



C.R.P(MD)No.1864 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2026

CORAM

THE HON'BLE MR. JUSTICE S.SOUNTHAR

C.R.P.(MD)No.1864 of 2026

1.N.Vimala
2.N.Subash Chandra Bose
3.N.Rajini Raja

.. Petitioners

Vs.

1.Jeya Seela
2.Thangapushpam
3.Dinesh
4.Ilavarasi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to direct the Principal Subordinate Judge, Tenkasi to number the I.A.SR. 3075 of 2025 in O.S.280 of 2018 on the file of Prinicipal Sub-Court, Tenkasi.

For Petitioners : Mr.D.Venkatachalam

ORDER

Since no adverse order is proposed to be passed against the respondents, notice to them is dispensed with.



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2.The Civil Revision Petition has been filed seeking a direction to the trial Court to number the application filed by the petitioners seeking to set aside the ex parte preliminary decree passed against them on 28.01.2025.

3.The first respondent herein filed a suit seeking recovery of money based on a mortgage deed executed by the husband of the first petitioner and the father of the petitioners 2 and 3, namely, Nainar Raja, in favour of one Pon Senthil Kumar and the deceased fourth defendant, namely, Hariharasubramanian. The legal heirs of the deceased fourth defendant in the suit were subsequently brought on record as defendants 5 to 7/respondents 2 to 4. It is the case of the first respondent/plaintiff that the said Pon Senthil Kumar had subsequently executed a made over document in favour of the plaintiff/first respondent. Based on the said document, the suit came to be filed for recovery of the mortgage money against the petitioners, who are the legal heirs of the original mortgagor.

4.The petitioners, who were arrayed as defendants 1 to 3, failed to appear before the trial Court and were set ex parte. Consequently, an ex parte preliminary decree came to be passed against them on 28.01.2025. Thereafter, the petitioners filed the instant application to



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set aside the said ex parte preliminary decree. However, the trial Court returned the application on the ground that the judgment dated 28.01.2025 was a contested one and, therefore, an application under Order IX Rule 13 of the Code of Civil Procedure was not maintainable. The petitioners re-presented the papers on 03.07.2025 stating that an ex parte decree had been passed against them and, therefore, an application under Order IX Rule 13 CPC was maintainable. The papers were once again returned by the trial Court on the ground that the earlier return had not been complied with. Aggrieved thereby, the petitioners have filed the present Civil Revision Petition.

5.A perusal of the typed set of papers, particularly the written statement filed by the fourth defendant, the predecessor in interest of the defendants 5 to 7 who were subsequently impleaded as legal representatives of the fourth defendant, would indicate that the defendants 4 to 7 had only supported the case of the plaintiff in their capacity as co-mortgagees along with Pon Senthil Kumar. They did not contest the suit claim and, in fact, sailed with the plaintiff. In such circumstances, merely because the ex parte judgment and decree dated 28.01.2025 were passed after hearing the defendants 4 to 7, the same cannot be treated as a contested decree insofar as the defendants 1 to 3 are concerned.



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6. A perusal of the judgment dated 28.01.2025 would further show that the petitioners/defendants 1 to 3 were set ex parte, whereas the defendants 4 to 7 supported the case of the plaintiff and claimed a half share in the mortgage debt in their capacity as co-mortgagees. Therefore, the judgment and decree dated 28.01.2025 cannot be construed as a contested decree insofar as the defendants 1 to 3 are concerned.

7. In view of the above, the trial Court is directed to number the petition filed by the petitioners in I.A.S.R. No.3075 of 2025 and dispose of the same in accordance with law, after affording opportunity to the respondents therein and after issuing notice to them.

8. With the above directions, this Civil Revision Petition stands disposed of. No costs.

16.07.2026

Index :Yes

Internet :Yes

NCC :Yes

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To

1.The Principal Subordinate Judge, Tenkasi.

2.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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