

IN THE COURT OF THE DISTRICT MUNSIF, DHARAPURAM

Present : Thiru.R.Pandi Maharaja B.Sc.,B.L.,

District Munsif, Dharapuram

On this 25th Day of October 2025, Saturday

E.A.No.6/2024 in E.P.No.6/2015 in O.S.No.473/1994

S.Vigneshwaran

S/o.S.Selvaraj

... Petitioner/proposed party

/ .Vs. /

1. Valliathal (died)
2. Dhandapani gounder
3. Nallammal @ Nallathal,
4. Dhanalakshmi
5. Eswaramoorthi (died) by Lrs
6. Thamaraiselvi
7. Nandhakumar
8. Naveenkumar
9. Vallinayaki
10. Kandasamy gounder
11. Deivathal (died)
12. Savithri
13. S.Selvaraj
- S/o.Chellappa gounder

....Respondents/petitioners

...Respondents/ Respondents

This petition is presented before me on 16.10.2025 for final hearing, in presence of Mr.T.Karthikeyan B.Sc.,B.L., learned counsel for the Petitioner and in presence of Mr.C.Selvaraj B.A.,B.L., learned counsel for the respondents 1 to 9 and Mrs.P.Sasikala B.A.,B.L., learned counsel for the respondents 11 and 12 and respondents 10 and 13 set-exparte. Upon hearing the arguments of both sides and on perusal of the records stood over for consideration till this day, this court passed the following,

"ORDER"

This petition has been filed under Section 47 of C.P.C., to allow this application by setting aside the decree obtained by the respondents 1 to 12 in O.S.No.473 of 1994 on the file of this court.

1. The brief averments of the petition filed by the petitioners:-

It is stated in the petition that, the petition mentioned property originally belongs to one Mr.Kandasamy from whom the 13th respondent purchased same vide Sale deed dated 24.10.1994 bearing Document No.2776/1994 at the office of the Sub-Registrar, Dharapuram and he had been exclusive possession and enjoyment of the property from the date of purchase. Thereafter, on 19.07.1999, the father of the petitioner purchased the said property from the 13th respondent vide registered Document No.2856/1999 for valuable sale consideration and on the date of purchase itself, the father of the petitioner has been put into the possession and enjoyed without any disturbance. Apart from that, the entire revenue records has been changed in the name of the father of the petitioner. Thereafter, on 11.11.2020, the father of the petitioner executed a registered Settlement deed bearing Document No.8483/2020 at the office of the Sub-Registrar, Dharapuram and the revenue records has been changed in the name of the petitioner and the petitioner borrowed an agriculture loan a sum of Rs.10,00,000/- at Canara Bank. By suppressing the right of the petitioner, the 1st to 12th respondents filed a suit for partition and obtained a preliminary decree and in pursuance of the same, they filed a present E.P. for division of petition mentioned property by appointing an Advocate commissioner further the 1st to 12th respondents ought to have file necessary application to set aside the settlement deed in the name of the petitioner and they have to seek possession of the property through court. Hence, this application has been filed for setting

aside the decree obtained by the 1st to 12th respondents in O.S.No.473/1994 on the file of this court

2. The brief averments of the counter filed by the respondents 1 to 9, the counter filed by the respondents 1 to 9 is adopted by the respondents 11 and 12:-

The counter filed by the 1st to 9th respondents and adopted by 11 and 12th respondents is that, the father of the petitioner had filed a claim petition in E.A.No.12/2019 in E.P.No.6/2015 and the same was dismissed by this court. Hence, this claim petition is not maintainable as per law. The statement of the petitioner in this petition as the 1st to 12th respondents obtained a preliminary decree and filed this execution petition by suppressing the facts is totally false. Moreover, the petitioner in the execution petition filed a suit for partition and obtained preliminary decree on 10.08.2000 and obtained Final decree on 17.01.2004 and file this petition for taking delivery of possession in respect of, the share of the execution petitioner. Apart from that the Sale deed executed in favour of the petitioner on 19.07.1999 is not at all bind the decree passed in O.S.No.473/1994. But, this petition has been filed by the petitioner by suppressing the entire fact and seeking the relief for set aside the decree in O.S.No.473/1994 is not at all maintainable and this petition liable to be dismissed.

3. Heard the both sides. On the side of petitioner, the petitioner examined himself as PW1 and through him Ex.P1 to Ex.P6 were marked and no oral and documentary evidence in respondents side and materials on record are perused.

4. The point for consideration in this petition is, “whether the petition is to be allowed or not?”

5. Discussion:

5.1. The learned counsel appearing for the petitioner would contend that, the petition mentioned property was purchased by the 13th respondent on 24.10.1994, which is period to the initiation of suit proceedings as the suit was filed on 16.12.1994. Further, the said suit was dismissed for default on 04.01.1999 and the property was sold to the father of the petitioner by the 13th respondent on 19.07.1999. Thereafter, the suit was restored and the preliminary decree was passed on 10.08.2000 and the final decree was passed on 17.12.2004. In the meanwhile, on 11.11.2020, the father of the petitioner executed a registered Settlement deed bearing Document No.8483/2020 at the office of the Sub-Registrar, Dharapuram and the revenue records has been changed in the name of the petitioner and the petitioner borrowed an agriculture loan a sum of Rs.10,00,000/- at Canara Bank. The learned counsel for the petitioner prayed that, this claim petition may be allowed and setting aside the decree passed in the original suit.

5.2. The learned counsel appearing for the 1 to 9, 11 and 12th respondents would contend that, the father of the applicant had filed a application under Section 47 C.P.C., in this execution proceedings and the same was dismissed by this court. Moreover, the father of the applicant has very well known about the pendency of execution proceedings and a settlement deed was executed in favour of the petitioner to create an interest in the property with intention to

prolong the execution proceedings. Hence, this application is filed by the petitioner is nothing but a purely the act of abuse process of law and the same is liable to be dismissed.

5.3. During the arguments of the learned counsel for the applicant, he submitted that the father of the petitioner filed a claim petition in E.A.No.12/2019 in E.P.No.6/2015 and on, 05.09.2023, due to dismissal of execution petition by default of the execution petitioner, the said claim petition was also dismissed on the same day. On verification of the records in the execution proceedings, it appears that the claim petition filed by the father of the petitioner was dismissed for default to take steps in the claim petition by him, but, that claim petition was not dismissed for the reason stated by the learned counsel for the applicant as above.

5.4. It is relevant to point out here that, on 22.02.2019, the father of the petitioner had filed claim petition under section 47 of C.P.C., as E.A No. 12 of 2019 in E.P No. 6 of 2015 and the same was dismissed for default as discussed above and during the pendency of the said pending litigation, the father of the petitioner has executed a registered Settlement deed dated 11.11.2020 and the said transfer is clearly hit by transfer pendelite under section 52 of Transfer of Property Act. Moreover, it is settled legal proposition that, a transferee pendente lite is barred from filing a claim petition under Section 47 of the Civil Procedure Code (CPC) because the principle of lis pendens applies, and they have no independent right to object to the execution of a decree. Such an objection to the

execution of a decree is specifically disallowed under Order XXI, Rule 102 of C.P.C.,.

5.5. *It is pertinent to point out here that, the Division Bench of the Hon'ble Madras High Court, in the case of "N. K. M. Meyyappa Chetti Vs V.K.M. Meyyappa Chetti reported in (1921) AIR(Madras) 559 held that "A transfer of property during the pendency of a suit (pendente lite) is inoperative against the rights of the opposite party under the decree. While such a transfer may be valid between the transferor and transferee, it does not affect the rights of the decree-holder. The doctrine of lis pendens prevents the agitation of property claims in execution that would infringe upon or challenge the correctness of the decree itself."*

5.6. It is seen from the available records in this proceedings that, the father of the petitioner has knowing the execution proceedings and taken steps to challenge the same by filing claim petition in the year of 2019 itself and during the said pending litigation, he executed a Settlement deed and the petitioner had waited for four years from the date of execution of settlement deed and after the legal proceedings are completed resisted by his father as earlier claim application, the petitioner has now set the clock from the beginning. The conduct and attitude of the petitioner is apparent that this application is filed to escape from the clutches of law and to delay and protract the execution proceedings. Admittedly, in all stages of the execution proceedings, the petitioner had complete knowledge about the day-to-day proceedings and only after the verge end of disposal of the execution

proceedings, the petitioner has come forward with this application. While considering the execution proceedings and nature of the litigation, the period of delay is inordinate and exorbitant.

5.7. *At this juncture, it is relevant to point out here the observations of the Hon'ble Madras High Court in the case of "Munusamy and others vs Vengadachalam and others reported in 2011 (1) LW 647 held that "Obstructors failing to prove independent right: Where obstructors fail to prove their right or entitlement to possession, especially when they are closely related to the judgment debtor and their documents are post-decree, their claim for obstruction can be considered an abuse of the court's process, hindering the decree holder from enjoying the fruits of the decree." Accordingly, in this case also, it appears that the Settlement deed and other documents are made post litigation that is not only after the suit proceedings but also the pendency of execution proceedings. Hence, this court is considered opinion that this claim petition is filed as clear abuse of process of law.*

5.8. *Moreover, it is further beneficial that referring the observations of the Hon'ble Madras High Court in "Gnanasekaran Vs Balasubramanian and others reported in 2023 (2) CTC 304" held as follows:-*

"16. While executing the decree, the Execution Court cannot go behind the decree between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in

appeal or revision, a decree even if it be erroneous is still binding between the parties.

17. In the case on hand, admittedly, the decree has become final and only after declaration in favour of the minor sons their mother steps into the shoes of the deceased sons and had inherited his half share of the suit properties. Therefore, at the time of claim, there was no sale deed exist between the third respondent and the petitioner herein. Therefore, the petitioner also cannot claim share of the third respondent herein. Hence, the Court below rightly dismissed the petition.”

*5.9. In catena of judgment rendered by the Hon'ble Supreme Court dealt with the provision of section 47 of C.P.C., it is relevant to point out here the observations of the Hon'ble Supreme Court in “**Meria Ramanna vs Nallaparaju**, AIR 1956 SC 87 : 1955 (2) SCR 938 has observed that for Section 47 to apply the following conditions must be satisfied:*

(i) The questions must be one arising between the parties to the suit in which the decree is passed, or their representatives; and

(ii) It must relate to the execution, discharge or satisfaction of the decree.

Thus, the condition for the applicability of Section 47 is that the question must relate to execution, discharge or satisfaction of the decree. Any question, which hinders or in any manner affects execution of the decree, are covered by Section 47.

5.10. In view of the above discussion and considering the facts in this application that the petitioner deliberately and intentionally filed this application

following dilatory tactics to drag on the execution proceedings. There is absolutely no merit in the application and thus the Court is inclined to dismiss this application without costs. Accordingly, this application is dismissed without costs.

Directly dictated to the Steno typist and corrected and pronounced by me in open court, this 25th day of October 2025.

District Munsif,
Dharapuram

Petitioner side witnesses

PW1	Vigneshwaran (Petitioner)
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Petitioner side Exhibits:-

Exhibits	Date	Documents and its nature
Ex.P1	24.10.1994	Sale deed in the name of S.Selvaraj, S/o.P.Chellapa gounder – Certified copy
Ex.P2	19.07.1999	Sale deed in the name of petitioner's father - Original
Ex.P3	-	Encumbrance certificate from 01.01.2019 to 21.03.2024
Ex.P4	11.11.2020	Settlement deed in the name of petitioner – Certified copy
Ex.P5	-	Plaint in O.S.No.357/2022 filed in The District Munsif Court, Dharapuram – True xerox copy
Ex.P6	-	“A” Register extract in the name of the petitioner – Downloaded copy

Respondents side witnesses and Exhibits:- - Nil

District Munsif,
Dharapuram.

Fair order

E.A.No.6/2024

in

E.P.No.6/2015

in

O.S.No.473/1994

25.10.2025

DMC, DPM.