

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 11<sup>th</sup> day of September 2026, Friday.

E.A.No. 33/2026

in

E.P. No.1/2025

in

O.S.No.34/2019

Jayasingh (Age 59),

S/o.Ponnaiya Nadar,

Idachivilai, Arasoor II Village,

Sathankulam Taluk, Thoothukudi District.

... Petitioner/1<sup>st</sup> Respondent/  
1<sup>st</sup> Defendant

/VS/

1. Kasilingam (Age 74),

S/o. Arumuga Nadar,

Door No.10/49 Poovudaiyarpuram,

Naduvakurichi Village, Sathankulam Taluk,

Thoothukudi District.

... 1<sup>st</sup> Respondent/Petitioner/ Plaintiff

2. Aavin (Age 45),

S/o.Velaya Nadar,

Idachivilai, Arasoor II Village,

Sathankulam Taluk, Thoothukudi District.

... 2<sup>nd</sup> Respondent/2<sup>nd</sup>Respondent/  
Defendant

Advocate for the Petitioner : J.Jebasingh Selvin,

Advocate for the Respondents: Thiru.M.Vasaharajan

**Relief:-**

This petition has been filed by the petitioner u/o 8 r 9 r/w Section 151 of CPC, to grant permission to file an additional counter in the execution proceedings.

**2. Case of the Petitioner:-**

2.1 The petitioner state that he had filed a counter in the execution proceedings. It was stated that in the execution petition, the east-west measurement on the southern side of the 2<sup>nd</sup> schedule property has been stated as 200 feet. However, in the report of the Advocate Commissioner, the east-west measurement on the southern side of the 3<sup>rd</sup> schedule property has been stated to be only 15.8 metres (51.82 feet). It was further stated that the aforesaid particulars were not stated earlier on his side, and the same can now be brought on record only by way of an additional counter.

2.2 The petitioner further state that when the 3<sup>rd</sup> schedule property was inspected through the Advocate Commissioner appointed in the aforesaid proceedings, it was found that, on the southern side of his property, namely the 3<sup>rd</sup> schedule property, there is land belonging to one Mahesh covered under Joint Patta No.222. Further south of the said land lies railway land pertaining to the Therikadu Railway Project. It was stated that when the Advocate Commissioner and the Surveyor came to inspect the property, the said railway land was shown in the Surveyor's application. It was further stated that during the survey inspection, he also came to know that the petitioner/plaintiff had encroached upon and enclosed the said railway land.

2.3 The petitioner further state that in the counter already filed by him in the aforesaid execution proceedings, he had not stated the above facts, and it is necessary to bring the aforesaid fact to the notice of this Court. Therefore, the petitioner has filed the present petition.

**3. Counter of the Respondents:-**

3.1 The 1<sup>st</sup> respondent state that the present Execution Application is vexatious, devoid of merits and filed only to delay the execution proceedings and prevent the decree

holder from enjoying the fruits of the decree. It was stated that O.S.No.34 of 2019 was decreed after full-fledged trial and the decree has attained finality, and the present Execution Petition has been filed only to enforce the said decree, and the petitioner cannot use the execution proceedings as an opportunity to reopen matters already adjudicated or to introduce new defences which could have been raised during the trial.

3.2 The petitioner further state that the present application is not maintainable since the petitioner had earlier filed E.A.No.2 of 2026 in the very same execution proceedings seeking permission to file an additional counter statement. It was stated that after enquiry and opportunity to both sides, the said application was dismissed by this Court on 01.06.2026 and the order has not been challenged. It was further stated that the petitioner, having suffered the said order, cannot once again seek the same relief by altering or improving the pleadings. It was alleged that the petitioner has also suppressed the filing and dismissal of E.A.No.2 of 2026 in the affidavit accompanying the present application. It is contended that the present application is barred by principles of res judicata and amounts to abuse of process of Court.

3.3 The 1<sup>st</sup> respondent denied the petitioner's contention based upon the measurement of 15.8 metres (51.82 feet) found in the Commissioner's report. It is stated that the 1<sup>st</sup> defendant had earlier filed E.A.No.1 of 2025 for appointment of an Advocate Commissioner in respect of the 3<sup>rd</sup> Schedule property in Survey No.673/3A1, pursuant to which Tmt. Roselin, Advocate, was appointed and inspected the said property and submitted her report. It was stated that even during the pendency of the main suit, in I.A.No.104 of 2019, Advocate Commissioner Tmt. T. Sutha Fathima, with the assistance of a qualified Surveyor and after notice to the parties, inspected and measured the suit properties on 04.05.2019 and submitted a report and rough sketch. It was further stated that the petitioner participated in those proceedings through counsel and was therefore aware of the relevant measurements.

3.4 The 1<sup>st</sup> respondent further state that the earlier Commissioner's report clearly identified the 3<sup>rd</sup> Schedule property and recorded that, though the petitioner was entitled to only 2.75 cents, he was actually enjoying 4.94 cents, inclusive of the 2<sup>nd</sup> Schedule property/pathway, which were marked as Ex.C1 and Ex.C2. It was stated that the petitioner's entitlement to the 3<sup>rd</sup> Schedule property is only to an extent of 2.75 cents under

the registered sale deed dated 24.09.2001 executed by Kani Ammal, marked as Ex.A2, whereas his enjoyment of 4.94 cents has also been recorded in Paragraph 5.18 of the judgment dated 27.06.2024.

3.5 The 1<sup>st</sup> respondent further state that no new fact arising subsequent to the earlier counter has been disclosed and no bona fide reason has been shown for permitting an additional counter at this belated stage. It was stated that the petitioner cannot be permitted to fill up lacunae or improve his case through additional pleadings in execution proceedings. It was further stated that the decree has become final and no stay has been granted by the Appellate Court. Hence, the decree is liable to be executed in accordance with law and the present application is liable to be dismissed with costs.

#### **4. Analysis and findings of this court :-**

##### **4.1 Heard. Record Perused.**

4.2 It has to be noted that the mere reception of an additional counter statement does not amount to acceptance of the averments contained therein, nor does it confer upon the petitioner/Judgment Debtor any right to reopen matters already adjudicated and concluded under the decree. The petitioner cannot, under the guise of an additional counter, question the correctness of the decree or reagitate the plaintiff's entitlement to the 2<sup>nd</sup> schedule pathway, which has already attained finality.

4.3 Insofar as the petitioner seeks to place before this Court certain specific physical features and measurements stated to have come to his knowledge during the subsequent inspection conducted in the execution proceedings, this Court is of the view that such pleadings may be received for the limited purpose of considering whether they have any bearing upon the identification and effective implementation of the decretal property. The 1<sup>st</sup> respondent/Decree Holder will have sufficient opportunity to controvert the same, and therefore no irremediable prejudice would be caused merely by receiving the additional counter.

4.4 The earlier E.A.No.2 of 2026 was dismissed, inter alia, on the ground that the petitioner had made only a vague assertion regarding subsequently discovered facts without furnishing material particulars. In the present application, the petitioner has set out the specific measurements and physical features which, according to him, were noticed during

the subsequent survey. In such circumstances, and without expressing any opinion upon the truth, admissibility or ultimate effect of those averments, this Court considers that the present application need not be rejected merely because the earlier application seeking similar procedural relief had been dismissed.

Accordingly, in order to afford a fair opportunity to both sides and to enable this Court to effectively execute the decree with reference to the property covered thereunder, the petitioner is permitted to file the additional counter statement, subject to the specific condition that no plea therein shall be entertained insofar as it seeks to reopen, vary, nullify or travel behind the decree already passed in O.S.No.34 of 2019. All questions regarding the relevance, correctness and legal effect of the additional averments are left open for consideration at the appropriate stage of the execution proceedings.

**As a results petition allowed. No order as to costs.**

Dictated to the Steno-Typist, typed by her, corrected, and pronounced by me in open court on this 11<sup>th</sup> day of September, 2026.

District Munsif,  
Sathankulam

**Petitioner side witness and documents -Nil**  
**Respondents side witness and documents -Nil**

District Munsif,  
Sathankulam

District Munsif Court, Sathankulam,  
EA.No.33/2026 in  
EP No. 1/2025 in  
O.S No.34/2019  
Fair/Draft Order  
Dated : 11.09.2026