

**In the Court of District Munsif, Mudukulathur**

**Present : Ms.J.C.Aparna, B.A, L.L.B.,**

**District Munsif,**

**Mudukulathur.**

**Wednesday the 10<sup>th</sup> day of December 2025**

**E.A.No.05/2025**

**in**

**E.P.No.02/2021**

**in**

**OS No.21/1999**

1. Late.Kumaravelu

2. Late.Rasaya

3. Late.Pooranam

4. Chellathai

5. Lakshmi

6. Selvakumari

7. Gandhimathi

8. Santhanakumar

9. Manickam

10. Selvarani

11. Pothumponnu

12. Charles @ Sarathkumar

13. Bhuvaneswari

..... Petitioners/Defendants

*/VS/*

Ramaya

..... Respondent/Plaintiff

This petition came on 24.11.2025 before this court for final hearing in the presence of Thiru.K.Senthoor, Learned Counsel for the Petitioners/Defendants, Thiru.K.Umasankar, Learned Counsel for the Respondent/Plaintiff and upon hearing both sides enquiry and upon perusing the material records and having stood over till this day for consideration, this court delivered the following:

### **ORDER**

This petition is filed by the petitioner U/O 21 R 26 & Sec 151 of C.P.C prays to stay this execution petition till the disposal of second appeal.

#### **2. Brief averments of the Petitioners/Defendants in brief:-**

The petitioner is the 5<sup>th</sup> defendant in the main suit. The respondent/plaintiff is only entitled to 1 Acre 44 cents in survey number 232/6 but he has filed this execution petition for recovery of 1 Acre 56 cents including the 10 ¼ cents belonging to the petitioners/defendants. The petitioners preferred a first appeal in AS No. 14/2017 and the same was decreed against these petitioners/defendants. A second appeal in SA.(MD). No.489/2022 is pending before the Honourable Madurai Bench of Madras High Court. Hence prays to stay this execution petition till the disposal of second appeal or irreparable injury will be caused.

#### **3. Brief averments of the Respondent/Plaintiff in brief:**

The respondent/plaintiff denies the averments in the petition. The petitioners/defendants state that they have preferred a second appeal against the decree but till date no summon has been issued to these respondent/plaintiff. In the courts portal, the second appeal as mentioned in the petition is listed as for dismissal on 21.04.2023 and no current status is produced. This petition is preferred to prolong the execution. Hence prays to dismiss the petition.

**4. Point for consideration:-**

Whether the petitioners is entitled to stay the Execution proceedings till the disposal of appeal?

No documents filed on either side. Heard both sides.

**5. Answer to the Point:-**

5.1. The learned counsel for the petitioner submitted that a decree in OS.21 of 1999 was passed against the petitioners/defendants. The respondent/plaintiff has filed the Execution petition against them. Against the decree, the petitioners/defendants have preferred A.S.No.14/2017, the same was also dismissed and a second appeal was preferred in SA.(MD). No.489/2022 and it is pending before the Hon'ble Madurai Bench of Madras High Court. The respondent/plaintiff is only entitled to 1 Acre 44 cents in survey number 232/6 but he has filed this execution petition for recovery of 1 Acre 56 cents including the 10 ¼ cents belonging to the petitioners/defendants. It is stated that if the decree is executed he will be put to great hardship. Hence, prayed to stay the Execution proceedings till the disposal of appeal.

5.2. The learned counsel for the respondent/plaintiff on the other hand submitted that a decree has been already passed directing the respondent/plaintiff to remove the encroachments and handover the possession. The present petition is filed only to drag on the proceedings. Hence, prayed for the dismissal of the petition.

5.3. Both sides rival submissions heard. Entire records perused. A decree has been passed in OS. 21/1999 directing the petitioners/defendants to remove the encroachments and handover the possession. Having heard both the counsels, what is required to be considered is the power of executing court Under Order XXI Rule 26 of Civil Procedure Code. The executing court has got power to stay the proceedings for a reasonable time only under two circumstances;

- i. to approach the same court which had passed the decree and to get an order of stay of operation of the decree or
- ii. to enable a party to file an appeal before the Appellate Court and get the stay of operation of the judgment and decree of the trial court.

5.4. Only under these two circumstances, Order XXI Rule 26 can be invoked. The intention of the legislature is to provide such a right to the executing court to enable the judgment debtor to file an appeal and to get an order of stay for a limited period and in such circumstances, the executing court can stay the proceedings for a reasonable time. If the judgment debtor has already filed an appeal, it is for him to get an order of stay from the Appellate Court by invoking Order XLI Rule 5 of Civil Procedure Code.

5.5. In the case on hand, in the application filed under Order XXI Rule 26 of Civil Procedure Code, the judgment debtors have clearly stated that they have already filed SA (MD) No. 489/2022 before the Hon'ble Madurai Bench of Madras High Court, no application has been preferred by the petitioners/defendants seeking stay of operation of judgment and decree of the trial court. Without doing so, they filed an application under Order XXI Rule 26 of Civil Procedure Code before the executing court. The Honourable Supreme Court has also held in *(2013) 9 SCC 491 (Sathyavathi Vs Rajendra Singh and another)* that there should not be an unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success, then his entire effort would be in vain. It is also settled law that mere pending of the second appeal cannot be a ground to stay the execution proceedings. Therefore in the light of the said discussions, the application is liable to be dismissed.

6. In the result, this petition is dismissed. No order as to costs.

Directly typed by me in my official laptop and formatted by Steno Typist, corrected and pronounced by me in open court on this 10<sup>th</sup> day of December 2025.

**District Munsif,  
Mudukulathur.**

**Both sides witnesses and documents : Nil**

**District Munsif,  
Mudukulathur.**