



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 20.01.2026

Judgment pronounced on : 30.03.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.189 of 2025
& CMP.No.4215 of 2025

V.M.Tamilselvan

.. Appellant

Vs.

1.Karunalayasamy Madam Nandavanam
Represented by Thakkar Arulmighu
Avinashilingeswar Thirukoil
Executive Officer,
Periyamaruthu Pandian S/o. Krishnan
Avinashi Town,
Avinashi Taluk, Tiruppur District.

2.M.S.Balan

.. Respondents

Prayer: Appeal Suit filed under Order XLI Rule 1 and Section 96 of CPC, to set aside the order and decreetal order made in E.A.No.1 of 2023 in E.P.No.90 of 2019 in O.S.No.622 of 2010 dated 28.08.2024 on the file of the II Additional District and Sessions Judge (FACAT), Tiruppur and thereby dismiss E.A.No.1 of 2023 in E.P.No.90 of 2019.

For Appellant : Mr.R.Thiagarajan

For Respondents : Mr.S.Ravichandran
Additional Government Pleader for R1
No appearance for R2



JUDGMENT

The plaintiff-decree holder is the appellant, aggrieved by the order in E.A.No.1 of 2023 in E.P.No.90 of 2019 in O.S.No.622 of 2010, on the file of the II Additional District and Sessions Judge, Tiruppur.

2.The facts in brief:

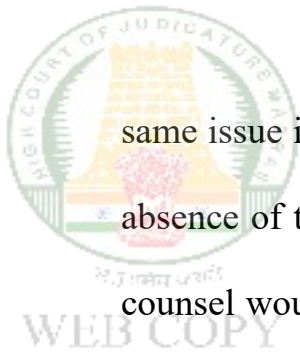
The appellant, as plaintiff filed a suit for specific performance in O.S.No.622 of 2010, seeking enforcement of an agreement of sale dated 21.11.2007 and also for other consequential reliefs against one M.S.Balan, the 2nd respondent herein. The 2nd respondent, as defendant contested the suit and ultimately, the trial Court, by judgment and decree dated 07.10.2016, decreed the suit and granted the relief of specific performance, by directing the plaintiff to deposit Rs.48,20,000/- being the balance sale consideration. The appellant filed E.P.No.20 of 2017 and the Court also executed a sale deed on 08.10.2018, which has been registered as Doc.No.13083 of 2018 on the file of the SRO, Avinashi. The execution petition was thereafter terminated. For recovery of vacant possession, the plaintiff filed E.P.No.90 of 2019 and pending the said EP, the third parties moved an application under Order XXI Rule 58 of CPC. Two such applications were filed, one by Suresh (E.A.No.49 of 2018) and another by Shanmugam (E.A.No.53 of 2018). Both the said applications under Order XXI Rule 58 of CPC came to be dismissed by the learned District and Sessions Judge. Similar other claims by other third



parties were also rejected. The 1st respondent, in fact, filed an application under Order XXI Rule 58 of CPC, even in the earlier E.P.No.20 of 2017, which admittedly was dismissed. However, the 1st respondent renewed his request and filed yet another application under Order XXI Rule 58 of CPC in E.A.No.1 of 2023 in the EP filed for recovery of possession, namely E.P.No.90 of 2019. The executing Court has dismissed the said EP by allowing the Order XXI Rule 58 of CPC application and also at the same time, nullified various registered documents, namely a Will and also settlement deeds and power of attorney. It is aggrieved by this order that the decree holder, as plaintiff, is on appeal.

3.I have heard Mr.R.Thiagarajan, learned counsel for the appellant and Mr.S.Ravichandran, learned Additional Government Pleader for the 1st respondent.

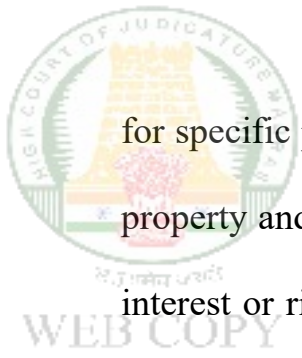
4.Mr.R.Thiagarajan, learned counsel for the appellant would firstly contend that in an execution petition filed for recovery of possession, an application under Order XXI Rule 58 of CPC was per se not maintainable in the first place and unfortunately, the executing Court proceeded, as if the application was one under Section 47 of CPC and decided it, on erroneous assumption of facts and ignoring settled legal position. The learned counsel would further state that when the 1st respondent had earlier made the very same attempt in E.P.No.20 of 2017 and the same had been dismissed and the said order has also become final, the 1st respondent was estopped from agitating the very



same issue in the subsequent EP, which was filed only for recovery of possession. In the absence of there being no challenge to the sale deed executed by the Court, the learned counsel would contend that the executing Court has proceeded to pass an erroneous and perverse order. He would also point out to the various directions issued by the executing Court and state that they were all beyond the scope of the very application filed by the 1st respondent and the executing Court had no powers to nullify a Will executed as cancelled, leave alone various other registered documents, namely settlement deeds and power of attorney.

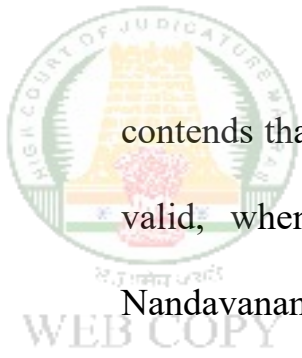
5. Inviting my attention to the mandate of Order XXI Rule 58 of CPC, the learned counsel would submit that the provision would stand attracted only when there is an attachment and in the present case, admittedly, there is no attachment sought for and in such circumstances, the application itself was not maintainable. He would therefore state that when there are no allegation of collusion and the 1st respondent has also failed to establish that there was an endowment in favour of the 1st respondent temple, the executing Court ought not to have allowed the objection application. He would therefore pray for the appeal being allowed.

6. Mr. R. Thiagarajan, would further submit that there is no endowment in the first place for the 1st respondent to even claim a right. In this regard, he would take me through the relevant exhibits. He would state that admittedly, the defendant in the suit



for specific performance, the 2nd respondent herein, has been in settled possession of the property and there is no shred of evidence on the side of the 1st respondent to claim any interest or right over the property. It is the further submission of Mr.R.Thiagarajan that no records have been produced by the 1st respondent to establish any semblance of right in the suit property and he would further contend that mere suspicion or entertainment of doubt that the property belongs to the temple will not be sufficient to clothe a right on the 1st respondent to object to an execution petition filed for recovery of possession, pursuant to a sale deed executed by the Court, in furtherance of a decree for specific performance. The learned counsel has also relied on the decision of the Hon'ble Supreme Court in *L.K.Prabhu @ L.Krishna Prabhu (Died) through Lrs Vs. K.T.Mathew @ Thampan Thomas and others*, reported in 2026 (1) CTC 113 and this Court in *Mirthubasini Vs. Easwaramurthy and others* in CMSA.No.20 of 2007 dated 05.08.2011.

7.Per contra, Mr.Ravichandran, learned Additional Government Pleader for the 1st respondent would submit that the executing Court has rightly relied on the evidence adduced by the parties in coming to the conclusion that the property had been endowed to the 1st respondent and any alienation or encumbrance to defeat the said vesting would be void. He would therefore state that there was no error committed by the executing Court in setting aside the various documents, while allowing the application under Order XXI Rule 58 of CPC. Pointing out to the settlement deed dated 16.04.1928 and referring to the clause that the said property cannot be alienated or encumbered and while so, he



contends that the Will executed by the Sadaiyappaswamy on 05.09.1975 is certainly not valid, when the properties have already been set apart for the purposes of a Nandavanam. He would therefore state that all the subsequent alienation were invalid, void and non-est and therefore, the executing Court, even though there was no prayer, was justified in setting aside the Will and all subsequent registered documents to ensure that the endowment in favour of the 1st respondent is given full and true effect. He would therefore pray for dismissal of the appeal.

8.I have carefully considered the submissions advanced by the learned counsel on either side.

9.After hearing the learned counsel for the parties, I frame the following point for consideration:

Whether the application under Order XXI Rule 58 of CPC is maintainable in an execution petition filed for recovery of possession?

10.It is not in dispute that the petitioner filed a suit for a specific performance against the 2nd respondent, who claimed to be the lawful owner of the suit property. The suit was decreed after contest and the decree also attained finality. The appellant thereafter initiated execution proceedings and after complying with the conditions in the

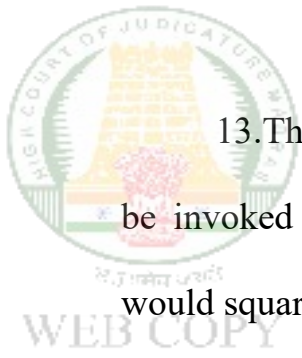


decree, this Court executed a sale deed in favour of the appellant, by way of a registered instrument. The execution petition was therefore terminated.

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11. In order to recover possession of the property from the 2nd defendant, the appellant filed E.P.No.90 of 2019. In the said execution petition, several third parties filed claim petitions which were also dismissed. One such application was filed by the 1st respondent, invoking Order XXI Rule 58 of CPC. It is the specific and primordial argument of Mr.R.Thiagarajan that in the execution petition filed for recovery of possession, the application under Order XXI Rule 58 of CPC cannot be maintained. It is in this regard that he has relied on the recent decision of the Hon'ble Supreme Court in *L.K.Prabhu's case*.

12. The Hon'ble Supreme Court, discussing the scope of Order XXI Rule 58 of CPC, held that Rule 58 of Order XXI is an adjudicatory mechanism for claims to property attached before judgment. The Hon'ble Supreme Court further held that though amended Rule 58 of Order XXI of CPC enlarges the scope of enquiry, still the adjudication must be based on proper pleadings and evidence. The Hon'ble Supreme Court further held that a claim petition either under Order XXI Rule 58 or Order XXXVIII Rule 38 of CPC cannot be enlarged or expanded to transform the attachment procedure into a substantive enquiry under Section 53 of the Transfer of Property Act.



13. This Court in *Mirthubasini's case*, held that Order XXI Rule 58 of CPC cannot be invoked when the property attached had already been sold. Both these decisions would squarely apply to the facts of the present case.

14. Firstly, there is no attachment of property that has been made or effected in the present case, admittedly even according to the respondents. Therefore, I do not find how there was even any scope for enquiry before the executing Court, to entertain the application under Order XXI Rule 58 of CPC. If at all the 1st respondent claimed an independent right, the 1st respondent ought to have initiated separate proceedings to establish its right in a properly instituted civil suit and ought to have sought for necessary reliefs of declaration. Without doing so, it was not open to the 1st respondent to invoke Order XXI Rule 58 of CPC and object to possession being handed over to the appellant. In fact, the 2nd respondent is admittedly in possession and the 1st respondent is not even in possession.

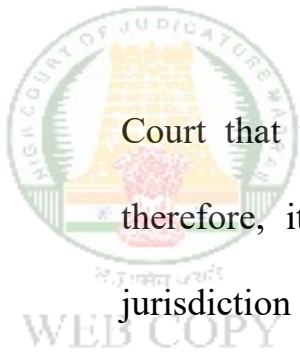
15. Further, as already discussed, the executing Court has already executed the sale deed in favour of the appellant and the same is also registered. Without there being a challenge to the said sale deed, no claim of any interest or title could be set up to dismiss an execution petition filed merely for recovery of possession, based on a decree of the Court, followed by a registered sale deed. In the light of the above, it is clear that the very application of under Order XXI Rule 58 of CPC was misconceived and



unfortunately, the executing Court has been carried away by the fanciful claim of the respondent that the property has been endowed to the temple and held, the agreement of sale and even earlier transactions to be not valid.

16.The executing Court ought to have seen that the prayers that have been sought for in the Order XXI Rule 58 of CPC application could not be granted in exercise of powers under Order XXI Rule 58 of CPC. However, unfortunately, the executing Court has proceeded to declare various documents as not being valid. Strangely, even a Will executed by one Sadaiyappaswamy is declared as cancelled. No person, much less any Court has the power to cancel a Will executed by the testator. A right of cancellation of the Will is available only to the maker and none else. The Courts can only declare the Will to be not genuine or untrue, but the Court can never declare a Will as cancelled. Similarly, the reliefs that ought to have been sought for by way of an independent suit could not and should not have been entertained under Order XXI Rule 58 of CPC.

17.It is also relevant to note that in the very same proceedings, when an attempt was made to question the executability of the decree under Section 47 of CPC, the executing Court has dismissed the application filed in the earlier E.P.No.20 of 2017, giving liberty to file a fresh application in E.P.No.90 of 2019. The said liberty was challenged by the petitioner before this Court in CRP.NPD.No.248 of 2025. However, when the said CRP was taken up for final hearing, it was brought to the notice of this



Court that the present appeal has already been filed and the same is pending and therefore, it was left open to the appellant to raise his contentions regarding the jurisdiction of the executing Court to pass the impugned order in the present appeal.

18. Even with regard to the right claimed by the 1st respondent, even assuming its objections were maintainable in an Order XXI Rule 58 of CPC application, the 1st respondent has failed to adduce sufficient and satisfactory evidence to establish that there has been a specific endowment or vesting of the subject property with the 1st respondent. The 1st respondent, not being a party to the suit and not claiming under the judgment debtor, could not have also maintained the Section 47 application and rightly realizing the same, though Section 47 application was invoked in E.P.No.20 of 2017, wisdom dawned on the 1st respondent and Section 47 was not invoked in the present case. However, the 1st respondent still committed an error by invoking Order XXI Rule 58 of CPC, which pertains only to objections regarding the attachment of the property and not relating to title.

19. The Order XXI Rule 58 of CPC is extracted hereunder for easy reference:

“58. Adjudication of claims to or objections to attachment of, property.—

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the



provisions herein contained: Provided that no such, claim or objection shall be entertained—

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

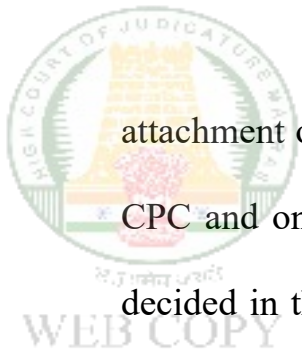
(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.”

20. Though after the amendment to Rule 58 of Order XXI of CPC, as also held by the Hon'ble Supreme Court, the scope of enquiry is enlarged, the fundamental requirement for invoking the said Rule is only when an objection is made to an attachment of property in execution of a decree. Therefore, the requirement of an



attachment of property in execution of decree is mandatory for invocation of Rule 58 of CPC and only then sub rule 2 of Rule 58 of CPC would apply for all questions to be decided in the said application. Therefore, the executing Court has clearly misread and misapplied Order XXI Rule 58 of CPC and granted the reliefs which are beyond the object and scope of Order XXI Rule 58 of CPC. For all the above reasons, the appellant is entitled to succeed. The point is answered in favour of the appellant.

21. In fine, the Appeal Suit is allowed and the order in E.A.No.1 of 2023 in E.P.No.90 of 2019 in O.S.No.622 of 2010 dated 28.08.2024 on the file of the II Additional District and Sessions Judge (FACAT), Tiruppur is set aside. However, dismissal of the appeal will not come in the way of the 1st respondent independently establishing its right, title and interest over the subject property, by filing a proper civil suit in the manner known to law, subject to law of limitation, if applicable. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

30.03.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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The II Additional District Sessions Judge (FACAT), Tiruppur.



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P.B.BALAJI.J,

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Pre-delivery Judgment made in
A.S.No.189 of 2025
& CMP.No.4215 of 2025

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