

**IN THE COURT OF THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE, RAMANATHAPURAM.**

**PRESENT: Thiru. A.K.MEHBUB ALI KHAN, B.L.M, L.L.M.,
PG.D.PM/IR, Dip.in.J.J & J.Psy., PG.,D.D.F.,
Principal District Judge, Ramanathapuram.**

Friday the 06th day of March 2026

**E.A. No. 1/2024
in
E.P. No. 21/2024
in
O.S.No.69/2023

Rajiv Gandhi ... Petitioner/Obstruc^ter

-VS-

01. P. Nagendiran 1st Respondent
/petitioner/ Plaintiff

02. Parthiban 2nd Respondent/
respondent/defendant.

This petition came on 27.02.2026 for final hearing before this Court in the presence of Thiru.S.A.S.Alavudeen, Advocate for the petitioner/Obstruc^ter and Thiru.J.Udhuman, Advocate for the 1st respondent /petitioner/Plaintiff and Thiru.Thirunavukkarasu, Advocate for the 2nd respondent/respondent/defendant and on hearing the arguments on both sides and on upon perusing the entire case records and having stood over for consideration till this date, this Court delivers the following ...

ORDER

This petition is filed by the petitioner/3rd party u/s 47 of C.P.C.

2. When the maintainability of petition u/s 47 of C.P.C. by 3rd party was questioned by this Court, the petitioner's counsel filed a memo praying to treat the petition as one under order 21 Rule 97 of C.P.C. in accordance with the decision of the Hon'ble Supreme Court in "*Periyammal -vs- Rajamani*"¹

3. **The case of the petitioner in brief:**

The petitioner is the 3rd party to the suit. The first respondent/Decree Holder had filed the suit in O.S. 69/2023 against the 2nd respondent/Judgment Debtor for recovery of money and the suit was decreed exparte on 12.10.2023. The petitioner had entered into a lease agreement with the 2nd respondent/Judgment Debtor in respect of the properties described in the schedule on 06.05.2022 under a registered document No. 1028/2022. Based on the said lease deed, he had proceeded to make construction of Petrol Bunk with dealership of Reliance Jio BP. He has been paying the lease amount regularly without any default. But the 2nd respondent/Judgment Debtor had issued notice to the petitioner on 06.07.2023 with false allegations which was suitably replied by him on 04.08.2023 . In furtherance of the said notice, the 2nd respondent/Judgment

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Debtor has filed O.S. 20/2024 against the petitioner and some others before the Hon'ble Sub Court, Ramanathapuram and the same is pending for deciding whether there is an Arbitration Clause in the said lease agreement dated 06.05.2022. In these circumstances, the petitioner came to know that the 1st respondent/Decree Holder had filed the suit in O.S. 69/2023 against the 2nd respondent/Judgment Debtor for recovery of money and the same was decreed exparte on 12.12.2023. He also came to know that the execution petition is filed against the 2nd respondent/Judgment Debtor by the 1st respondent/Decree Holder to execute the said decree in O.S. No. 69/2023. It is also known to the petitioner that the 1st respondent/decree holder had obtained Attachment Before Judgment in I.A. No. 02/2023 on 22.08.2023. The said suit was filed without impleading the petitioner who has right and interest over the said property. The 1st respondent/Decree Holder has suppressed the lease agreement and that the petitioner is having possession over the said property. The first respondent/Decree Holder has colluded with the 2nd respondent/Judgment Debtor and has filed the suit for recovery of Rs. 20 lakhs on pro note and subsequently the E.P., to defeat the right of the petitioner. The plaintiff has no capacity to lend such amount and he has not produced Income Tax return. It is mandatory to verify this before decreeing the suit but the Court had not verified whether there was any transaction of consideration or Bank transfer of money since the amount exceeded Rs. 2 lakhs. Since,

the Court had failed to do so, the decree is not maintainable in eye of Law and liable to be set aside. The petitioner and the 2nd respondent/Judgment Debtor have exchanged several notices from 06.05.2022 to 13.12.2023 and the same was suppressed by the Decree Holder. The order of attachment before judgment was passed without giving any reason. The exparte decree as well as the ABJ order should be set aside on the ground of non-joinder of necessary parties and suppression of material facts. The decree is not executable since it was obtained by fraudulent means. Since, the petitioner gained knowledge about these proceedings only in August 2024, he has taken steps to set aside the exparte decree and order in I.A. 02/2023. The execution petition is filed to bring the property for sale through Court action if the Judgment Debtor fails to pay the amount. Since, the petitioner is in possession of the property as per the lease agreement, he has accrued right over the property and he reserves his right to pay the said amount to the Decree Debtor to redeem the suit land. Therefore, the petitioner has filed the petition to determine the executability of the exparte decree on the strength of non-joinder of proper and necessary parties. Unless the said petition is allowed and the same is determined, the petitioner would be put to irreparable loss and hardships. Therefore, he prays to allow the petition and dismiss the execution petition.

4. The Contention of the 1st respondent/Decree Holder in brief:

The 1st respondent/Decree Holder had filed O.S. No.69/2023 against the 2nd respondent/Judgment Debtor for recovery of money and has obtained an ex parte decree on 12.10.2023. He had also obtained an order of attachment before Judgment since the Judgment Debtor did not furnish any security. This respondent/Decree holder is not aware about the transactions or exchange of notices between the petitioner and the 2nd respondent or about the suit in O.S. 20/2024 pending before the Sub Court, Ramanathapuram. He came to know about this only after filing of this petition. This respondent suspects that the documents are created by the petitioner and the 2nd respondent/Judgment Debtor to defeat the right of this respondent/decree holder to recover the debt amount. This respondent has denied the allegations that he has colluded with the 2nd respondent/Judgment Debtor and filed the suit and Execution Petition. The 2nd respondent/Judgment Debtor had borrowed a sum of Rs. 20 lakhs from this respondent and since he did not repay the principal or the interest, the suit was filed to recover the money. The allegations that this respondent does not have sufficient source to lend Rs. 20 lakhs because he has not filed I.T. returns are not acceptable. The decree is valid and it cannot be questioned by this petitioner. There is no necessity to adjudicate the issue and this petitioner is not a necessary party to the suit and he has no right to raise such a plea. The petitioner has no right to pray to set aside the decree

or the Attachment Before Judgment order obtained by this respondent. This respondent has filed the E.P. to recover the decree amount from the Judgment Debtor and the petitioner need not pay any amount and it is not acceptable that he is ready to pay such amount. The claim that the property is brought for sale because the petitioner has obtained a lease is not maintainable. This respondent has neither suppressed any facts nor colluded with the 2nd respondent in filing the suit or the Execution Petition. The petitioner is not a party either in the suit or in the execution Petition and so he cannot object the decree or judgment obtained by this respondent. The petitioner has colluded with the 2nd respondent/Judgment Debtor and has filed this petition with ulterior motive to defeat the right of the decree holder. The petition is not maintainable and must be dismissed with cost.

5. The Contention of the 2nd respondent/Judgment Debtor in brief:

This respondent /Judgment Debtor did not borrow any amount from the 1st respondent/Decree Holder and he has taken steps to set aside the exparte decree and has filed petition in I.A. 4/2024 and the same is posted for enquiry. The allegations made by the petitioner that he has entered into a lease agreement with this respondent in respect of the schedule property is not correct. The lease agreement is only in respect of a portion of the property. Since, the petitioner did not conduct and act in accordance with the lease agreement, this respondent/Judgment Debtor has filed O.S.

20/2024 against the petitioner and others before the Sub Court, Ramanathapuram and the same is pending. This petition is filed by the petitioner with intention to delay the said enquiry in I.A. No. 4/2024 and prevent the exparte decree from being set aside. This petitioner is not a necessary party to the suit or Execution Petition and the petition filed u/s 47 of C.P.C. is not maintainable and the same has to be dismissed.

6. Point for consideration in this petition is,

Whether the petition be allowed ?

7. In this case, P.W.1 was examined and Ex.P.1 to Ex.P.9 were marked. No oral evidence was let in by the respondents but Ex.R1 and R.2 were marked through P.W.1 during cross examination.

8. **Answer to Point.**

In this case, the learned counsel for the petitioner vehemently argued that he is a necessary party to the suit as well as the Execution Petition and that suppressing the fact of the lease agreement, the plaintiff had filed the suit. He further contended that he is in possession of the said property, which is attached before judgment, as a Lessee. Therefore, he has interest over the said property and hence his right and interest must be adjudicated under Order 21 Rule 97 of C.P.C. Even though the petition was originally filed under section 47 of C.P.C. he had filed a memo to covert it as one

under order 21 Rule 97 of C.P.C. He relied upon decision of Hon'ble Supreme Court in *“Periyammal -vs- Rajamani”*² . Therefore, he would argue to consider the petition filed by the petitioner as one filed under Order 21 Rule 97, and he implored he implicate the Court to adjudicate the right and interest of the petitioner.

8.1 Per contra, the learned counsel for the 1st respondent/decree holder argued that he is not at all a necessary party in the suit or in the execution petition and he cannot seek adjudication of his right. Further he contended that the petitioner claims to be only a lessee and that does not give any right over the property. He further argued that the suit was filed for recovery of money against the Debtor namely the 2nd respondent and therefore the 3rd party who claims to be a tenant is not a necessary party to the suit. He further contended that the petition is misconstrued and filed only to delay and frustrate the claims of this respondent/decree holder. Thus, he prays to dismiss the petition.

8.2 It is true that the Hon'ble Supreme Court in *“Periyammal (dead through Lts) -vs. V.Rajamani”*³ has held that

“ The executing Court has a duty to consider the substance of the application and applying the relevant rule, even if the application is incorrectly labelled. Dispossession is not a pre

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requisite for entering an application under Order 21 Rule 97 of C.P.C”

Therefore, this Court considering the above decision treats the petition filed under section 47 of C.P.C. into an application under Order 21 Rule 97 of C.P.C. and proceeds to decide the same.

8.3 The main contention of the petitioner is that the Judgment Debtor had entered into a lease agreement with this petitioner under Ex.P.6 letting out the suit property. He has further contended that based on the said lease agreement, he has entered into a sub lease agreement with Reliance Jio BP for putting up a petrol bunk, under Ex.P.1. The Judgment Debtor had also confirmed the said sub lease with Reliance Jio bp under Ex.P.8. Therefore, he has contended that he is a lessee of the property sought to be sold in the execution proceedings and therefore he has right and interest over the said property. He has further contended that the decree holder cannot dispossess him by filing the execution petition for sale of the property and he has a preemptive right to adjudicate his right and prevent the delivery of possession.

8.4 From the evidence and the documents filed by the petitioner, it is found that the petitioner has entered into a lease agreement with the Judgment Debtor and another person namely Vanathi W/o. Kathiresan under Ex.P.6 and Ex.P.7 in respect of the schedule property and its adjacent

property. A perusal of Ex.P6 reveals that out of the total extent of 20 cents 15-1/2 cents are let out to this petitioner. However, even as per the contention of the petitioner, the decree holder and the said Vanathi have filed two separate suits before the Sub Court, Ramanathapuram in O.S. 15/2024 and O.S.20/2024 to declare that the said lease deeds are invalid and the suits are pending to decide about the Arbitration Clause in the lease agreement. Therefore, the said lease agreements are questioned by the lessors before the appropriate Forum.

8.5 It is equally important to note that the decree holder has filed a suit against the Judgment Debtor in O.S. 69/2023 for recovery of money based on a pronote. The said suit was decreed exparte and the decree holder has filed the execution petition to execute the said decree. It is also admitted by the parties that the decree holder also obtained attachment before Judgment of the schedule property in I.A. No. 02/2023 on 22.08.2023 since the Judgment Debtor did not furnish security. Therefore, the Execution petition is filed by the decree holder for sale of the said property and to realize his debt.

8.6 The main aspect that has to be decided in this petition is, whether this petitioner is a necessary party to the said suit as claimed by him. He has claimed that suppressing the lease agreement and his possession over the suit property, the decree holder has obtained an exparte

decree and is attempting to execute the same. In this regard, the petitioner has raised various contentions regarding the validity of the transaction between the decree holder and the Judgment debtor. He has claimed that the Trial Court has not considered that the loan amount is Rs. 20 lakhs and no income tax returns or bank transactions are filed by the plaintiff but the Court has decreed the suit without verifying the validity of the transaction. He has relied upon the decision of the Hon'ble Kerala High Court in "***P.C. Hari -vs- Shine Vargeese***", on the point that any transaction above Rs.2 lakhs is in violation of section 269 SS of Income Tax Act and that it is not legally enforceable. In this regard, this Court has to remind the petitioner that the said decision of the Hon'ble Kerala High Court has been over ruled and set aside by the Hon'ble Supreme Court in "***Sanjabij Tari -vs- Krishove S.Borcar and another***"⁴. The Hon'ble Supreme Court has categorically held that just because a cash transaction is made in violation of Section 269 SS of Income Tax Act would not make it illegal or enforceable. That being so, the contention of the petitioner that the transaction itself is un-enforceable cannot be sustained. It is further necessary to note that being a 3rd party to the transaction, this petitioner cannot challenge the validity or legality of the said transaction.

8.7 In respect of the contention that he is a necessary party to the suit and the execution petition, he has contended that he being a lessee and

having possession over the suit property should have been included in the suit, since the suit property was sought to be attached. In this regard, it is the important to refer to the decision of the Hon'ble Supreme Court in ***“NAK Engineering Company Private Limited -vs- Tarun Keshrichand Shah”***⁵. In the said decision, the Hon'ble Supreme Court has categorically held that in a suit for simple money recovery against specific entity, a 3rd party cannot force their way into the suit just because they have a 'possessory interest' in the defendant's property. The Hon'ble Supreme Court Further laid down three important doctrines while considering whether a 3rd party is a necessary party or not to a suit. It has held that the plaintiff the 'dominus litus' and has every liberty to file the suit against the person against whom he seeks the relief. The 3rd party cannot jump into a money suit just to legitimize their possession of a property or to frustrate the plaintiff's recovery process. The next doctrine is the test of necessary party . In a suit for money based on a pro note, the privity of contract is only between creditors and the debtors. A stranger to the contract is not a necessary party. Even if the creditor plans to attach the property of the debtor. The tenant has no privity of contract in respect of the subject matter of the suit namely the debt. In other words, a necessary party is one who has legal interest over the subject matter of the suit. He must have direct legal interest in actual subject matter of the litigation and not merely a

commercial interest in the same. This proposition has been held by the Hon'ble Supreme Court in *“Ramesh Hiranand Kundanmal -vs- Municipal Corporation of Greater Bombay ”*⁶ The Hon'ble Supreme Court in the said case has held that in a money suit, debt is the subject matter and the tenant or buyer of the property of the debtor has no direct legal interest in the debt. It is to be noted that the debtor or the guarantor of the debt alone can be a necessary party to the suit for recovery of money and at the most the legal heirs of the debtor can be necessary parties. But at any stretch of imagination, it cannot be held that a tenant or a lessee is a necessary party to decide the 'lis' about the money transaction between the creditor and the debtor.

8.8 Therefore, considering the said proposition laid down by the Hon'ble Supreme Court in the decisions referred above, this Court holds that the petitioner who claims to be a tenant of the debtor is not a necessary party to the suit filed by the creditor against debtor for recovery of money. The same para meter applies to the execution proceedings also.

8.9. It is relevant to note that the present execution petition is filed to recover the decree amount from the Judgment debtor and in case of the failure to pay the amount, to bring his property in court auction sale and thereby recover the said amount. Admittedly, the execution petition is not for taking delivery of the possession. As already pointed out, the petitioner

⁶ 1992 (2) SCC 524.

who is the 3rd party to the decree and held to be not a necessary party to the suit cannot invoke section 47 of C.P.C. Considering that the same has been converted into order 21 Rule 97 of C.P.C., This petition to resist or obstruct the delivery of the suit property, anticipating that he would be dispossessed by the prospective court auction purchaser of the property, is also not maintainable. Because, the Execution Petition is not for delivery of possession. It is further important to note that even if the property is sold in Court Auction sale, the purchaser can get the sale certificate and enforce the delivery either under Order 21 Rule 95 or Rule 96 of C.P.C. It is for the Court auction purchaser to enforce his right in respect of the property purchased by him. When there is a specific provision to record symbolic delivery in case the property purchased is in possession of a tenant or a lessee under Rule 96 of order 21 of C.P.C., the tenant or lessee cannot take preemptive action to safeguard his possession against the decree holder /creditor in the execution proceedings to recover the money but not for possession. Even in “*Periyammal vs- Rajamani*” 's Case, the Hon'ble Supreme Court has categorically held that the provision under Order 21 Rule 97 of C.P.C. deals with the execution of the decrees for possession and admittedly the decree passed in O.S. 69/2023 is not for recovery of possession but only for recovery of money. Even, the execution petition is filed only to recover the decree amount by selling the property already attached in I.A. No.2/2023. If at all the petitioner has any independent

right or title not claiming under the Judgment Debtor, he could only exercise his right by invoking order 21 Rule 58 of C.P.C. challenging the attachment order. However, this petitioner has not claimed independent right but has claimed only tenancy right under the Judgment Debtor. Therefore, at any stretch of imagination, he cannot be considered as a person having independent right over the said property.

8.10 It is further important to note that this petitioner has not challenged the attachment order passed by the Court under Order 21 Rule 58 C.P.C. but he has only filed an application to determine the right and interest under Order 21 Rule 97 of C.P.C. Considering that he is only a tenant /lessee which is also challenged by the lessor before Sub Court in a separate proceedings, he cannot stall or stop the execution proceedings to bring the property for sale. As already pointed out, even if the property is sold in court auction, it is not necessary that he should be physically dispossessed and the auction purchaser can exercise his right by invoking order 21 Rule 96 of C.P.C. to record the delivery of the property in possession of the tenant. Only if the auction purchaser enforces his right under Order Rule 21 Rule 95 of C.P.C. to take actual possession, this petitioner can approach the Court to safeguard his possession, that too only against the Court auction purchaser and not against the creditor/Decree Holder presenting the very sale of the property through court auction sale. Therefore, the petition is

misconceived and premature and is not maintainable.

8.11 The other decisions relied upon by the learned counsel for the petitioner in “**Said Ibrahim v. Prakasan & Ors.**”⁷ it is regarding the application of the principle of resjudicata in subsequent stage of the proceedings, and it is not relevant to the facts of the case.

8.12 In fine, it is held that the petitioner is not a necessary party to the suit or to the execution petition and he cannot claim any independent right or interest over the property as against the decree holder in the execution petition for sale of the said property to recover the decree amount. It is further held that the decree passed in O.S. 69/2023 cannot be set aside on the grounds raised by this petitioner, since he is a 3rd party and not a necessary party to the said proceedings. Thus, it is held that the petition is not maintainable and is liable to be dismissed. This point is decided accordingly.

In the result, the petition is dismissed with cost.

Dictated to Executive Assistant directly and typed by her in the computer, corrected and pronounced by me in Open Court this the 06th day of March 2026.

Principal District Judge,
Ramanathapuram.

I. List of witnesses examined on the side of the petitioner:

01. Tr. Rajiv Gandhi

II. List of documents filed on the side of the Respondent:

01. 13.12.2022 - Certified copy of Indenture of sub lease.
02. - - Xerox copy of money transaction with bank.
03. - - Xerox copy of pro note
04. 10.07.2023 - Xerox copy of notice
05. 13.07.2023 - Xerox copy of reply notice.
06. 06.05.2022 - Xerox copy of indenture of lease.
07. 11.02.2022 - Xerox copy of Indenture of lease.
08. 28.10.2022 - Xerox copy of indenture of sub lease.
09. 29.11.2025 - Certificate issued by Rajiv Gandhi.

Witnesses examined on the side of respondent : NIL

Documents filed on the side of petitioner in cross examination:

01. 12.10.2023 - Certified xerox copy of Judgment in O.S.69/2023.
02. 12.10.2023 - Certified xerox copy of Decree in O.S.69/2023.

Principal District Judge,
Ramanathapuram.