

DMC ARAKKONAM

**1 EA.No.02 of 2025 IN EP.62 of 2009
IN OS.No. 154/2000**

IN THE COURT OF DISTRICT MUNSIF ARAKKONAM RANIPET DISTRICT

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

DISTRICT MUNSIF, ARAKKONAM

Monday the 2nd day of March 2026

EA.No.02 of 2025 IN

EP.62 of 2009 IN OS.No. 154/2000

(CNR - TNRP080001192009)

M.Raji

---Petitioner/Objector

(vs)

1. Dhanasekar

--- 1st Respondent/Decree Holder

2. Kalyaniammal

--- 2nd Respondent/Defendant

This suit is coming for final hearing before me on 20.02.2026 in the presence of Mr.P.Ramamoorthy counsel appearing for Petitioner/Objector. Mr.S.Prabakaran counsel appearing for 1st Respondent/Decree Holder. 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 24 Rule 26 and sec 151 of CPC to stay the operation of the decree till the disposal of Section 47 application which was already filed.

1.Brief Averments of Petition:

1.1. The petitioner/objector states that the 1st Respondent/Plaintiff filed a suit for redemption as against the 2nd respondent and obtained preliminary decree dated 07.03.2003 and final decree dated 12.04.2007 in the above suit. The petitioner have

acquired the right and title in respect of the E.P. Schedule properties in any by virtue of the Registered Settlement deed dated 26.05.1976 executed by the petitioner father namely Mani Reddiar. Mani Reddiar executed the Registered Settlement deed dated 26.05.1976 in favour of his wife namely Pachiammal, the petitioner mother herein with life estate and thereafter absolute right to male issues as per conditions stipulated in the settlement dated 26.05.1976.

1.2. Further states that the petitioner is the only legal heir and legal representative of the deceased father and mother namely Mani Reddiar and Pachiammal. The time of executing the settlement deed dated 26.05.1976. Since, the petitioner's father executed the settlement deed dated 26.05.1976 he had no right to deal with the schedule property in any manner. The petitioner verified the records and came to understand that the petitioner father executed usufructory mortgage in favour of 2nd respondent/defendant in respect of the schedule property and delivered possession of the same to 2nd respondent taking advantage of the fact that the petitioner was minor. In fact the petitioner's mother Pachaiammal also died in the year 1979 itself.

1.3. The petitioner's father having executed the Regd., settlement deed dated 26.05.1976, he had no right to mortgage the property to 2nd respondent/defendant. Whatever the transactions between petitioner father and 2nd respondent/defendant Kalyaniammal is not valid and binding on petitioner and the possession in respect of the E.P. schedule property with 2nd respondent is illegal and against the provisions of law. The petitioner's father sold the E.P. Schedule property to father of 1st respondent/plaintiff and other properties to one Thandavarayan covered under the Settlement deed dated 26.05.1976.

1.4. Further states that the petitioner's father already executed the settlement deed dated 26.05.1976 in his favor, he had no right to alienate the E.P. schedule property to Subramani, father of 1st respondent/plaintiff. Therefore, the petitioner

filed the suit O.S.No.157/2006 on the file of this Hon'ble Court against the respondents and others for declaration and for other reliefs. The petitioner not a party to the preliminary decree dated 07.03.2003 as well as final decree dated 12.04.2007 in O.S.No.154/2000. In view of the said facts the decree passed in O.S.No.154/2000 is not valid and binding on the petitioner. Therefore on the basis of sale deed the 1st respondent/plaintiff cannot claim any right to file a suit for redemption in respect of the EP schedule properties. On the basis of Preliminary decree dated 07.03.2003 as well as Final decree dated 12.04.2007 in O.S.No.154/2000 the 1st respondent has filed E.P for delivery of the E.P. Schedule properties. Under these circumstances he filed application Under Section 47 to declare and determine the decree passed in O.S.No.154/2000 in respect of E.P. schedule properties is in executable for recovery of possession and also he have filed application to stay the execution of the decree till the disposal of the suit in O.S.No.157/2006.

1.5. Further states that the stay application E.A.No.9/2011 was allowed on and further this Hon'ble Court was pleased to close the Sec.47 application filed by him as the suit O.S.No.157/2006 was decreed in his favour on 12.11.2013 Against the decree and Judgment passed in O.S.No.157/2006 the 1st respondent/plaintiff has preferred an appeal A.S.No.132/2014 on the file of Hon'ble Sub-Court, Arakkonam and the appeal A.S.No.132/2014 went against the petitioner on 13.07.2015 and accordingly he have preferred second Appeal No.924/2015 before the Hon'ble High Court, Chennai. The petitioner have not succeeded in S.A.No.924/2015 due to question of law and the S.A.No.924/2015 was dismissed in favour of 1st respondent/plaintiff. However he states that the E.P.No.62/2009 in O.S.No.154/2000 is in executable and the 1st respondent is not legally entitled for recovery of possession.

1.6. Further states that the 2nd respondent/defendant is not in possession of the schedule properties and the E.P. for delivery of properties itself infectious and not entitled to the relief as prayed. Therefore, prayed that this Hon'ble Court may be

pleased to Stay the operation of the decree till the disposal of Section 47 application which was already filed.

2.Brief Averments of counter filed by 1st respondent:

2.1. The respondent states that he filed the suit O.S.No.154/2000 against the 2nd respondent for delivery of possession of the suit property. The above suit preliminary decree passed on 07.03.2003 and final decree passed on 12.04.2007. The said decree is binding on the 2nd respondent. The 2nd respondent is bound to deliver the suit property to this respondent. Against the court decree she cannot deliver the property to anyone else. Further the petitioner M.Raji filed the suit O.S.157 of 2006 on the file of DMC Arakkonam (a) to declare the petitioner's title to the suit property, (b) to declare the Preliminary in O.S.No.154 of 2007 is not valid and binding on him, (c) restraining the 2nd respondent Kalayaniammal from delivering the suit property to this respondent. Though the said suit was decreed in on 12.11.2013, the appeal filed by this respondent A.S.134/2014 allowed in favour of this respondent on 13.07.2015. The petitioner filed S.A.No.927/2015 before the Hon'ble High Madras and the same was dismissed on 25.01.2023. Hence the second appeal is in favour of this respondent.

2.2. Further states that O.S.154/2000 is in favour of this respondent and the said decree binding on the second respondent as well as the petitioner. The suit O.S.157/2006 went against the petitioner and the 2nd respondent Mrs.Kalyaniammal. Hence both the suits decreed in favour of this respondent. The above two suits against the petitioner Raji and 2nd respondent Mrs.Kalayaniammal. While the facts are so, against the court decree the 2nd petitioner is not entitled to deliver the suit property to the petitioner. It is crystal clear that the petitioner and the 2nd respondent colluded together and have filed the petition to restore the E.A.10/2011. Only to drag on the proceedings and to delaying the delivery of the property to this respondent, the petitioner has filed this vexatious petition.

2.3. Further states that the 2nd respondent did not deliver the property to the petitioner, further she is binding on the decree O.S.154/2000 and against the decree she cannot proceed. It is absolutely false to state that the petitioner is in possession of the suit property. As per the decree in O.S.154/2000, the respondent entitled for recovery/delivery of possession of the property from the 2nd respondent. The petitioner has no locostandi to file the petition. Therefore, prayed to dismiss the petition.

3. Points for consideration:

Whether this petition is to be allowed or not?

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

4.Discussion and findings:

4.1. Heard both sides. Perused the records. The case of the petitioner is that he acquired righting the title in respect of the EP schedule properties by virtue of registered settlement deed dated 06.05.1976 executed by his father namely Mani Reddiyar. On 26.05.1976 the petitioner's father Mani Reddiyar executed settlement deed in favour of his wife with life estate and thereafter absolute right to made issues. At the time of executing the settlement deed the petitioner was minor, the petitioner's father had no right to mortgage the property the 2nd respondent therefore he filed suit for declaration and other reliefs O.S.No.157/2006 in this court the petitioner filed section 47 to declare and determine the decree passed in O.S.No.154/2000 and filed stat petition till the disposal of O.S.No.157/2006 this court allowed the stay petition and closed section 47. The decree was passed in favour of the petitioner by the petitioner O.S.No.157/2006 the 1st respondent/plaintiff preferred appeal in A.S.No.132/2014 and the appeal against the petitioner and further on 13.07.2015 the petitioner had preferred 2nd appeal No.924/2015 before Hon'ble High Court and the

same was dismissed against the petitioner. The petitioner is in possession of the EP schedule properties hence prays to stay the operation of decree till the disposal of section 47 application i.e E.A.10/2011.

4.2. Whereas, the contention of the 1st respondent is that O.S.No.154/2000 is in favour of the 1st respondent and the decree is binding on the 2nd respondent and the petitioner. The petitioner filed O.S.No.157/2006 though it was decreed by trial court the same was dismissed against the petitioner if 1st appeal and 2nd appeal. The petitioner and 2nd respondent have colluded together and filed this petition to stay the decree till disposal of E.A.10/2011 is only to drag on the proceedings and to delay delivery of property.

4.3. Upon perusal of rival submissions this court is of opinion that, here it is pertinent to refer **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 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* <http://www.judis.nic.in> **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”.

4.4. This court upon relying on the above judgment is of 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 passing 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. Furthermore, EA.01/2025 is dismissed therefore the stay of section 47 petition is not maintainable. Hence, in interest of justice this petition this court is not inclined to allow this petition.

In result this petition is dismissed. No cost.

DMC ARAKKONAM

**8 EA.No.02 of 2025 IN EP.62 of 2009
IN OS.No. 154/2000**

Dictated to typist directly, typed in his computer, corrected and pronounced by me in the Open Court on this the 2nd day of March 2026.

District Munsif,
Arakkonam.

Petitioner side witnesses and Exhibits:- NIL

Respondent side witnesses and Exhibits :- NIL

District Munsif,
Arakkonam.