



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-07-2026

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

CMA No. 3749 of 2025

and

CRP No. 261 of 2026

CMA No. 3749 of 2025

V.Chinnusamy
S/o.Veerabathira Gounder

Appellant(s)

Vs

1. Thangaraj
s/o.Ramasamy Gounder

2.R.Mani
S/o.Ramasamy Gounder

Respondent(s)

PRAYER

Civil Miscellaneous Appeal filed under Order 43 Rule (1) of CPC r/2 96 of CPC, against the fair and decreetal order dated 06-02-2025 passed by the Learned II Additional District Judge, Salem in R.E.A.No.2 of 2022 in R.E.P.No.109 of 2019 in OS.No.87 of 2015.

For Appellant(s): Mr.L.Mouli

**CRP No. 261 of 2026**

V.Chinnusamy
S/o. Veerabathira Gounder

Petitioner(s)

Vs

R.Mani
S/o. Ramasamy

Respondent(s)

PRAYER

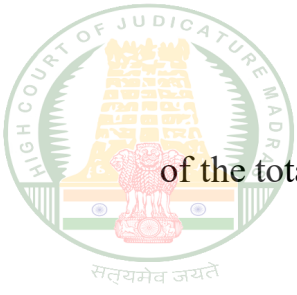
Civil Revision Petition filed under Section 115 of CPC., against the Fair and Final Order dated 06.02.2025 passed by the Learned II Additional District Judge Salem in R.E.P. No. 109 of 2019 in OS No. 87 of 2015 and prays to set aside the same.

For Petitioner (s): Mr.L.Mouli

COMMON JUDGMENT

The issue involved in both the appeals are common and hence, they are taken up together, heard and disposed of through this common order.

2.The appellant in CMANo.3749 of 2025, is the decree holder in OS.No.87 of 2015. The appellant filed the suit for recovery of money which was decreed as against the 2nd respondent by a judgment and decree dated 23.04.2018 and this decree has also become final. The appellant filed REP.No.109 of 2019, to attach and sell the undivided portion of 25 ¼ cents out



of the total extent of one acre.

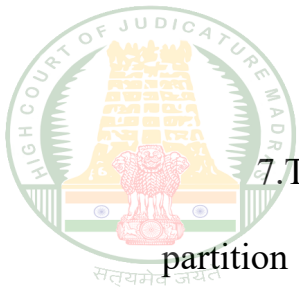
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3.The 1st respondent filed REA.No.2 of 2022 under Section 47 and Order 21 Rule 58 of CPC., claiming a right and title over the property to an extent of 50 ½ cents. The 1st respondent also took a stand that already a suit for partition has been filed in OS.No.346 of 2022, before the Additional Sub Court, Salem and the same is pending and in the meantime, the appellant is attempting to bring the undivided share in the property for sale, which will cause prejudice to the 1st respondent.

4.The Court below passed the fair and decreetal order in REA.No.2 of 2022, dated 06.02.2025, allowing the application filed by the 1st respondent herein. Aggrieved by the same, CMA No.3749 of 2025 has been filed.

5.Pursuant to the order passed in REA.No.2 of 2022, consequential order came to be passed in REP.No.109 of 2019, dismissing the execution petition. Aggrieved by the same, CRP. No.261 of 2026 has been filed before this Court.

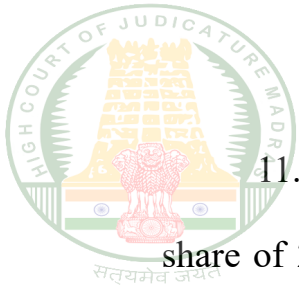
6.Heard the learned counsel for the appellant/petitioner. The 2nd respondent in CMA.No.3749 of 2025 and the sole respondent in CRP No.261 of 2026 has been served with notice and the name has also been printed in the cause list and there is no appearance either in person or through counsel.



7. The learned counsel for the appellant/petitioner submitted that the partition suit that was filed by the 1st respondent was 'dismissed for default' and therefore as on date, no suit is pending. In view of the same, the learned counsel submitted that the Court can proceed further to attach and sell the undivided share of 25 ¼ cents and insofar as demarcation of property is concerned, it can always be worked out in a suit for partition. The learned counsel submitted that such sale of undivided share is not barred in law.

9. The learned counsel for the 1st respondent in the appeal submitted that the 1st respondent is entitled for 50 ½ cents in the property and insofar as the remaining extent, the 1st respondent will not have any objections provided that the identification and demarcation of property should take place only in a suit for partition.

10. In the considered view of this Court, the decree was passed in the suit in the year 2018 and admittedly the judgment debtor is having share in the property to an extent of 50 ½ cents. Out of this share, the appellant who is the decree holder wants to attach and sell undivided share of 25 ¼ cents. That is the only manner in which the appellant will be able to recover the money due and payable under the decree.



11. There cannot be any objection if the Court below attaches undivided share of $25 \frac{1}{4}$ cents and permits the sale of the property to a potential auction purchaser. Ultimately, the purchaser of the property has to either demarcate the property with the co-operation of the 1st respondent in the appeal by way of entering into a partition deed or must do the same in a partition suit which ultimately will end up in demarcation and allotment of the respective shares. Till this happens, the purchaser of the undivided share of $25 \frac{1}{4}$ cents will only have a title to that extent and the actual identification and possession will take place only on the entire property being partitioned.

12. In the light of the above discussion, the order passed by the II Additional District Judge, Salem in REA.No.2 of 2022 in REP No.109 of 2019 dated 06.02.2025, is hereby set aside. In view of the same, the consequential order passed in REP. No.109 of 2019 dated 06.02.2025, is also set aside. There shall be a direction to the Execution Court to restore the Execution Petition on file and proceed further with the attachment and sale of undivided share of $25 \frac{1}{4}$ cents. The above observations made by this Court sufficiently takes care of the interest of the 1st respondent. The auction purchaser ultimately will have to resort to some mechanism in accordance with law to carve out and identify the extent of $25 \frac{1}{4}$ cents that is purchased by him in the Court auction.



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13. In the result, both the Civil Miscellaneous Appeal and Civil Revision Petition, are allowed in the above terms. No costs.

31-07-2026

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

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To

The II Additional District Judge Salem.



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N.ANAND VENKATESH J.

KP

**CMA No. 3749 of 2025
and CRP No. 261 of 2026**

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