

**III ADDITIONAL DISTRICT AND SESSIONS COURT,  
TIRUVALLUR AT POONAMALLEE.**

Present : **Thiru.C.VIJAYAKUMAR, B.A., B.L.,**  
III Additional District and Sessions Judge

**Tuesday, the 10<sup>th</sup> day of March 2026**

**E.A.No. 2 of 2025  
in E.P.No.63 of 2024  
in I.A.No.1/2019  
in O.S.No.381/2018**

- 1) Mr. N. Manoharan,
- 2) Mr. N. Saravanan,

.. Petitioner/JD-2 & JD-3.

*//Vs//*

- 1) R. Manimegalai,
- 2) R. Revathi,
- 3) R. Nagaraj

.. Respondents / Decree Holder.

- 1) Shanthi,
- 2) Poongodi,

.. Respondents / JD-4 & JD-5.

**ORDER**

This petition, filed under Section 47 of the CPC and prayed to declare the decree in I.A.No.1/2019 in O.S.No.381/2018 is null and void consequently dismiss the above Execution Petition on the following grounds:-

**2) A short brief of affidavit accompanying with the petition :-**

The petitioner filed this petition seeking a declaration of the decree in I.A.No.1/2019 in O.S.No.381/2018 as null and void and dismissal of the E.P.No. 2 of 2025 which

filed under Section 47 CPC. It is contended that, The petitioners (JDs 2 & 3) submit that their father, Nataraja Naicker, originally purchased 284 sq. mtr. of property via a 1965 sale deed (Patta No. 316) and was survived by two wives, Mrs. Baby and Mrs. Malliga. On May 9, 2014, he settled two 792 sq. ft. portions of land in favor of Mr. N. Saravanan and Mr. N. Manoharan through registered settlement deeds (Nos. 3125/2014 and 3126/2014), after which Mr. Saravanan sold his portion to Mrs. C. Vasantha in 2019. Regarding the remaining land, an extent of 645 sq. ft. was sold to Mr. L. Ramesh in 2015, leaving a final undivided extent of 819 sq. ft. that remained in Nataraja Naicker's possession until his intestate demise. This 819 sq. ft. property is currently enjoyed by his legal heirs from both marriages, and the petitioners contend that the decree holders are entitled to only a 1/6th share (136½ sq. ft.). The petitioners further argue that the respondents/DHs wrongly filed a partition suit (O.S. No. 381/2018) by concealing property particulars and failing to implead necessary subsequent purchasers, resulting in an ex-parte preliminary decree and a subsequent execution petition for the delivery of the "B schedule" property. Despite the petitioners and subsequent purchasers maintaining peaceful possession with updated tax and utility records, the decree holders are now seeking delivery of the property. The petitioners assert they have a strong case to establish their rights and maintain that unless the execution petition is stayed, they will suffer irreparable loss. Therefore, the petition is filed.

**3) Now the point for consideration is whether the petition is maintainable for further adjudication?**

4) Prior to delving into the merits of the petition in regular course , this Court deemed it appropriate to first determine the issue of its maintainability. As per the principle laid down by the Hon'ble High Court of Madras in the case of **Selvaraj and Others vs. Koodankulam Nuclear Power Plant India Limited and Others (MANU/TN/4835/2021)**, this court assigned an E.A. Number to this petition and then passed the order with regard to the maintainability of this petition as follows.

5) The Hon'ble Supreme Court in the case of **PERIYAMMAL (DEAD) THROUGH LRS & ORS. VERSUS V. RAJAMANI & ANR. ETC. reported in 2025 INSC 329** held that,

**Para 73 (42.8) The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.**

In light of the Hon'ble Supreme Court's directions, mechanical registration of petitions under Section 47(1) CPC is restricted. Such petitions must be considered strictly in accordance with the limited scope of Section 47(1). Furthermore, courts should refrain from entertaining applications that either: (a) raise issues already

adjudicated in the suit, or (b) concern matters that could have been raised during the original suit proceedings with due diligence.

6) The main execution application was filed seeking the execution of the final decree by delivering the property mentioned therein to the decree holder, under Order 21 Rule 35 of the CPC. While the said execution application was pending for filing of counter by JD2 and JD3, they filed their counter on 11.06.2025. On the same day, they also filed the present application under Section 47 of the CPC. The section 47(1) reads as follows :

**Section 47. Questions to be determined by the Court executing decree.—**

**(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.**

7) It is settled law that Section 47 of the Code of Civil Procedure, 1908 strictly limits the executing court to determining questions arising between the parties to the suit (or their representatives) and which relate specifically to the "**execution, discharge or satisfaction of the decree.**" In the present case, the petitioners' primary grounds for challenging the execution are that the decree holders are only entitled to a 1/6th share in the property and that the original suit was filed by concealing material particulars and failing to implead necessary parties.

8) This court observes that these grounds do not pertain to the mode or manner of execution of the decree. Instead, they constitute a direct challenge to the validity and legality of the decree itself. Such a challenge amounts to a collateral attack on the decree, which is expressly not permitted in execution proceedings, as the executing court cannot go behind the decree.

9) Further it is a well-settled principle of law that the executing court cannot go behind the decree or question its validity. In the case of **C.F. Angadi v. Y.S. Hiranayya reported in (1972) 1 SCC 191** and **Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman reported in (1970) 1 SCC 670**, wherein it has been held that while determining a question under Section 47, an executing court cannot go behind the decree and question the correctness of the same.

10) Therefore, this Court concludes that the instant petition filed under Section 47 of the Code of Civil Procedure fails to disclose any valid grounds relating to the execution, discharge or satisfaction of the decree, and as such, is not maintainable for numbering and further judicial consideration.

11) In the result, the petition under section 47 of CPC is dismissed as the petition is not eligible for further adjudication as the petition is not maintainable.

Dictated to steno-typist directly, typed by him in computer, corrected and pronounced by me in the Open Court on this the 10<sup>th</sup> day of March 2026.

**III Additional District and Sessions Judge,  
Thiruvallur @ Poonamallee.**