

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE AT SALEM  
PRESENT: Thiru. A. M. Ravi, B.A., B.L.,  
II Additional District Judge, Salem.

Wednesday, the 30<sup>th</sup> day of August 2023

**R.E.P.No.1/2020**

**in**

**O.S.No.210/2015**

T. Jeyavel Murugan

... Petitioner/ Decree Holder

/Vs/

1. R. Thangaraj

2. R. Mani

... Respondents/ Judgment Debtors

This petition is taken on file on 13.01.2020 came up before me on 11.08.2023 for final hearing in the presence of Mr.J.Ravi, Advocate for Petitioner and of Tr.Pon.Ramani, and Tmt. P.DeviRamani, Ms.Ra.Thejashvini, Advocates for the Respondents. On hearing both side arguments, and upon perusing the entire records and matter having stood over for considering till this day, this Court delivered the following :

**ORDER**

The Petitioner / Decree Holder filed an Execution Petition under Order XXI Rule 11 of C.P.C. to attach and sell the petition mentioned immovable properties of the Respondents for the purpose of realization of the decree amount with interest and cost and decree passed in O.S.210/2015 dated 31.10.2017.

**2. The Summary of the averments in the affidavit filed by the Petitioner / Decree holder is as follows:-**

The Petitioner / Decree holder obtained the Decree in O.S.210/2009 on 31.10.2017 and directing the Respondents / Judgment Debtors that to pay the sale advance amount of Rs.15,00,000/- with interest at the rate of 7.5% per annum from the date of the sale agreement till the date of the realization of the amount with cost. Though the Respondents are very well aware of the Decree, they are evading from paying the Decree amount to the Petitioner with mala fide intention to cheat the Petitioner/ Judgment Debtor. The 2.02 ½ acre belong to the Respondents under the registered sale deed dated 03.03.1999 executed by their mother Ponnayammal and maternal aunt Pappayammal filed a suit for partition in O.S.524/2002 before the I Additional Subordinate Court, Salem that she did not execute any sale deed on 03.09.1999 in favour of the Respondents, that the Respondents fraudulently fabricated sale deed dated 03.03.1999 and got registered by impersonation and that she is entitled to 50 ½ cents. The Court also decreed the suit on 08.02.2010 directing the Respondents to allot her 50 ½ cents in the said property. Hence the Respondents are entitled to common undivided 1.52 ½ acre in the property in the sale deed dated 03.03.1999 and he filed this petition to recover the

suit amount by selling the Respondent's common undivided 1.52 ½ acre property in public auction.

**3. The Summary of the averments in the counter filed by the 3<sup>rd</sup> Respondent and adopted by the is as follows:-**

The petition mentioned property not only belongs to the Respondents / Judgment Debtors, regarding the petition mentioned property a suit in O.S.524/2002 is pending before the I Additional Subordinate Court, Salem, and in this Execution application the Execution Court would not ascertain the shares of the Respondent / JD in the Petition mentioned property. Hence this EP is not executable one and pray for dismiss this petition.

4. Both side no oral and documentary evidence produced.

5. Arguments heard.

**6. The Point for consideration in this petition is that Whether this petition is deserved to be allowed or not?**

**POINT :-**

7. The Petitioner / Decree holder filed this Execution application to attach and sell the petition mentioned immovable properties for the purpose of the realization of the Decree amount with interest and cost and decree passed in O.S.210/2015 dated 31.10.2017. Further more the

Petitioner / Decree holder side submitted that as one date there is no appeal is pending against the decree & Judgment passed in the above suit and the Respondents / Judgment Debtors not come forward to pay the Decree amount with cost and interest. Hence, this petition.

8. The other side objection is that the petition mentioned property not only belongs to the Respondents / Judgment Debtor, regarding the petition mentioned property suit in O.S.524/2002 is pending before the I Additional Subordinate court, Salem, and in this Execution application the Execution Court would not ascertain the shares of the Respondent / JD in the Petition mentioned property. Hence this EP is not executable one and pray for dismiss this petition.

9. Considering the objection raised by the Respondent / Judgment Debtor the Petitioner / Decree holder in his proof affidavit he categorically submitted that though the Respondents are very well aware of the Decree, they are evading from paying the Decree amount to the Petitioner with malaifide intention to cheat the Petitioner/ Judgment Debtor. The 2.02 ½ acre belong to the Respondents under the registered sale deed dated 03.03.1999 executed by their mother Ponnayammal and maternal aunt Pappayammal filed a suit for partition in O.S.524/2002 before the I Additional Subordinate Court, Salem. The said Court also decreed the

suit in O.S.524/2022 on 08.02.2010. Hence, the Respondents are entitled to common undivided 1.52 ½ acre in the petition mentioned property. Hence, this Court comes to the conclusion is that as per the decree and Judgment passed in O.S.524/2002 the Respondents / JDS are entitled to 1.52 acres and remaining 50 ½ cents allotted to one Pappayammal in the petition mentioned property. The Respondents / Jds are not come forward to pay the Decree amount with interest. Hence to enjoy the fruits of the decree and in the interest of justice attach the 1.52 acres in the petition mentioned property out of total extent of 2.02 ½ acres in the petition mentioned property accordingly. Batta in 3 days. Attach 1.52 acres in the petition mentioned property out of total extent of 2.02 ½ acres by 06.10.2023.

**IN THE RESULT:**

This petition is partly allowed. Batta in 3 days. Attach 1.52 acres in the petition mentioned property out of total extent of 2.02 ½ acres by 06.10.2023.

The order dictated to Steno-typist, transcribed by her, corrected and pronounced by me in the open Court, the 30<sup>th</sup> day of August 2023.

sd/-A.M.Ravi  
**II Additional District Judge,  
Salem.**

**APPENDIX :**

**List of Petitioner side witnesses :** NIL

**List of Petitioner side Documents :** NIL

**List of Respondent side witnesses :** NIL

**List of Respondent side Documents :** NIL

sd/-A.M.Ravi  
**II Additional District Judge,  
Salem.**