

**DMC ARAKKONAM 1 EA. 02/2025 IN E.P.no.14/2009
IN THE COURT OF DISTRICT MUNSIF ARAKKONAM RANIPET DISTRICT**

PRESENT:- Selvi.A.AMEENA.,BBA.,LLB(Hons)

DISTRICT MUNSIF, ARAKKONAM

Friday the 10th day of October 2025

EA. 02 of 2025 in E.P.no.14 of 2009

(CNR – TNRP080000852009)

Panchatchara reddyar

---Petitioner/Decree Holder

(vs)

Indiranaiammal

---Respondent/Judgment Debtor

This suit is coming for final hearing before me on 06.10.2025 in the presence of Mr.V.Senthilkumar counsel appearing for Petitioner/Decree Holder. Mr.K.M.Murali counsel appearing for Respondent/ Judgment Debtor. On perusal of entire case records having stood over for consideration till this day, this court has delivered the following:-

ORDER

The petition is filed under Order 47 rule 1 read with section 114 of CPC.

1.Brief Averments of Petition:

1.1. The petitioner submits that he is the petitioner/respondent/ Judgment debtor in the execution petition. Further submits that the above EP has been filed by the respondent as against the petitioner's deceased mother namely Indranimmal. Respondent/ Decree Holder has filed a suit against petitioner's deceased mother for specific performance suit in OS.No.138 of 2005 before this honorable court after receiving notice petitioner's mother contested the suit, at the time of pending suit petitioner's mother aged about 80 years , engaged a council Mr. R Ganapathi to represent on behalf of the petitioner' mother. The petitioner's mother was following

up the matter with her previous counsel since 2006 but thereafter petitioner's mother became very sick and not able to follow up the matter with previous counsel. Due to old age of petitioner's deceased mother was taking medical treatment and completely lost petitioner's mother case before this Honorable court. Petitioners mother health condition also worsened and failed to instruct the previous counsel to file written statement and counter in Os.No.138 of 2005.

1.2. Further submit that the petitioner's deceased mother never ever executed any agreement to the respondent/ decree holder, the respondent /decree holder has not come forward with clean hands before this honorable court but due to health condition of the petitioner's deceased mother, the respondent/ DH got exparte decree in his favor. The petitioner has filed a petition to set aside the exparte order and pending before this honorable court. The petitioner's deceased mother was not able to appear and contest the case and also not able to instruct previous counsel appropriately only for the above said reason which is neither willful nor wanton. The respondent/ decree holder has obtained exparte decree and filed this execution petition against petitioner's deceased mother, the petitioner's deceased mother engaged the same counsel in execution petition Mr. R Ganapati did not follow the matter in the meantime the petitioner's deceased mother changed the new counsel Mr.R. Saravanan and Mr. Hari Babu. While pending the execution proceedings before this honorable court, petitioner's mother died in the year of 2010. The respondent filed petition to include the legal heir of petitioner's mother thus, this petitioner was impleaded in this execution petition. The petitioner's previous counsel did not inform about the order being passed in the execution petition. Therefore, there is no willful default on petitioner's part.

1.3. Further submits that the respondent /decree holder created fraudulent sale agreement and filed the suit against the petition's mother. The respondent/ decree holder got exparte decree and filed execution petition before this honorable court. Actually, the petitioner's mother namely Indraniammal filed partition suit as against Mangammal and others in respect of survey No.439/6 before this honorable court as OS. No.91/1980 and this honorable court passed the decree in judgment in favor of the petitioner's mother. Further submits that the respondent decree holder is a 3rd party in the suit scheduled property, he himself created the sale agreement which is like executed by petitioner's mother and filed suit against petitioner's mother. The respondent /decree holder is not mentioning the survey number in his execution petition but based on affidavit of village administrative officer the respondent/ DH is mentioning the survey number in the execution proceedings in the draft sale deed

filed before this honorable court is not valid because the respondent/DH is not mentioning the survey number neither in the suit nor executive proceedings.

1.4. Further submits that no such door number and no such schedule of property is there. Therefore, the question of sale deed does not arise without survey number of the property. Actually, the property was mentioned in the suit is door No.20 from Othavadai street to Durai House, South east side 16 feet, from Othavadai Street, North side 150 feet, Hut House East West 16 feet x 150 feet north to South Totally 1400 square feet. Further submits that without filing any petition to amend the decree and judgment in the suit, correction was made out in the decree is not maintainable and not binding on the petitioner/ judgment debtor. Due to this the petitioner/JD filed civil miscellaneous appeal before the honorable subordinate judge at Arakkonam and the same was numbered as IA.No.1 of 2025 in CMA No. Nil of 2025 and posted for appearance of respondent and counter dated 25.08.2025 therefore, the petitioner has filed this interim stay of execution proceedings till the disposal of appeal pending before the Honorable subordinate judge at Arakonam in IA.No. of 2025 in CMA No. Nil of 2025.

1.5. Further the petitioner submit that he has filed stay petition before this Honorable court under order 21 rule 26 of CPC dated 24.7.2025 and was posted on 31.7.2025 for check and call on and on the same day the petition was numbered and posted for counter of respondent/decree holder on the same day notice of hearing was given to other side. This Honorable court adjourned the above case on 4.8.2025 for counter and the respondent did not file counter and again this honorable court posted on 8.08 2025 for last chance for counter and again the respondent not filed the counter and again the Honorable Court posted on 12.08.2025 for last chance for counter the respondent filed counter and on 20.08.25 it was posted for both side inquiry. On that day the petitioner was absent and no representation and heard the response side inquiry, the petitioner has not come forward for petitioner side inquiry the petitioner side inquiry was sue motor closed.

1.6. Further submits that considering that as per order 21 rule 26 CPC this petition can be filed only before the court which passed the decree, if the EP is transferred to another court. Thus, petition cannot be filed before this court. In interest of Justice, this Honorable court was dismissed the EA.No.01of 2025 on the same day 20.8.2025. The above EA.No.01of 2025 was filed on 24/7 /2025 and dismissed on 20.08.2025. Hence, the petitioner/JD is constrained to file the petition

for review of the order passed in EA.No.01of 2025 dated 20.08.2025 for the following grounds.

- i) That the honorable court ought to have seen that the petitioner is entitled for interest
- ii) That whether this petitioner is having right to file stay petition and order 21 to 26 CPC before this honorable Court come up which passed the degree and execution proceedings is pending before this honorable court
- iii) Whether the pending execution petition came under precept
- iv) Whether if the order is not reviewed the petitioner will suffer great loss
- v) Whether this court has committed erroneous mistake on not perusal of records.

Therefore, prays to review the order in EA.No. 1 of 2025 in EP No.14 of 2009 which was filed on 24.07.2025 and dismissed on 20.08.2025

2. Brief Averments of Counter:

2.1. The respondent submits that they denies all the allegations in the petition as false, frivolous and vexatious. Further submits that the boundaries and measurements have been sufficiently described in the plaint, decree and execution petition. Hence there is absolutely no necessity to amend the decree or judgment. The appeal has been filed only to protract and delay the execution proceedings and to prevent the defendant from enjoying the fruits of the decree. Further submits that the pendency of CMA number nil of 2025 before the Honorable Subordinate judge Arakkonam cannot be used as a ground to maintain the present vexatious petition the petitioner has filed the present proceedings only to delay the lawful execution of the degree.

2.2. Further submits that the grounds urged by the petitioner are untenable contrary to law and devoid of merits. The petitioner JD was set exparte both in the suit and in the execution proceedings. Further the respondent relied on the Honorable Supreme Court judgment in Dr. Jamuna V. Karmegam 2013(6)MLJ 517 and Meenakshi Sundaram textiles vs Vallimmal textiles in which it has categorically held that an executing court cannot go beyond the degree and cannot examine its correctness on facts or law unless the decree is set aside in appropriate proceedings. “ A decree, even if erroneous, is binding between the parties unless declared nullity by the court lacking jurisdiction”.

2.3. Further submits that the petitioner cannot invoke section 47 CPC after having remained ex party in the suit as well as in the execution proceedings further relied on the judgment K. Gopalasamy Chetty and others vs Mathiseelan (died) and others, wherein it has been held that the execution court cannot go beyond the decree. Unless the decree in original suit is set aside, the execution cannot be stalled and the decree has become final. Hence, this petition is liable to be dismissed with cost.

3.Points for consideration:

- (i) Whether this review petition is to be allowed or not?

No oral evidence was examined and no documentary evidence was marked on both sides.

4. Discussion and findings:

4.1. Heard both sides. Perused the records. The petitioner/Judgment Debtor has filed this review petition to review the order passed on 20.08.2024 on the grounds that (i) That the honorable court ought to have seen that the petitioner is entitled for interest, (ii) That whether this petitioner is having right to file stay petition and order 21 to 26 CPC before this honorable Court come up which passed the decree and execution proceedings is pending before this honorable court,(iii) Whether the pending execution petition came under precept, (iv) Whether if the order is not reviewed the petitioner will suffer great loss, (v) Whether this court has committed erroneous mistake on not perusal of records. Subsequently the petitioner filed memo by stating he willing to withdraw ground number III. Memo recorded.

4.2. Whereas the respondent/Decree holder vehemently contested that the pendency of CMA number nil of 2025 before the honorable subordinate judge Arakkonam cannot be used as a ground to maintain the present vexatious petition. The petitioner has filed the present proceedings only to delay the lawful execution of the decree. The grounds urged by the petitioner are untenable contrary to law and devoid of merits.

4.3. This court upon perusal of rival submissions before reviewing the order in EA.01/2025 in EP.No.14/2009 has to look when a review can be entertained as per Order 47 Rule 1 of CPC which contemplates that “

(1) Any person considering himself aggrieved-

(a) by a decree or Order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or Order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or Order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or Order made against him, may apply for a review of judgment to the Court which passed the decree or made the Order.

(2) A party who is not appealing from a decree or Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment."

4.4. In the light of reading the above order it is clear that only on discovery of new and important matter or evidence which after the exercise of the due diligence was not within his knowledge or could not be produced by him at the time of the order was passed, or on account of some mistake or error apparent on the face of the record or for any other sufficient reasons decides to obtain a review of the order made against him.

4.5. Here the main contention by the learned petitioner counsel during his enquiry was that the petitioner was not given an opportunity of being heard in EA.No.01of 2025. This court is of opinion that the main Execution proceeding is pending since 2009. The petitioner filed EA.No.01of 2025 to stay the proceedings until the disposal of CMA nil of 2025 which is pending before the Honorable Sub court Arakkonam under Order 21 rule 26. This court gave an opportunity to the petitioner to do his side enquiry on 20.08.2025 on that day this court called the petitioner in open court but the petitioner remained absent and there was no

representation on the side of the petitioner but the respondent counsel appeared and did their side inquiry. Considering that the execution proceedings has been pendings from 2009 this court closed the enquiry of the petitioner by giving one opportunity and passed an order in EA.No.1 of 2025.

4.7. In that order this court by referring **C.R.P.(MD)No.693 of 2014(NPD) Jonia vs A.Michael Antony** in which our Hon'ble High court held that “ *4. The very application in I.A.No.112 of 2014 is misconceived. The Executing Court does not have the power to stay the proceedings in execution, except in cases that come within Order 21 Rule 26(1) of Civil Procedure Code. Order 21 Rule 26(1) of Civil Procedure Code reads as follows:- 26.When Court may stay execution:-(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment the debtor to apply to the Court by which the decree was passed or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto. 5.A reading of the above provision clearly demonstrates that where there is a transfer of decree to another Court for execution and the transferee Court is empowered to stay the execution in order to enable C.R.P.(MD)No.693 of 2014(NPD) the judgment debtor to get certain order from the transferor Court or the Appellate Court. Therefore, stay by Executing Court, where there is no transfer of decree for execution to another Court will not fall within Order 21 Rule 26(1) of Civil Procedure Code. The only provision that enables the Court that passing the decree to stay execution is under Order 41 Rule 5(2) of Civil Procedure Code. Order 41 Rule 5(2) Civil Procedure Code reads as follows:-*

5(2). Stay by Court which passed the decree:- Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed

for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed. It is clear from the above that the Court which passed a Decree on the original side can grant a stay of execution of the decree only on an application being filed before it, seeking stay of execution, before expiry of the limitation for filing an Appeal against the Decree”.

And relying on the above judgment formed opinion that Order 21 rule 26 contemplates to file petition before the court to which decree is sent for execution and not before the court which passed the decree. The only provision that enables the Court that passed the decree to stay execution is under Order 41 Rule 5(2) of Civil Procedure Code even, as per that provision the proceedings can be stayed before expiry of appeal period against the decree. Here the decree has been passed in the year 2007 and appeal period has been lapsed years ago. Moreover, the court which passed the decree cannot go beyond its own decree and stay the proceedings by discussing as stated above this court dismissed the EA.No.1/25 in EP.No.14/2009.

4.8. To look into the reason set forth by the petitioner for the review of order in EA.No.01/2025 this court is of opinion that this court heard the petitioner enquiry in this review petition this court could not find any discovery of new and important matter or evidence, does not find any apparent error on the face of record. Therefore, this court is of opinion that this court has very well gone through the records and dismissed EA.No.1/2025 in EP.No.14/2009. Thus, there is no reasons found by this court to entertain this review petition. Hence, in interest of justice this court is not inclined to allow this petition.

In result this petition is dismissed. No cost.

Dictated to typist directly, typed in his computer, corrected and pronounced by me in the Open Court on this the 10th day of the October 2025.

District Munsif,
Arakkonam.