

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT

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

District Munsif, Mettur

Wednesday, this the 25th day of June 2025

R.E.A.No. 18 of 2025

in

R.E.P. No. 16 of 2015

in

O.S.No. 75 of 2001

(CNR No. TNSA17-000209-2015)

1. Mariyannan
2. Muthu
3. Periyannan
4. Thandavan
5. Madhaiyan
6. Mohan
7. Sellammal
8. Selvaraj
9. Mariyammal

... Petitioners/1,3 to 6, 8, 10 to 12 Respondents

/Versus/

1. Palaniyappan (Died)
2. Chinnathayee (Died)
3. Palaniyappan
4. Sellakannu
5. Sithayan
6. Palaniyammal
7. Madhaiyan
8. Marimuthu

... Respondents/Petitioners

This petition came up before me in the presence of the learned counsel Mr. P. Gopinath., B.Sc., B.L., appearing for Petitioners/Respondents 1, 3 to 6, 8, 10 to 12 and Mr. B. Balamurugan., M.A., M.L., appearing for Respondents/Petitioners. Upon hearing both sides arguments and after having stood over for my consideration till this day, this court passed the following:-

ORDER

This petition is filed by the petitioners/respondents 1, 3 to 6, 8, 10 to 12 under

section 151 of CPC to reopen the execution proceedings in order to lead oral evidence by the petitioners and to mark the petition mentioned documents.

1. Brief averments in the petition filed by the petitioners is as follows:

1.1. The petitioners are the respondents 1, 3 to 6, 8, 10 to 12 in the execution proceedings. The petitioners are taking a stand against the true facts by submitting false information and was taking advantage of the mistakes of the petitioners. When the petitioners had filed their counter in the execution petition, the second appeal filed by them was pending. Since, the second appeal was heard through video conferencing some vital documents were not looked into and hence, the petitioners had filed a review petition and the same was pending. The execution petition is filed without following the legal provisions and with false averments.

1.2. The petition property in Survey no. 62/1F1 was belongs to One Andiappan and his legal heirs. The Survey no.62/1E is not at all in existence. The same was also putforth during the enquiry of the petitioner's counsel. But if the said facts could be appreciated only if oral evidence in this regard is deposed by marking the relevant documents. Due to the petitioner's illness, he was unable to do so till this time. The petitioners are intended to put forth their legal points and the same could be proved only through marking the documents. Hence, this petition.

2. Brief facts in the counter filed by the 5th respondent and adopted by the other respondents is as follows:

2.1. The respondents denied the averments made by the petitioners in their petition. This petition is filed only to protract the execution proceedings. This petition is filed when the execution petition is posted for orders. The review petition filed by the petitioners were allowed and thereafter, the second appeal was also dismissed after hearing both side arguments. Since, the second appeal was decided on merits, the petitioners are not entitled to lead evidence in respect of the decided facts and also specifically about the survey numbers. Hence, this petition is liable to be dismissed.

3. No oral and documentary evidence on either side.

4. Points for Consideration:

(i) Whether this petition has to be allowed or not ?

5. Discussion:

5.1. Both side rival submissions heard with regard to their pleadings and perused the materials on record. The deceased respondents 1 and 2 herein had obtained a decree in their favour in O.S.No. 75 of 2001 dated 31.03.2005 on the file of this court as against the petitioners herein, in which it was declared that the respondents 1 and 2 had got

(i) right to carry water from the well situated in SF 62/1F2 to the lands in SF 62/1C, through the lands in SF 62/1F2, 62/1F1 and 62/1E.

(ii) right to carry water from the well situated in SF 62/1F2 to the lands in 62/1G through underground pipe line to the lands in SF 62/1E

(iii) and a decree of mandatory injunction directing the defendants to restore the underground water pipeline that connected the water tanks that is situated in SF 62/1F2 and 62/1G by relaying the pipe line through SF 62/1E and to remove the obstruction made in the earth channel that runs through SF 62/1E to lands in SF 62/1C within 2 months and if the defendants do not restore the under ground water pipe line and do not remove the obstruction in the earth channel, the respondents is at liberty to execute the decree and have the underground pipeline and the earth channel restored,

(iv) and a decree of permanent injunction restraining the defendants from any way interfering the right to draw water from the well situated in SF 62/1F2 and carry the same to lands SF 62/1C and 62/1G through lands in SF 62/1E.

5.2. Thereafter, the petitioners/defendants herein had preferred an appeal in A.S.No. 41 of 2005 on the file of the Hon'ble Sub-Court, Mettur and the same was dismissed on 27.07.2006 by confirming the judgment and decree of the trial court.

Aggrieved by the same, the petitioners/defendants had preferred second appeal before Our Hon'ble Madras High Court in S.A.No. 1511 of 2007 and the same was seems to be dismissed on 10.12.2020. Thereafter, the petitioners had filed a miscellaneous petition in CMP No.348 of 2021, in which an order was passed on 12.02.2021 restoring the second appeal again on file. Then the second appeal in S.A.No. 1511 of 2017 was also dismissed by Our Hon'ble Madras High Court on 02.07.2021 by confriming the judgment and decree passed by this court and the Hon'ble Appellate Court. There was no materials on record to show that whether the petitioners herein had filed any appeal as against the second appeal or any review petition and whether the same was pending as alleged in their petition. Further, the petitioners had also not produced any particulars with regard to the alleged pending proceedings. It is not the contention of the petitioners that any stay has been granted as against this execution proceedings. In such circumstances, the contention of the petitioners herein that the review proceedings are pending are all could not be accepted.

5.3. The execution petition was filed by the respondents herein, who were the legal representatives of the deceased respondents 1 and 2 in order to execute the relief of mandatory injunction described in clause (iii) of the decree. When the execution petition was posted for orders on 29.04.2025, the petitioners herein had come forward with this petition to reopen the execution petition in order to lead oral and documentary evidence. It is the contention of the petitioners that the execution petition is filed without following the legal provisions and with false averments and the property in Survey no. 62/1F1, in which the respondent claiming the right belongs to One Andiappan and his heirs and there is no survey number in existence as 62/1E and hence, they have to lead oral and documentary evidence. The above contention of the petitioners are not having considerable force. Because, it is well settled that the executing court cannot go behind the decree and declare it's validity, unless the decree suffered by lack of inherent jurisdiction. In this context, this court wants to rely on the observation of Our Hon'ble Madras High Court in,

i) 2009 (1) CTC 58:

" it is well settled that executing court cannot go behind decree unless court which passed decree suffered by lack of jurisdiction which will make it a nullity - Even if a decree is considered to be an illegal one, remedy open to party aggrieved is to approach higher forum, if same was passed by Court of competent jurisdiction"

ii) 2012 - 1 -L.W. 962:

"Executing court does not have jurisdiction to go behind the decree, unless, there was lack of inherent jurisdiction - The only remedy in cases of erroneous exercise of jurisdiction is to challenge the same by filing an appeal - The Executing Court cannot travel beyond the decree under execution and an erroneous decree cannot be said to be a nullity nor can a decree based on an error be a nullity". "Executing Court has no jurisdiction to entertain the said application as application itself was not maintainable".

5.4. Admittedly, in this execution petition, the petitioners herein had entered appearance on 16.10.2015 and had filed their counter statement on 22.09.2016. Thereafter, this petition is filed by the petitioners, after a period of 9 years, that too, when the case was posted for orders. Therefore, from the overhaul discussion, this court comes to the conclusion that this petition is devoid of merits and liable to be dismissed.

In the result, this petition is dismissed. Considering the facts and circumstance of this case, there is no order as to cost.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 25th day of June 2025.

**Sd./-Thiru.M.Selvam,
District Munsif,
Mettur.**

Both side witnesses and exhibits: Nil

**Sd./-Thiru.M.Selvam,
District Munsif,
Mettur.**