

IN THE XXVI ASSISTANT CITY CIVIL COURT, CHENNAI

Present : Thiru. C.Rajasekar, B.A., B.L.,

XXVI Assistant Judge

Thursday, this the 02nd day of July, 2026

E.P.No.441/2025

in

OS.No.3733/2023

(CNR NO. TNCH01-005267-2025)

1. Mrs. M. Savithri

W/o. Late K. Manikandan

2. M. Arun Kumar

S/o. Late K. Manikandan

3. M. Praveen Kumar

S/o. Late K. Manikandan

...Petitioner/Decree holder

... Vs ...

K. Krishnan

S/o. Kakka Mallan

First Floor, Door No.33B

Tiruveethi Amman Kovil 4th Street

Thiruvannamiyur, Chennai 600 041.

...Respondent/Judgment Debtor

This Execution petition has come up for final hearing before me on 15.06.2026, in the presence of M/s.K.A.Mariappan, G.M.Ananthakumar and P.Anbarasu Counsels for the Petitioner/Decree Holder and M/s. A. Joseph Dorairaj counsel for the Respondent/Judgment debtor and then the Respondent /Judgment debtor is set exparte on 30.10.2025 and due to his non filing of counter and exparte enquiry is heard from the decree holder side and upon perusing the entire records and having stood over for consideration till this day, this court delivered the following:

ORDER

This Petition has been filed by the decree holder under Order XXI Rule 97 of Code of Civil Procedure seeking the relief of delivery of possession of the 'B' Schedule property to the decree holders.

2. The Petition averments in brief:

The Decree holders have submitted in this petition that the suit in O.S. No.3733/2023 was filed against the Judgment debtor and the same was decreed in favour of decree holders on 27.09.2024. As per the decree the Judgment debtor was directed to deliver the possession of the 'B' Schedule property to the decree holders within 2 months from the date of the Judgment, but the Judgment debtor had not complied the above direction. According to that, the decree holders have filed this Execution petition against the Judgment debtor and prayed to direct the Judgment debtor to deliver the possession of the 'B' schedule property as per the decree.

3. Notice was duly issued to the Judgment Debtor and then he was set exparte, due to his non filing of counter and then enquiry was heard from the decree holder. No oral and documentary evidences are adduced by the decree holder side. Entire case records are carefully perused.

4. Point for consideration:

Whether the execution petition against the Judgment debtor for delivery of possession under order XXI Rule 97 of CPC is to be allowed.?

5. Discussion:

05-01) The petitioners have prayed to direct the Respondent/Judgment debtor to deliver the possession of the 'B' schedule mentioned property to the decree holders

as per the decree in O.S.No.3733/2023. Petition and entire case records are carefully perused. On perusal of the decree and entire case records, it is found that the main suit in O.S.No. 3733/2023 was decreed in favour of the Decree Holders and the Judgment Debtor was directed to deliver the possession of the 'B' schedule mentioned property. Since, the Judgment debtor has not preferred an appeal against the decree passed in O.S.No.3733/2023, the decree attained finality and the Decree Holders are entitled to get the relief of enforcing the decree against the Judgment Debtor by way of filing execution petition.

05-02) In such circumstances, the Decree Holders have approached this court and submit that the Judgment debtor has not complied the direction imposed in the decree. Further, the Judgment Debtor has not tried to object the facts of this petition and the decree passed in O.S.No.3733/2023 by way of appearing before this court. So, this court comes to the conclusion that the Judgment Debtor has failed to comply the direction of the decree in O.S.No.3733/2023. Though the Decree Holders have quoting wrong provision in this application that under order of 21 rule 97 of CPC this Court decides to grant the relief as sought in this application under order of 21 rule 35 of CPC, on the basis of the settled proposition of law that quoting wrong provision of law is not a ground to reject the relief sought for in a petition.

6. Since the judgment debtor has failed to comply the direction of the decree passed in O.S.No.3733/2023 this court decides to execute the decree by vacating the Judgment debtor to deliver the vacant possession of the 'B' schedule mentioned property to the decree holders. Hence this petition is allowed in the interest of the Justice. Accordingly, issue delivery warrant on payment of batta. Batta in 3 days. Delivery by 07.08.2026.

Dictated to steno typist, directly computerized by her, corrected and pronounced by me in the open court, this the 02nd day of July, 2026.

**XXVI Assistant Judge,
City Civil Court, Chennai.**

Both side Witnesses & Exhibits : Nil

**XXVI Assistant Judge,
City Civil Court, Chennai.**

Draft/Fair Order

E.P.No.441/2025

in

OS.No.3733/20231

02.07.2026

XXVI Assistant Court,
Chennai.