IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 09.01.2026

Orders Pronounced on : 19.01.2026

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

A No. 1512 of 2025
AND
EP NO. 9 OF 2021

1. Vinod Thimothy
S/o.K.P.Thimothy

2.Sajeev Thimothy
S/o.K.P.Thimothy,
Both are at Kuttukarans, No.244,
Third Main Road, Defence Colony,
Indira Nagar, Bangalore 560 038

Applicant(s)

Vs

1. M/s Urban Tree Infrastructures
Pvt Ltd
6th Floor, Good Shepherd Square,
No.86, Kodambakkam High Road,
Thirumurthy Nagar,
Nungambakkam,
Chennai-600 034.

Respondent(s)

EP No. 9 of 2021

1. Vinod Thimothy
S/o.K.P.Thimothy

2.Sajeev Thimothy

S/o.K.P.Thimothy,
Both are at Kuttukarans, No.244,
Third Main Road, Defence Colony,
Indira Nagar, Bangalore 560 038

Petitioner(s)

Vs

1. M/s Urban Tree Infrastructures Pvt Ltd
6th Floor, Good Shepherd Square,
No.86, Kodambakkam High Road,
Thirumurthy Nagar,
Nungambakkam, Chennai-600 034.

Respondent(s)

A No. 1512 of 2025

PRAYER

To set aside the order dated 29/01/2025 passed in E.P.No.9 of 2021 by the Learned Master and restore the E.P.No.9 of 2021 on the file of this Honble Court.

EP No. 9 of 2021

PRAYER

Pleased to order of attachment and sale of the immovable property of the judgment debtor as described in the schedule in the execution petition to recover the decree amount with interest.

A No. 1512 of 2025

For Applicant(s):	Mr.S.Saravana Kumar for M/s. I. Abrar MD Abdullah
For Respondent(s):	Mrs.Chitra Sampath Senior Counsel for M/s.Ganesh and Ganesh

ORDER

This application has been filed challenging the order passed by the learned Master in EP No.9 of 2021 dated 29.01.2025 dismissing the Execution Petition on the ground that the award is in executable.

2. When this application came up for hearing on 10.11.2025, this Court after hearing both sides passed the following order:-

Heard the learned counsel appearing on behalf of the appellants/Award Holders and the learned Senior Counsel appearing on behalf of the respondent/Judgment Debtor.

2. This appeal has been filed against the order passed by the learned Master dated 29.01.2025 in E.P.No.9 of 2021, wherein the learned Master has dismissed the execution petition.

3. There was a dispute amongst the parties and ultimately, they decided to amicably settle the dispute amongst themselves and they entered into a joint compromise memo dated 27.06.2019. It will suffice to take note of clauses VI(1)(2), (5) and (6) of the said joint compromise memo, which are extracted hereunder:-

"VI. Under such circumstances, the Claimants and Respondent had several rounds of discussions in the presence of the respective Counsels and arrived at final terms of compromise to amicably settle all the issues and the said terms of compromise are recorded as hereunder:

(1) According to the terms of compromise, the Respondent has fixed the value of Claimants' share i.e., 50% undivided share of land in the Schedule 'B' Property together with 9000 sq.ft of the constructed area as Rs.11,75,00,000/- (Rupees Eleven Crores Seventy Five Lakhs only) and agreed to purchase the same. The said sum of Rs.11,75,00,000/- (Rupees Eleven Crores Seventy Five Lakhs only) is payable by the Respondent to the Claimants

in the following manner:-

(a)Rs.1,00,00,000/- (Rupees One Crore only) had already been paid by the Respondent to the Claimants towards non-refundable deposit which is adjusted towards the said sum of Rs.11,75,00,000/- (Rupees Eleven Crores Seventy Five Lakhs only)

(b) Rs.25,00,000/- (Rupees Twenty Five Lakhs only) had already been paid by the Respondent to the Claimants towards refundable deposit which is now adjusted towards the said sum of Rs.11,75,00,000/- (Rupees Eleven Crores Seventy Five Lakhs only) (c) Rs.33,66,000/- (Rupees Thirty Three Lakhs Sixty Six Thousand only) is paid on this date by Banker's Cheque bearing No.004920 Dated 27.06.2019 drawn on HDFC Bank, Nungambakkam Branch, Chennai in the name of 1 st Claimant after deducting TDS @ 1% (Rs.34,00,000- Rs.34,000) (d) Rs.15,84,000/- (Rupees Fifteen Lakhs Eighty Four Thousand only) is paid on this date by Banker's Cheque bearing No.004921 Dated 27.06.2019 drawn on HDFC Bank, Nungambakkam Branch, Chennai in the name of 2

nd Claimant after deducting TDS @ 1% (Rs.16,00,000-Rs.16,000) (e) Balance amount of Rs.10,00,00,000/- (Rupees Ten Crores only) shall be paid by the Respondent to the Claimants within four months from this date without any interest. (2) On payment of balance amount of Rs.10,00,00,000/- (Rupees Ten Crores only) to the Claimants as per their entitlement, the Claimants shall execute and register the Sale Deed in favour of Respondent or its nominee in respect of their 50% undivided share of land in the Schedule 'B' property and surrender the vacant possession of the First Floor with the proportionate share in common area including Lift, staircase, passage, car parks, two wheeler parks and other common rights as applicable, which is in possession of the Claimants to the Respondent.

(5) Till the balance amount of Rs.10,00,00,000/- (Ten Crores only) is paid to the Claimants, the Claimants shall have the charge on the entire Schedule 'B' Property. (6) If the balance amount of Rs.10,00,00,000/- (Ten Crores only) is not paid beyond four months from this date, it shall

carry interest at 12% p.a till the entire amount is paid and the same shall be paid on or before 31.12.2019. It is clearly understood that for the first four months, the Respondent shall not pay any interest. Beyond four months, the Respondent is liable to pay 12% p.a till the entire award amount is paid."

4. Based on the joint compromise memo dated 27.06.2019, the arbitration award came to be passed on 09.07.2019.

5. It is not in dispute that insofar as compliance with conditions (a) to (d) of VI(1), the same has been complied with. The only dispute pertains to the payment of the balance amount of Rs.10 Crores by the judgment debtor to the award holders, which was agreed to be paid within four months from 27.06.2019 without interest.

6. Clause VI(6) stipulated that if the balance amount of Rs.10 Crores is paid beyond four months, it will carry an interest of 12% per annum till the entire award amount is *paid. Clause VI(5) also created a charge over the entire 'B' schedule property till the balance amount is paid to the award holders.*

7. The execution petition was filed by the award holders only insofar as this portion of the award is concerned.

8. The learned Master has dismissed the execution petition on the ground that the award holders have not fulfilled their obligation by furnishing the copies of the trust deed that were sought for by the judgment debtor and therefore, the learned Master came to a conclusion that the award has become un-executable and accordingly dismissed the execution petition.

9. The title to the 'B' schedule property is elaborately explained in the recitals of the sale deed dated 30.03.2019, which was executed by the award holders in favour of the judgment debtor. For proper appreciation, the relevant recitals are extracted hereunder:- "WHEREAS said

D.ThirumalaiReddi sold the aforesaid property under sale deed dated 29.11.1974 registered as Document No. 4140 of 1974 in the office of registrar of Madras to (1) Sajeev Trust (2) Vinod Trust (3) Vinod, Sajeev and Vinitha Trust (4) Vinitha Trust (8) SicyThimothy. WHEREAS all that piece and parcel of premises bearing Municipal Old Door No. 57. New Door No.105 (earlier Door No.78) General Patters Road, Chennai 600 002 measuring an extent of 1 Ground and 1200 sq.ft thereabouts comprised in R.S.No.375/128 of Triplicane village and more particülarly described in Item 2 of Schedule 'A' hereunder written, originally belonged to Mrs Chandra, she having purchased the same under Sale Deed dated 29.01.1973 registered as Document No. 109 of 1973 in Sub Registrar's office of Triplicane. WHEREAS said Mrs Chandra sold the aforesaid property under sale deed dated 29.11.1974 registered as Document No. 4139 of 1974 in the office of registrar of Madras to (1) Sajeev Trust (2) Vinod Trust (3) Vinod, Sajeev and Vinitha Trust (4) Vinitha Trust (5) SicyThimothy. WHEREAS accordingly (1) Sajeev Trust (2) Vinod Trust

(3) Vinod. Sajeev and Vinitha Trust (4) Vinitha Trust and (5) Sicy Thimothy became joint and absolute OWNERS of Item 1 and Item 2 of Schedule 'A' property. Whereas Item 1 and Item 2 of the Schedule 'A' property are adjacent properties and are jointly described in Schedule 'B' hereunder written and hereinafter collectively referred to as the 'SAID PROPERTY', WHEREAS all the aforesaid four Trusts were private Trust created on 01.06.1974 for a period of 25 years and as per the terms of the Trust after expiration of 25 years from the date of incorporation of Trust, if the Trustees in their absolute discretion think fit divide the Trust fund in accordance with Clause 3 of the respective Trust deeds. WHEREAS the Trustees of Sajeev Trust held meeting on 26.05.1909 and dissolved the Trust and all the Trust fund including 1/5 th share in Schedule 'B' property was transferred to the sole existing beneficiary Sajeev Thimothy. WHEREAS the Trustees of Vinod Trust held a meeting on 26.05.1999 and dissolved the Trust and all the Trust fund including 1/5 th share in Schedule 'B' property was transferred to the beneficiaries in the

following ratio:-

Vinod Thimothy - 20% of Trust Fund

Susan Vinod Thimothy - 20% of Trust Fund

AnaithaVinod Thimothy - 20% of Trust Fund

Raoul Vinod Thimothy - 40% of Trust Fund

WHEREAS the Trustees of Vinod, Sejeev and Vinitha Trust held a meeting on 26.05.1999 and dissolved the Trust and all the Trust fund including 1/5 th share in Schedule 'B' property was transferred to the beneficiaries in the following ratio:

Vinod Thimothy - 10% of Trust Fund

Susan Vinod Thimothy - 10% of Trust Fund

Anaitha Vinod Thimothy- 10% of Trust Fund

Raoul Vinod Thimothy - 10% of Trust Fund

Sajeev Thimothy - 40% of Trust Fund

Vinitha Thimothy - 20% of Trust Fund

WHEREAS the Trustees of Vinitha Trust held a meeting on 26.05.1999 and dissolved the Trust and all the Trust fund including 1/5 th share in schedule 'B' property was *transferred to the beneficiaries in the following ratio:-*

Vinod Thimothy - 10% of Trust Fund

Susan Vinod Thimothy - 10% of Trust Fund

Anaitha Vinod Thimothy- 10% of Trust Fund

Raoul Vinod Thimothy - 10% of Trust Fund

Sajeev Thimothy - 40% of Trust Fund

Vinitha Thimothy - 20% of Trust Fund

WHEREAS accordingly (1) Vinod Thimothy (2) Susan Vinod Thimothy (d) Anaitha Vinod Thimothy (4) Raoul Vinod Thimothy (5) Sajeev Thimothy (6) Vinitha Thimothy (7) Sicy Thimothy became joint and absolute owners of Schedule 'B' Property.

WHEREAS all the aforesaid owners were family members and owned several others properties including Schedule 'B' Property. Whereas an oral Partition and family arrangement was entered into between all the aforesaid owners on 10.09.2003 and implemented with immediate effect. The said Partition and family arrangement was also recorded and reduced to writing by memorandum dated 19.03.2004. As per the terms of the family *arrangement, Schedule 'B' Property was allotted to Mr.Vinod Thimothy and Mr.SajeevThimothy in proportion of 68% and 32% respectively. Accordingly, Mr.Vinod Thimothy and Mr.SajeeyThimothy became joint and absolute owners and have been in uninterrupted and exclusive possession and enjoyment of said property more particularly described in Schedule 'B' hereunder written. Whereas they have also transferred Revenue records viz., Patta, Corporation assessment, Chennai Metropolitan Water Supply and Sewerage Board assessment in their name."*

10. The above recitals will explain in detail as to how the award holders became the absolute owners of the 'B' schedule property. When 50% of the 'B' schedule property was conveyed in favour of the judgment debtor by the sale deed dated 30.03.2019, the judgment debtor did not have any doubt on the title of the award holders. Insofar as the balance 50% is concerned, it seems that the judgment debtor had approached the bank seeking for financial *facilities in order to settle the amount in favour of the award holders in line with the joint development agreement dated 16.06.2011. At that point of time, the concerned bank seems to have insisted for the copies of the trust deeds. Since the award holders were not in possession of the copies of any of the documents, the payment of the balance amount of Rs.10 Crores by the judgment debtor to the award holders came to be stalled.*

11. From the typed set of papers filed by the judgment debtor, it is seen that the judgment debtor had approached the ICICI Bank and sought for sanction of loan and the loan amount was also sanctioned through sanction letter dated 31.07.2019, sanctioning a sum of Rs.8.50 Crores. The only bottleneck that has been faced by the judgment debtor is that the bank is insisting for the copies of the relevant documents as a condition precedent for releasing the loan amount and these documents are not available with the award holders and everything has come to a grinding halt.

12. In the considered view of this Court, the title to the entire 'B' schedule property has been explained even in the sale deed dated 30.03.2019 that was executed by the award holders in favour of the judgment debtor. If the judgment debtor did not find any clog in the title of the award holders at that point of time, that should not become an issue insofar as the balance 50% of the property is concerned. Whatever title was traced in the earlier sale deed dated 30.03.2019, will equally apply while dealing with the balance 50% also. The judgment debtor had agreed to purchase the 50% share from the award holders and towards the same, they were supposed to make the payment. This dispute has been going on from the year 2019 onwards.

13. In the course of hearing, this Court made it clear to the counsel for the judgment debtor that insofar as the title to the 'B' schedule property, this Court will reiterate the title as was traced in the earlier sale deed dated 30.03.2019 and thereby confirm the title to the property in favour of the award holders. If that is done, there must be no *difficulty for the judgment debtor to proceed further to make the payment, as per the joint compromise memo dated 27.06.2019. If the judgment debtor is not inclined to make that payment, the entire property can be brought for sale and both parties can take 50% of their share.*

14. When the above was pointed out to the learned Senior Counsel appearing on behalf of the judgment debtor, the learned Senior Counsel sought for some time to take instructions.

15. Post this case on 21.11.2025 under the caption 'for orders'.

3. Pursuant to the above order, the matter was listed for hearing on 24.11.2025 and the following order came to be passed by this Court:-

Pursuant to the earlier order passed by this Court on 10.11.2025, the application was listed for hearing today. The respondent has filed an affidavit and the respondent *has sought for payment of 50% out of the total sale consideration. Apart from that, the respondent is also claiming payment of Rs.1.75 crores, which was the advance amount paid by the respondent pursuant to the Compromise Award. Furthermore, the respondent is also claiming for the cost incurred.*

2.The claimant is not willing for such a settlement and in fact the claimant is claiming for a total sum of Rs.17.04 Crores (approximately). In the light of the respective stand taken by the parties, there is no scope for settlement in this case. Hence, this Court is inclined to pass orders on merits.

3.Post this case under the same caption on 02.12.2025.

4. Heard Mr.S.Saravana Kumar for M/s.I Abrar Md Abdullah, learned counsel for the applicants and Mrs.Chitra Sampath, learned Senior counsel for respondent.

5. The learned counsel for the applicants submitted that the

learned Master went wrong in coming to a conclusion that the compromise award which gets the status of a decree, is in executable. The learned counsel submitted that there was no requirement for the applicants to furnish any title documents to the respondent and the obligation was only upon the respondent to pay a total sum of Rs.11,75,00,000/- for purchase of the 50% undivided share of land in the B Schedule property and the superstructure in the 1st Floor. Out of this amount, only a sum of Rs.1,75,00,000/- was paid and the balance payment of Rs.10,00,00,000/- is due and payable. Since this amount was not paid, in order to recover the amount, the present execution petition was filed to attach and sell the B scheduled property over which the applicant had a charge. Hence, the learned Master came to a wrong conclusion as if there is a corresponding obligation on the part of the applicants and whereas, there was no such corresponding obligation for the applicants except to sell the property to the respondent and which the applicants were ready to perform.

6. Per contra, the learned Senior Counsel appearing on behalf of the respondent submitted that the compromise award was

more in the nature of a sale agreement and if the respondent is not in a position to purchase the property due to paucity of funds, the same cannot result in attaching and selling the property which had vested on the respondent as per clause 3 of the joint compromise memo. At the best, the applicants can sell the property to some third party and if at all, there is any loss sustained by the applicants due to the reduced sale consideration, separate proceedings must be initiated for recovery of the loss. The learned Senior counsel submitted that the relief sought for in the Execution petition by the applicants is unsustainable and the applicants are seeking to recover the money from the respondent, which is not the purport of the award passed based on the compromise.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. The relevant portions in the Joint compromise memo has already been extracted supra when the earlier order was passed on 10.11.2025. The applicants had entered into a joint development agreement dated 16.06.2011 with the respondent and as per the Joint

development agreement, the respondent had constructed building to the tune of 18000 Sq.ft. As per the Joint Development Agreement, the applicants and the respondent are entitled to 50% of the constructed area and 50% of the undivided share of the land in the B Schedule property. There was a dispute among the parties and Arbitral proceedings were initiated.

9. The parties entered into a compromise. In line with the compromise, the Sale deed that was already executed on 30.03.2019 in favour of the respondent through which the Second Floor of the property along with the proportionate share in the common area, was agreed to be valid and binding on the applicants. Insofar as the remaining constructed area and the remaining 50% undivided share in the B Schedule property, the respondent had agreed to purchase the same for a total sale consideration of 11,75,00,000/-. Out of the same, 1,75,00,000/- was paid and the balance amount of Rs.10,00,00,000/- was agreed to be paid by the respondent within four months and on receipt of this amount, the applicants had agreed to execute a registered sale deed in favour of the respondent for the remaining portion which is the First Floor and 50% of the undivided

share of land in the B Schedule property.

10. The compromise also contemplated payment of interest at the rate of 12% per annum, if the balance amount of Rs.10,00,00,000/- is not paid within the stipulated time.

11. The grievance of the applicants is that the respondent has not paid the balance amount of Rs.10,00,00,000/- and the execution petition has been filed for recovery of this amount with interest. For that purpose, the applicants want to attach and sell the property that was already sold in favour of the respondent since the applicants had a charge over the property as per the Joint Compromise Memo.

12. The only question to be considered by this Court is as to whether the respondent not being able to purchase the property, can be mulcted with the liability of recovery of the amount of Rs.10,00,00,000/- along with interest.

13. The purport of the compromise award is more in the nature of an agreement for sale. The applicants had agreed to sell the

remaining property and the respondent had agreed to purchase the property for a sale consideration determined in the joint memo of compromise. If ultimately, the respondent does not come forward to purchase the property, due to any reasons, it will always be left open to the applicants to sell the subject property to any third party. If ultimately, the applicants incur any loss in that process due to the reduced sale consideration than what was agreed to be paid by the respondent, it will result in the common law remedy of recovery of the loss / damages sustained by the applicants from the respondent.

14. In the considered view of this Court, if the Execution petition is allowed as prayed for by the applicant, it will result in a scenario where the respondent will not get anything out of the entire property and at the same time, the respondent would have parted with huge sums of money. The applicants will take away the property which was already sold in favour of the respondent and apart from that they also deal with the property which was retained by them as per the Joint Memo of compromise. This will virtually amount to unjust enrichment. In any case, that was not the effect of the award passed pursuant to the Joint memo of compromise.

15. In the light of the above discussion, this Court is not inclined to interfere with the order passed by the learned Master dated 29.01.2025 and it is left open to the applicants to work out the remedy in the manner known to law and this Application stands dismissed. No costs.

19-01-2026

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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

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