

In the Court of the District Munsif, Sathankulam.

Present. Thiru.M.Siva Rajesh, B.B.A.,L.L.B.,

District Munsif Sathankulam.

Dated:- This the 19th day of September 2025, Friday.

EA.No.15/2025

in

E.P.No.1/2025

in

O.S.No.34/2019

A.Kasilinga Nadar (Age 76),

S/o. Arumuga Nadar,

residing at 10/49 Poovudaiyarpuram,

Naduvakurichi Village,

Sathamkulam Taluka, Thoothukudi District.

... Petitioner/Decree Holder

VS

1. Jeyasingh(Age 59),

S/o. Ponniah Nadar,

residing at 3, Main Road

Idachivillai, Arasoor – II Village,

Sathankulam Taluk, Thoothukudi District.

2. Aavin (Age 44),

S/o. Velliah Nadar,

residing at 42, Main Road

Idachivillai, Arasoor – II Village,

Sathankulam Taluk, Thoothukudi District.

... Respondents/Judgment Debtors

Advocate for the Petitioner: Thiru.J.Jebsingh Selwyn

Advocate for the 1st Respondent: Thiru.M.Vasaharajan

Advocate for the 2nd Respondent : Tmt.Sheeba Irin

1. Relief : -

The petitioner prays for dismissal of the execution petition as premature and not maintainable, and prays for a stay of all further proceedings until the pending appeal and delay condonation application are finally decided, along with any other relief deemed fit by the Court.

2. Case of the petitioner:-

2.1 The original suit in O.S.No.34/2019 was decreed ex parte against the respondent (D1), while the 2nd defendant, in collusion with the plaintiff, formally contested and consented to a decree, thereby prejudicing the respondent. On gaining knowledge of the decree, the respondent promptly filed an appeal before the Hon'ble Tiruchendur Subordinate Court along with a petition to condone delay in I.A.No.69/2025 under Section 5 of the Limitation Act. The appellate court has issued notice in both the appeal and the condone delay petition, thereby keeping the matter under active judicial consideration. It is a settled principle that an appeal is a continuation of the suit, and when such appeal with a pending delay petition has not been rejected, the execution proceedings cannot continue, as doing so would defeat the appellant's right to challenge the decree. Moreover, under Section 47 CPC, all matters concerning execution, discharge, or satisfaction of the decree must be determined by the executing court, and a pending appeal challenging the legality of the decree directly relates to execution and must be duly considered.

Considering the aforesaid submission the petitioner plead this court to allow this petition.

3. Counter of the Respondents:-

3.1 The respondent stated that the petition is not maintainable either in law or on facts and is liable to be dismissed at the outset. It is contended that the executing court cannot go behind the decree, and even if the decree is alleged to be illegal, the only remedy available is to approach the higher forum; hence, the present application is misconceived. The respondent further stated that the appellate court decisions relied upon in the petition are irrelevant to the facts of this case. It is further stated that the allegation of collusion is baseless and fabricated,

intended solely as a tactic to delay proceedings. It was alleged that the petition is mala fide and fraudulent, with the sole objective of delaying the matter. The respondent further stated that the petitioner has no right or title over the petition schedule property, and any order in his favour would cause irreparable loss and hardship to the respondent. Considering the aforesaid submission the respondent prays for dismissal.

4. Arguments:-

The petitioner reiterated the facts stated in the petition and placed reliance on the following precedents

- (i) V. Ramaswami Vs A V Ramakrishnan (AIR 1964 Mad 130)
- (ii) R Thyagarajan Vs Ranganathan (2007 (4) MLJ 1131)
- (iii) Shyam Sunder Sarma Vs Pannalal Jaiswal (2005 (1) SCC 436)
- (iv) Govindammal Vs Marimuthu (2016 (5) CTC 225)
- (v) K K Modi Vs K N Modi (1998 (3) SCC 573)
- (vi) ROC No. 1361-A/2021/RG dated 15.12.2021

The respondent reiterated the facts stated in the counter.

5. Analysis and Findings of this court :-

5.1 Heard. Record Perused.

5.2 Considering the both submissions, this Court is of the view that mere pendency of an appeal or a condone delay petition does not automatically operate as a stay of execution. Unless and until the appellate court grants specific interim orders staying the decree, the executing court cannot withhold execution solely on the ground that an appeal is pending. It has to be noted that section 47 CPC empowers the executing court to decide questions relating to execution, discharge, or satisfaction of the decree, but it does not permit the court to question the validity of the decree itself. Such a challenge lies exclusively within the jurisdiction of the appellate forum. In the present case, no interim relief has been granted by the appellate court. Therefore, the execution cannot be stayed merely on the petitioner's plea of collusion or pendency of proceedings elsewhere.

In view of aforesaid observation this court dismiss this petition.

Dictated to the Steno-Typist, typed by her, corrected, and pronounced by me in open court on this the 19th day of September, 2025

District Munsif,
Sathankulam

Petitioner side witness and documents -Nil

Respondents side witness and documents -Nil

District Munsif,
Sathankulam

District Munsif Court,Sathankulam, EA.No.15/2025in E.P.No.1/2025 OS.No.34/2019 Fair/Draft Order Dated : 19.09.2025
