivolous applications with the sole object of delaying the fruits of the decree and has directed all executing Courts to adopt a strict approach to ensure expeditious execution of decrees. The Court has further observed that objections which substantially seek to reopen the issues already decided in the original proceedings should not be entertained in execution.

20. Similarly, the Honourable Supreme Court in **Periyammal (Dead through LRs.) & Others v. V. Rajamani & Another 2025 SCC OnLine SC 507** has held that fraud is a serious allegation which must be specifically pleaded and strictly proved by cogent and convincing evidence. Mere allegations or suspicion cannot be accepted as proof of fraud. Unless fraud is established in accordance with law, a judicial order passed by a competent Court cannot be treated as a nullity.

21. The reliance placed by the petitioner upon the judgment of the Honourable High Court of Madras in **N. Devarajan and Others vs. M/s. Nirmal Industries** to contend that a petition under Section 47 of the Code Of Civil Procedure is maintainable where the decree is alleged to be a nullity cannot be disputed as a proposition of law.

22. It is well settled that an executing Court can examine whether the decree is a nullity in exceptional circumstances. However, the maintainability of such a petition depends upon the nature of the objections raised and whether the decree is ex facie without jurisdiction or whether the objections merely seek to reopen disputed



questions of fact and findings already concluded in the original proceedings.

23. In the present case, the petitioner has not demonstrated that the Rent Controller lacked inherent jurisdiction to entertain R.C.O.P. No. 23 of 2017 or to pass the eviction order. On the contrary, the entire case of the petitioner rests upon disputed questions relating to the identity of the landlord, the genuineness of the registered Will, the ownership of the property, the alleged suppression of the registered Sale Deed, alleged impersonation and alleged fraud. These are all matters requiring adjudication upon evidence and are questions which either were or could have been raised before the Rent Controller during the original proceedings.

24. It is significant to note that the respondent has produced Ex.R-1, the registered Last Will and Testament executed by Marilingai Gowder, son of Karia Gowder, in favour of Marilingaiah, son of Siddey Gowder. According to the respondent, by virtue of the said registered Will, Marilingaiah had become the absolute owner of the petition schedule property much prior to the institution of R.C.O.P. No. 23 of 2017. The petitioner, on the other hand, relies only upon Ex.P-1, the registered Sale Deed of the year 1955, to contend that the original owner was a different person. Whether the registered Will is genuine, whether title validly passed under the Will, whether Marilingaiah became the owner of the property and whether any fraud had been practised are all disputed questions which cannot be adjudicated by an executing Court while exercising jurisdiction under Section 47 of the Code Of Civil Procedure.

25. Further, the records reveal that during the proceedings in R.C.O.P. No. 23 of 2017, the respondents therein had admitted the landlord-tenant relationship and the rate of rent. No plea was raised disputing the identity or title of the landlord. After suffering an order of eviction, no appeal has been preferred



challenging the decree on the grounds now urged before this Court. The decree has thus attained finality. The petitioner cannot now be permitted to reopen the entire adjudication by characterising the decree as one obtained by fraud without there being any adjudication by a competent Court declaring so.

26. The contention regarding alleged fraud is nothing but a challenge to the correctness and legality of the decree itself. Such a challenge falls outside the limited scope of Section 47 of the Code Of Civil Procedure. This Court cannot embark upon a detailed enquiry regarding title, validity of testamentary documents or allegations of impersonation in execution proceedings. Acceptance of such a contention would amount to permitting the executing Court to exercise appellate jurisdiction over the decree, which is impermissible in law.

27. This Court is therefore of the considered opinion that although a petition under Section 47 of the Code Of Civil Procedure may be maintainable in appropriate cases where the decree is shown to be a nullity on account of inherent lack of jurisdiction, the allegations made by the present petitioner do not establish such a case. The petitioner has merely sought to reopen issues which are directly connected with the merits of the eviction proceedings and which cannot be examined by an executing Court. The allegations of fraud remain unsubstantiated and unsupported by any adjudication by a competent forum. Consequently, the present petition does not raise any question relating to the execution, discharge or satisfaction of the decree but is only an indirect attempt to avoid execution of a decree which has attained finality. Accordingly, this Court holds that the present petition filed under Section 47 read with Section 151 of the Code of Civil Procedure is not maintainable in law.

**Result:**

28. In the result, the petition is dismissed with costs. The petitioner is directed to pay the costs of this petition to the respondent.

Dictated by me to the steno-typist, typed by her in computer, corrected and pronounced by me in open court, this the 29th day of June 2026.

Sd/- L. PRAKASH,

**DISTRICT MUNSIF,
UDHAGAMANDALAM.**

Petitioner's side exhibits marked:

Sl. No	Date	Documents	Nature of Documents	Exhibits
1.	23.12.1955	Sale Deed	Certified Registration Copy	Ex. P-1

Respondent's side exhibits marked:

Sl. No	Date	Documents	Nature of Documents	Exhibits
1.	02.05.1985	Last Will and Testament	Certified Registration Copy	Ex. R-1
2.	-	Death Certificate of Marilingai Gowder, S/o. Karia Gowder	Photostat Copy/Original	Ex. R-2
3.	14.11.2019	Eviction Order passed in R.C.O.P. No. 23 of 2017	Certified Copy	Ex. R-3

Sd/- L. PRAKASH,

**DISTRICT MUNSIF,
UDHAGAMANDALAM.**



Draft/Fair Order:

E.A. No. 02/2026

in

E.P. No. 01/2026

in

R.CO.P. No. 23/2017

Dated: **29.06.2026**

**District Munsif Court,
Udhagamandalam.**