

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT

Present: Thiru. M. Selvam, B.A., B.L.,

District Munsif, Mettur

Saturday, this the 07th day of February 2026

E.P.No. 26 of 2025

in

O.S. No. 473 of 1998

(CNR No. TNSA17-000147-2025)

Sundararaj

...Petitioner/Plaintiff

-Versus-

1. Ariyappan (Died)

2. Palani

3. Venkatachalam

4. Murugan

5. Aayaponnu

6. Prema @ Kannupillai

7. Ammasi (Died)

8. Eswari

9. Pachiyannan (Died)

10. Murugan

11. Kannagi

12. Chinnu

13. Madan Balaji

...Respondents/Defendants

This petition is heard in the presence of Mr. M.K. Arjunan, B.A., B.L., the Learned counsel appearing for the petitioners and Mr. V. Vaithilingam., B.A., B.L., the Learned counsel appearing for the respondents 2, 8, 11 and 13. The respondents 3, 5, 6 10 and 12 were set-exparte on 10.09.2025 and the 4th respondent was set-exparte on 16.10.2025. The respondents 1, 7 and 9 are died. Enquiry heard and having perused the entire records and having stood over for my consideration till this day, this court delivered the following,

ORDER

The petitioner had filed this petition under Order 21 Rule 35 of CPC for delivery of the property allotted to him as per the order dated 10.10.2017 passed in the reviewed final decree application in I.A.No. 1361 of 2008 in O.S.No. 473 of 1998.

1. Brief facts in the petition as follows:

1.1. The petitioner is the plaintiff in O.S.No. 473 of 1998, which was filed for the relief of partition, separate possession and permanent injunction as against the respondents 1 to 12. The said suit was preliminarily decreed in favour of the petitioner on 27.01.2004. Aggrieved the same, the respondent 2, 7, 8, 10 to 12 had preferred an appeal in A.S.No. 23 of 2004 on the file of the Hon'ble Subordinate Court, Mettur and the same was partly allowed on 15.12.2004. Thereafter, final decree was also passed on 23.07.2010 and reviewed final decree was also passed on 10.10.2017 in I.A.No.1361 of 2008.

1.2. The 2nd respondent herein had executed a settlement deed in favour of the 13th respondent. Hence, the 13th respondent was impleaded in this petition. In the said reviewed final decree, the petitioner herein was allotted with 33 ½ cents of land shown in green colour as 'B' part in the rough sketch and 50 cents of land shown in red colour as 'A' part of the said rough sketch. Even after the final decree, the respondents had not handed over the possession of the properties allotted to the petitioner. Hence, the petitioner had come forward with this execution petition seeking the delivery of the properties allotted to him in the reviewed final decree.

2. Brief facts in the counter filed by the 2nd respondent and adopted by respondents 8, 11 and 13 is as follows :

2.1. These respondents had admitted about the passing of the reviewed final decree and the properties allotted to the petitioner. But the petitioner himself is in

possession of the properties allotted to him in the reviewed final decree application. Hence, this execution petition itself is not maintainable and the same was filed only to harass these respondents. The petitioner had not approached this court with clean hand and had suppressed the true facts.

2.2. The petitioner had shown the schedule of property in the execution petition as described in the plaint schedule. Since the petitioner has been allotted with specific share, the petitioner has to file this execution petition only showing the properties allotted to him as schedule of property. The Commissioner in his report had stated that survey no. 418/1 was sub divided into survey no. 481/1A and survey no. 418/1B. But the petitioner had not at all disclosed the same in his petition. In the reviewed final decree application it was specifically held that the allottees cannot claim any right over the land on the upper side of the stone revetment. Hence, this execution petition is not maintainable and liable to be dismissed.

3. The respondents 3, 5, 6, 10 and 12 were set-exparte on 10.09.2025 for their non appearance, even after the receipt of court notice. The 4th respondent had appeared on receiving the notice before this court on 10.09.2025 and requested time to engage counsel on his behalf. Though sufficient time given, neither the 4th respondent nor any counsel on his behalf had appeared. Hence the 4th respondent was set-exparte 16.10.2025.

4. No oral evidence on either side. The reviewed order dated 10.10.2017 passed in final decree application in I.A.No.1361 of 2008 filed along with this execution petition is marked as Ex.P1 at the time of order. The documents produced by the respondents along with the counter statement is marked as Ex.R1 and Ex.R2 at the time of order.

5. Points for consideration:

(i) Whether this execution petition seeking delivery of the property allotted to the petitioner in reviewed final decree application in I.A.No.1361 of 2008 in O.S.No.473 of 1998 has to be allowed or not ?

6. Both side rival submissions heard with regard to their respective pleadings and perused the materials on record. It is an admitted fact that the petitioner herein had filed a suit in O.S.No. 473 of 1998 for the relief of partition, separate possession and permanent injunction as against the respondents 1 to 12 and the same was preliminarily decreed in favour of the petitioner on 27.01.2004. Aggrieved the same, the respondent 2, 7, 8, 10 to 12 had preferred in appeal in A.S.No. 23 of 2004 on the file of the Hon'ble Subordinate Court, Mettur and the same was partly allowed on 15.12.2004. Thereafter, the petitioner had filed an final decree application in I.A.No. 1361/2008 and a final decree was also passed on 23.07.2010 and then a reviewed final decree was also passed on 10.10.2017 in I.A.No.1361 of 2008.

7. The said order dated 10.10.2017 passed in the reviewed final decree was filed by the petitioner along with this execution petition and the same was marked as Ex.P1. On perusal of the same, it shows that the petitioner is allotted with an extent of 33 ½ cents of land shown in green colour and mentioned as 'B' part in the rough sketch of the Advocate Commissioner and another extent of 50 cents of land shown in red colour and mentioned as 'A' part of the said rough sketch. This execution petition is filed by the petitioner to take delivery of the above said property allotted to him in the reviewed final decree.

8. The contesting respondents 2, 8, 11 and 13 had disputed the claim of the petitioner by filing a counter statement contending that the petitioner is already in possession of the properties allotted to him in the reviewed final decree application. In order to establish the same, these respondents had relied on the Ex.R2 photographs. On perusal of the Ex.R2, it shows that an agricultural land has been

raised by crops and coconut trees. But there was no materials on record to show that the said land was the land allotted to the petitioner in the reviewed final decree and the said crops and coconut trees were raised by him and he was being in possession of the same. Therefore, the Ex.R2 photographs alone cannot be taken as such the respondents had proved their above said contention.

9. The yet another contention of these respondents is that the petitioner had shown the schedule of property in this execution petition as described in the plaint schedule of the original suit and not the properties allotted to him in the reviewed final decree application. Admittedly, the petitioner had show the schedule of property in this execution petition as described in the plaint schedule and not the properties allotted to him in the reviewed final decree application. But in the column no.10 of the execution petition, the petitioner had only sought for the delivery of the properties, which was allotted to him in the reviewed final decree application. Therefore, this court forms opinion that the above contention raised by these respondents are too technical in nature and does not fatal the case of the petitioner in toto.

10. On perusal of the execution petition and the affidavit filed by the petitioner, it shows that the petitioner is not claiming any property in excess to the properties allotted to him in the reviewed final decree application. The contesting respondents had also not established anything to the contrary. Such being the position, the petitioner is entitled to take delivery of the properties, which was allotted to him in the reviewed final decree application.

In the result, this petition is allowed. It is hereby ordered to deliver the properties to an extent of 33 ½ cents of land shown in green colour and mentioned as 'B' part in the rough sketch of the Advocate Commissioner and another extent of 50 cents of land shown in red colour and mentioned as 'A' part of the said rough sketch as per the order dated 23.07.2010 passed in

reviewed final decree application in I.A.No.1361 of 2008 in O.S.No.473 of 1998 to the petitioner. Batta to be paid within 7 days. Call on 26.03.2026.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 07th day of February 2026.

**District Munsif,
Mettur**

Both side witnesses : Nil

Petitioners side documents :

Ex.P.1	10.10.2017	Certified copy of the reviewed order dated 10.10.2017 passed in final decree application in I.A.No.1361 of 2008
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Respondents side documents :

Ex.R.1	21.06.2010	Photocopy of the Advocate Commissioner report
Ex.R.2	***	Photographs (3 No's)

**District Munsif,
Mettur**