

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
TIRUVANNAMALAI.**

Present: **Thiru.P.Mathusuthanan**, B.A., B.L.,
Principal District Judge,
Tiruvannamalai.

Tuesday, the 21st day of April- 2026.

E.P.No.27/2025 in MCOP.No.184/2023
CNR.No.TNTM0-002472-2025

1. Manjula	...	Petitioners/Decree holders
2. Devika		
	Versus	
Jaiganesh	...	Respondent /Judgment Debtor

This Execution Petition has come up for final hearing on 18.04.2026 in the presence of **Tr.K.Vijayakumar**, learned Advocate appearing for the petitioners and **Tr.B.Tamil Anbu** learned Advocate appearing for the respondents and upon hearing the arguments on both sides and perusing the available records and having stood over for consideration till this day, this court passed the following,

ORDER

This Execution Petition is filed by the petitioners under Order 21 Rule 11(a) of CPC seeking to pass suitable order under Order 21 rule 54 of CPC by attaching the schedule mentioned property of the respondent and issue sale notice under 21 rule 66 of CPC and bring the same to sale to the extent found in

column 7 with subsequent interest and cost and there by recover amount due to the petitioners/decreed holders.

2) Brief averments of the petition are as follows:

The petitioners herein are the decreed holder in MCOP.No.184/2023. This Court passed a decreed infavour of the petitioners on 18.10.2023 and directing the Respondent to pay Rs.8,21,912/- with interest. Now Rs.12,76,525/- along with cost and interest (after deducting the payment of Rs.1,25,000/-) is payable by the Respondent/Award Debtor to the petitioners. But so far the respondent has neither paid anything towards the amount nor preferred any appeal. The petitioners have already filed one execution petition in E.P.No.17/2024 and this respondent was arrested and sent to civil prison and E.P. was closed on 30.01.2025. Hence, this petition.

3) Brief averments of the counter filed by the respondent are as follows:-

The petition filed on behalf of the petitioners for the recovery of the sum of Rs. 12,76,525-00 being the award amount with interest passed by this Honourable court in the above compensation claim is not at all maintainable one either in law or on facts of the case and the same deserves to be dismissed with costs.

This respondent denies the various allegations made in the petitioner's affidavit save and except those that are specifically admitted herein and puts the

petitioner to strict proof of each and every one of them.

The contention of the petitioner in column No.6 of the petition that the petitioners have already filed one Execution Petition in E.P.No.17/2024 and this respondent was arrested and sent to Civil Prison on 31.01.2025 is of course true and this respondent submits that since this respondent has no means he has filed an Insolvency Petition before the Honourable Subordinate Judge's Court No.II. Tiruchirappalli and the same is pending in I.P.No.04/2025 is of course true.

she further allegations made in the Execution Petition that this respondent's father having landed property in Village Grama Natham Dry S.No. 255/5 in Avoor village with a RCC super structure is absolutely false and baseless one made with scant regard for truth. This respondent submits that the above said house site was once owned by this respondent's father Jayaraman and he conveyed the said property about 40 years back i.e., even prior to the date of his birth and there is no moveable or immoveable property owned by this respondent. This respondent is pauper and hence he has filed Pauper OP before the Honourable Subordinate Judge's Court No.II. Tiruchirappalli. Hence the present Execution Petition filed by the petitioner has no merits at all and the same deserves to be dismissed with the costs of this respondent.

As stated above, even this respondent's father was also not having any immoveable property as given in the petition and the petition itself is not maintainable one.

There are no merits or bonafide in the present application filed by the petitioner to amend the Execution petition is not at all maintainable one and the same is devoid of merits, lacks in bonafide and deserves to be dismissed with the costs of respondent. Hence, the respondent requested to dismiss the petition with cost.

4) On the side of the petitioners no witness was examined and as many as 3 documents were marked and on the side of the respondent no witness was examined and no document was marked.

5. Point for consideration in this petition is that:

Whether the Execution petition is to be allowed as sought for ?

6. Point: The learned counsel, appearing for the petitioner would contend that he has come forward with this petition seeking relief for attaching 1/4th share of the respondent's property over the petition mentioned property. He would further contend that the respondent herein in the earlier occasion has paid a sum of Rs.1,25,000/- and subsequently he did not come forward to pay the balance of the award amount. In such a circumstance, he has filed a counter stating that the petition mentioned property was sold 40 years ago and he has no interest or title over this petition mentioned property and has further stated that he has filed pauper original petition before the Sub Court No.2, Trichy.

He would further content that the respondent herein has stated false details in his counter statement. Infact, the property in question is still under the

possession of the respondent and their family members and even the Chitta still stands in the name of his father one Jayarman and electricity connection is also stands in the name of his elder brother. The petition mentioned property derived by his father through partition deed dated 20.12.1985 and still that property is undivided among the family members of the respondent. Hence, he has come forward with this petition to attach only 1/4th share of the respondent alone and in support of his submission, the petitioner has marked the following partition deed, chitta, E.B service connection online status report. Hence, he argued for attach the property.

7) **Per contra**, the learned counsel appearing for the respondent at the time of argument would contend that the petition mentioned property is not in the name of respondent herein, on the other hand, stands in the name of one Karunanithi. He would further contend that the said petition mentioned property originally belongs to the respondent's father one Jayaraman and subsequently the same has been sold of to Karunanithi in the year 1999 along with his mortgagee one Rajendran, hence the question of respondent still possessing right over the petition mentioned property does not arise, hence, he argued for dismiss the petition.

8) On contra, the learned counsel appearing for the petitioner in a way of reply would contend that though on the side of the respondent it was contend that the property in question not belongs to him, what necessitate him to defend

the case and protect the property in question. He would further contend that the property in question is an ancestral joint family property of the respondent herein. As per the case of the respondent, the property in question was purchased by one Radha ammal and subsequently in the year 1986 one Jayarman /father of the respondent and his sister entered into a spartition with regard to the property belongs to Radha ammal, including the petition mentioned property. Hence, the property in question is a self acquired property of Jayarman, but the encumbrance certificate that on 01.01.1926 to 15.04.2026 does not indicate the name of the Radhda ammal as owner of the petition mentioned property. If the property in question indeed originally belongs to said Radha ammal that would have reflected in the encumbrance certificate but does not do, which would indicate the fact that the property in question could not have belongs to the said Radha ammal. He would further contend that since the property in question is an ancestral joint family property, it does not reflected in the above encumbrance certificate in the name of said Radha ammal as alleged by the respondent herein. Apart from this, he would contend that the property in question, though originally sold off by the father of respondent one Jayaraman alongwith is sister's son Raja infavour of Rajendran in the year 1989, on the very next year the very same property has been sold off by the said Rajendran alongwith Jayaraman infavour of one Karunanithi in the year 1990, who has subsequently in the year 2019 sold off the property. The manner in

which the property in question passed through the hands among the family members of the respondent herein would further strengthen the doubt over the character of the property as alleged by the respondent. On the other hand, it establish the nature that the property must have an ancestral joint family property of the respondent as alleged by the petitioner herein. And he would further contend that even assuming for a while that the property stands in the name of one Jayakumar elder brother of respondent by virtue of sale deed, dated 30.07.2019, the patta still stands in the mane of Jayaraman since 1989 which would further strengthen the contention of the petitioner that the property in question is that of ancestral joint family property. Hence, he would contend that the respondent who is son of said Jayaraman has equal interest over the property(1/4th share), hence to that extent, the petitioner is entitled to attach the property, hence argued for allowing the petition.

9) **Per contra**, the learned counsel appearing for the respondent would contend that mere revenue records stands in the name of Jayaraman would not confer any title to the respondent herein as if an ancestral joint family property. He would further contend that in the absence of any proof to show the ancestral joint family property on the side of the petitioner herein, it is not correct to contend that the property in question is an ancestral joint family property and thus, the respondent herein has 1/4th share over it. And he would further contend that the relevant accident had happened on 06.03.2016, whereas, the

property in question has been sold of in the year 1989 and 1990 respectively. That being so, it cannot be presumed that these are all earlier transactions had dealt with anticipating either accident or livelihood of attaching the interest of the respondent herein in the petition mentioned property. Hence, it cannot be said that the respondent herein has played fraud to resist the legitimate claim of the petitioner from the property as alleged by the learned counsel appearing for the petitioner, hence, he argued for dismissal of the petition.

10) Heard. Perused the records.

11) The petitioner herein has filed this petition for attachment of the petition mentioned property stating that the respondent herein has 1/4th share over the petition mentioned property as it is an ancestral joint family property. It is an admitted fact that the property in question is not stands in the name of the respondent herein, on the other hand, it stands in the name of the respondent's brother one Jayakumar. It is well settled law that if the property is not that of Judgment debtor, the question of attaching the same by way of order of this court on EP proceedings does not arise. Similarly, if the petitioner is able to prove the fact that the property in question is an ancestral joint family property and thus, the respondent/JD has equal share over it, then there is no legal bar to pass an order of attachment to such extent.

12) But in the case on hand, though the learned counsel appearing for the petitioner vehemently contend that the property in question is an ancestral joint

family property, no material to substantiate the same has been produced. Eventhough the learned counsel appearing for the petitioner relied upon the encumbrance certificate and the patta in respect of the property stands in the name of the respondent's father to prove his claim, these are all, in my considered opinion cannot be taken into account in the execution proceedings as the alleged the right of the respondent over the petition mentioned property required comprehensive and separate adjudication under relevant statutory provision of law.

13) That being so, the contention of the counsel appearing for the petitioner relying upon the encumbrance certificate, patta are quite extraneous and out of scope of the execution proceedings. Hence, in the absence of any proof to show either title or interest of the respondent over the petition mentioned property in question the relief of attachment of the property sought for by the petitioner is not correct in the eye of law.

14) It is well settled law that if the petitioner wants to convince the court with regard to existence of respondent right over the property, it is the duty cast upon him to prove such existency through the reliable and substantiate material. Mere presumption and assumption with record to the existency of the right of the Judgment debtor over the property cannot be drawn while deciding the execution proceedings. It is not the business of execution court to decide the title, right and interest of the Judgment debtor over the petition mentioned

property as it is quite extraneous and falls under different forum which is competent to decide all those things. Hence, the contention of the counsel appearing for the petitioner in this regard cannot be countenanced.

15) It is therefore, this court is not inclined to allow this application as sought for and thus the point is answered accordingly.

Infine, this petition is dismissed with the liberty to file a fresh application if the petitioner is able to establish the title or right of the respondent/JD in any other property.

This Order is dictated by me to Stenographer Grade-I of this Court, transcribed by her in the computer, corrected and pronounced by me in the open court, this the 21st day of April- 2026.

**Principal District Judge,
Tiruvannamalai.**

Witnesses examined on the side of the petitioners: None

Documents marked on the side of the Petitioners:-

Ex.P.1	31.12.1986	Copy of Partition deed entered into Jayaraman Vagaiyara
Ex.P.2	..	Consumption card standing in the name of Jayakumar
Ex.P.3	16.06.2025	Computerized Patta for Avoor village S.No.255/5 standing in the name of Jayaraman.

Witnesses examined on the side of the Respondent: None

Documents marked on the side of the Respondent:- Nil

PDJ

ORDER
E.P.No.27/2025
in
MCOP.No.184/2023
D.D.O.21.04.2026