

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

**PRESENT: Selvi.A.Keerthana, B.A., L.L.B.,
District Munsif, Ponneri.**

Wednesday, the 07th day of January 2026

EXECUTION APPLICATION No.99 OF 2018

in

EXECUTION PETITION No.40 OF 2006

in

Original Suit No.118 of 2004

1. S.Venkatesa Mudali (died)

2. Subramani

3. Sekar

.....Petitioners/Judgment Debtors

- Vs -

1. P.Sakthivel (died)

2. Subbulakshmi (died)

3. Kadirvel

4. Muthuvel

5. Amuthavalli

6. Thilagavathi

7. Gandhimathi

8. Murugavel

9. Senthil (died)

..... Respondents/Decree holders

This petition came on 07.01.2026 for final hearing before me in the presence of Mr.R.Maharajan, Learned counsel appearing for the petitioners and Mr.T.Susairaj, Learned counsel appearing for the Respondents. Upon hearing both sides, after perusing the material case records and having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition has been filed by the petitioners under Order 21 Rule 26 and Section 10 of CPC to stay the entire all further proceedings in the above execution petition in EP.40/2006 until final disposal of the suit in OS.169/2008.

2. Brief averments of the Affidavit filed by the Petitioners are as follows:

The petitioners herein are the judgment debtors in the main Execution Petition No.40 of 2006, which has been filed for delivery of possession in respect of S.No.238/5A pursuant to an exparte decree passed on 02.12.2004. After the passing of the decree, the sole defendant died on 03.01.2009 and the sole plaintiff died on 02.12.2012, and their respective legal heirs were impleaded. The petitioners herein, along with Gunasekari, filed a suit in O.S.No.169 of 2008 against P.S. Sakthivel and another for the relief of declaration of title and consequential injunction. As per the family arrangement, the property situated at Perambur was allotted to the respondent/plaintiff. The petitioners herein therefore dispute the title of the respondent/decreed holder. The above said suit is pending before this Hon'ble Court, and the respondents are also actively participating in the same. Suppressing this material fact, the present execution petition has been filed. The said Gunasekari is also residing in the suit property apart from the petitioners and is therefore a necessary party to the execution proceedings. Hence, the present petition has been filed seeking to stay further proceedings in the main execution petition until the final disposal of the suit in O.S.No.169 of 2008. Hence this petition.

3. Bring averments of the counter filed by the 4th respondent and adopted by the other respondents are as follows:

The respondents submit that earlier one Mrs. Parvathi Ammal, who was a tenant, had instigated Venkatesa Mudaliar to file a suit in O.S.No.237 of 1989,

which was dismissed on 03.04.1998. The present petition has been filed only to drag on the proceedings and to prevent the respondents from effecting delivery of possession. The respondents further submit that the petitioners herein have filed O.S.No.169 of 2008 against the respondent/decreed holder, seeking a declaration that the ex parte decree passed in favour of the first respondent in O.S.No.118 of 2004 is not binding on them. The petitioners cannot now seek to set aside the ex parte decree, as an application to set aside the same was already filed and dismissed, against which no appeal has been preferred nor any revision filed. The petitioners, who are parties to O.S.No.169 of 2008, are now attempting to stall the execution proceedings without filing any appropriate application. The respondents further submit that since the decree was passed on 02.12.2004, Section 10 of the CPC is not applicable. Thus, the petitioners do not have any right to seek a stay of the operation of the decree.

4. Evidence :

Neither the petitioners nor the respondents have placed any oral or documentary evidence before this court.

5. Point for determination :

Whether this petition can be allowed or not.

6. Discussion and findings :

6.1. Heard. Records perused. The present petition has been filed by the petitioner/judgment debtor seeking to stay all further proceedings in Execution Petition No.40 of 2006 until disposal of the suit in O.S.No.169 of 2008. This execution petition has been filed as against the respondents/decreed holders based on the decree passed in O.S.No.118 of 2004 dated 02.12.2004. The sole ground on which the present petition has been filed is to stay the execution proceedings until

the final disposal of O.S.No.169 of 2008, which suit was filed by the judgment debtors herein along with one Mrs. Gunasekari. When the case came up today, admittedly, both counsel submitted that the said suit had already been disposed of. It is relevant to mention here that, during the pendency of the application, counsel for the respondents represented before this Court that the above said suit had been dismissed. On verification, it could be seen that the suit in the above original suit number had already been disposed of. Even assuming that the suit is pending till date, the petitioners have not furnished any order of stay before this Court, in the absence of which there is nothing to prevent the execution proceedings from continuing unless an order of stay has been granted.

6.2. Moreover, the main execution petition is of the year 2006. Accordingly, in the interest of justice and in order to avoid unnecessary delay, this court is not inclined to entertain this application. Furthermore, keeping in mind the specific mandate given in *Rahul S. Shah v. Jitendra Kumar Gandhi & Ors.*, (2021) 6 SCC 418, the Hon'ble Supreme Court emphatically held:

“25. These provisions contemplate that for execution of decrees, the Executing Court must not go beyond the decree. However, there is a steady rise of proceedings akin to a re-trial at the time of execution, causing failure of realisation of the fruits of the decree and relief which the party seeks from the Courts despite there being a decree in their favour. Experience has shown that various objections are filed before the Executing Court and the Decree Holder is deprived of the fruits of litigation, while the Judgment Debtor, in abuse of the process of law, continues to benefit from the subject matter which he is otherwise not entitled to.”

Wherein a specific direction was given to every executing court to dispose of the execution petition within a period of six months, this Court is not inclined to

stall the execution proceedings unless a stay has been granted by the appellate forum. For the reasons stated supra, this Court is not inclined to entertain this application. In the result, this petition is dismissed as infructuous.

7. Result :

In the result, this petition is dismissed as infructuous. No costs.

Dictated by me to the steno-typist, directly typed by her in her desktop, corrected and pronounced by me in the open court, on this the 07th day of January 2026.

**DISTRICT MUNSIF
PONNERI**

Both side witnesses and documents:- NIL

**DISTRICT MUNSIF
PONNERI**

Fair/ Draft Order
E.A.No.99/2018
E.P.No.40/2006
Date:07.01.2026
DMC,PNI.