

SA(MD).No.88 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment reserved on 16.06.2026	Judgment pronounced on 03.07.2026
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THE HON'BLE MR. JUSTICE P.B.BALAJI

SA(MD) No.88 of 2026 and
CMP(MD).No.2950 of 2026

Radhamani (died)

1.K.Chitra

2.D. Abirami

... Appellants / defendants

Vs.

Idol Sri Kundaleswaraswamy,
Chettipalayam, Karur Taluk,
rep. By its Executive Officer
Sri Kalyana Pasupatheeswaraswamy
Devasthanam.

.. Respondent / Plaintiff

Prayer : Second Appeal filed under Section 100 CPC against the Judgment and Decree dated 01.08.2025 passed in A.S.No.41 of 2024 on the file of the Principal Subordinate Judge, Karur, confirming the Judgment and decree dated 20.03.2024 passed in I.A.No.10 of 2024 in O.S.No.289 of 2022 on the file of the Principal District Munsif, Karur.

For Appellants	: Mr.Naveen Kumar Moorthi for Mr.S. Varsha
For respondent	: Mr.P. Athimoolapandian



SA(MD).No.88 of 2026

WEB COPY

JUDGMENT

The second appeal was listed before me for admission. Considering the fact that the appeal arises out of an order passed under Order VII Rule 11 CPC and the narrow scope of the second appeal, I directed the learned counsel for the appellants to serve notice on the respondent / plaintiff. Thereafter, the respondent also entered appearance through counsel and, in fact, raised a preliminary objection with regard to the maintainability of the second appeal itself.

2. I heard Mr.Naveen Kumar Murthi, learned counsel appearing for Ms. S. Varsha, learned counsel for the appellants, and Mr. P. Athimoola Pandian, learned counsel for the respondent.

3. The objection with regard to the maintainability of the second appeal is on the ground that an order of remand passed in an appeal is appealable under Order XLIII Rule 1(u) of the Code of Civil Procedure and, when a specific appellate remedy is provided, the judgment of the first Appellate Court cannot be challenged under Section 100 of the Code of



SA(MD).No.88 of 2026

Civil Procedure, by way of a Second Appeal.

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4. Mr. Naveen Kumar Murthi, learned counsel for the appellants, fairly admitted the position that Order XLIII Rule 1(u) CPC provides for a regular appeal against an order of remand. However, he submitted that, in any event, the matter would ultimately come before this Court and, therefore, no prejudice would be caused to the respondent/plaintiff if the second appeal is converted into a Civil Miscellaneous Appeal. He also undertook to pay the applicable court fee payable on a regular appeal under Order XLIII Rule 1(u) CPC. In support of his submissions, Mr. Naveen Kumar Murthi relied upon the following two decisions:

1) The judgment of the Hon'ble Supreme Court, reported in **2004 (4) Supreme Court Cases 26** in the case of **Narayanan Vs. Kumaran and others.**

2) The judgment of the Hon'ble Supreme Court, reported in **2007 (13) Supreme Court Cases 293** in the case of **Soni Dineshbhai Manilal and others Vs. Jagjivan Mulchand Chokshi.**



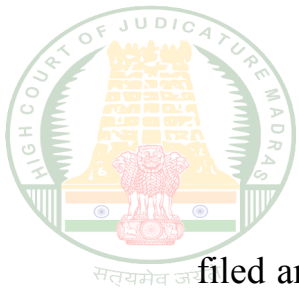
SA(MD).No.88 of 2026

WEB COPY

5. Per contra, Mr. P. Athimoola Pandian, learned counsel for the respondent, submitted that the scope of a second appeal is entirely different from that of an appeal under Order XLIII Rule 1(u) CPC and that, therefore, the request for conversion of the present second appeal into a Civil Miscellaneous Appeal cannot be acceded to, notwithstanding the appellants' willingness to make good the deficit court fee. In support of his submissions, he placed strong reliance on the decision of the Hon'ble Supreme Court reported in *AIR 2012 SC 3788*, in the case of **Jegannathan Vs Raju Sigamani and Another**. He, therefore, prayed that the second appeal be dismissed as not maintainable. However, he fairly submitted that liberty may be granted to the appellants to prefer an appeal as contemplated under Order XLIII Rule 1(u) CPC, since they had approached the wrong forum by preferring a second appeal.

6. I have carefully considered the submissions made by the learned counsel on either side.

7. The respondent/plaintiff filed a suit in O.S. No. 289 of 2002 against the appellants herein. Pending the suit, the appellants/defendants



SA(MD).No.88 of 2026

WEB COPY

filed an application under Order VII Rule 11 CPC seeking rejection of the plaint, which came to be allowed by the trial Court. Aggrieved by the rejection of the plaint, the respondent/plaintiff preferred A.S. No. 41 of 2024. By judgment and decree dated 01.08.2025, the first Appellate Court allowed the appeal and remanded the matter to the trial Court. Aggrieved by the said order of remand passed by the first Appellate Court, the present second appeal has been filed. At this juncture, there can be no qualms that an order of remand passed by the first Appellate Court is appealable under Order XLIII Rule 1(u) CPC.

8. Mr. Naveen Kumar Murthi, learned counsel for the appellants, also fairly admitted this legal position. In such view of the matter, what remains to be considered is whether the request made by the appellants for conversion of the second appeal into a Civil Miscellaneous Appeal can be entertained and permitted in law.

9. The Hon'ble Supreme Court, in **Narayanan's case**, held that an appeal lies against an order of remand under Order XLIII Rule 1(u) CPC and further held that such an appeal under Order XLIII Rule 1(u) CPC should be heard on the grounds enumerated under Section 100 CPC.



SA(MD).No.88 of 2026

WEB COPY

Relying upon the said ratio, Mr. Naveen Kumar Murthi submitted that, when the Hon'ble Supreme Court has clearly laid down the legal position governing an appeal under Order XLIII Rule 1(u) CPC, there can be no embargo on this Court converting the present second appeal into a Civil Miscellaneous Appeal, subject to the payment of the applicable court fee. Further, Mr. Naveen Kumar Murthi placed strong reliance on the decision in ***Soni Dineshbhai Manilal***, wherein, at paragraph No. 24, the Hon'ble Supreme Court held as follows:

“24. In a given case the appellate court in exercise of its inherent jurisdiction can convert one type of appeal to the other. Forum for preferring a second appeal as also an appeal under Order 43 Rule 1(u) is the same, namely, the High Court. As the scope of an appeal under Order 43 Rule 1(u) is wider than a second appeal, the appellants on their own showing are not prejudiced in any manner, if the High Court proceeded to consider the question involved in the appeal in its impugned judgment.

10. Referring to the above paragraph, the learned counsel for the appellants submitted that the Hon'ble Supreme Court has clearly observed that the appellate Court, in the exercise of its jurisdiction, can convert one type of appeal into another and that the said principle squarely applies to the facts of the present case.



SA(MD).No.88 of 2026

WEB COPY

11. In the later decision in **Jegannathan's case**, which arose from the Madurai Bench of the Madras High Court, the Hon'ble Supreme Court held that, since an order of remand is specifically made appealable under Order XLIII Rule 1(u) CPC, the only remedy available to an aggrieved party is to challenge such an order by preferring an appeal under the said provision. In fact, in the said decision, the Hon'ble Supreme Court also considered its earlier decision in **Narayanan's case**, discussed hereinabove. The Hon'ble Supreme Court, in the later decision, held that what was decided in **Narayanan's case** was only that an appeal under Order XLIII Rule 1(u) CPC should be heard on the grounds enumerated under Section 100 of the Code of Civil Procedure. The Hon'ble Supreme Court further held that the said decision cannot, in any manner, be interpreted to mean that a second appeal is maintainable against an order of remand.

12. Though in **Soni Dineshbhai Manilal's case**, the Hon'ble Supreme Court, at paragraph 24, expressed that it is permissible for the appellate Court to convert a second appeal into an appeal under Order



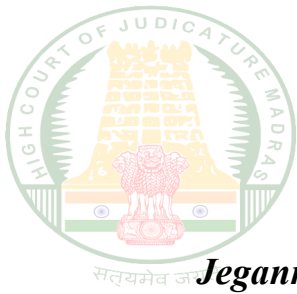
SA(MD).No.88 of 2026

WEB COPY

XLIII Rule 1(u) CPC and further held that the scope of an appeal under Order XLIII Rule 1(u) CPC is wider than that of a second appeal and that no prejudice would be caused to the appellants, I am unable to follow the said dictum of the Hon'ble Supreme Court for the following reasons:

(i) In ***Soni Dineshbhai Manilal's*** case, the second appeal had already been entertained against the order of remand, and substantial questions of law had also been framed and decided by the High Court. It was against the said judgment that the matter was taken up to the Hon'ble Supreme Court. In such circumstances, taking into account the fact that the matter had been pending for more than 40 years, as also the nature of the dispute and the quantum involved, the Hon'ble Supreme Court did not deem it necessary to hold that the second appeal was not maintainable. Therefore, I do not see how the said decision can be applied to the facts of the present case.

ii) Secondly, the decision in ***Jegannathan's*** case is later than the decision in ***Soni Dineshbhai Manilal's*** and directly deals with the issue involved in the present second appeal, namely, the maintainability of a second appeal against an order of remand. The Hon'ble Supreme Court, in



SA(MD).No.88 of 2026

WEB COPY

Jegannathan's case, has categorically held that a second appeal is not maintainable against an order of remand passed by the first Appellate Court and that the proper remedy is to prefer an appeal under Order XLIII Rule 1(u) CPC.

13. In view of the above, I am unable to accept the request made by Mr. Naveen Kumar Murthi that, subject to payment of the applicable court fee, the second appeal may be converted into a Civil Miscellaneous Appeal and be heard by this Court.

14. For the above reasons, the second appeal is dismissed as not maintainable. Liberty is, however, granted to the appellants to prefer a regular appeal under Order XLIII Rule 1(u) CPC, within a period of 30 days from the date of receipt of a copy of this judgment. If any such appeal is filed within the said period along with the applicable court fee payable thereon, the Registry shall number the Civil Miscellaneous Appeal without putting limitation against the appellants. No costs. Consequently, the connected Miscellaneous Petition is closed.

03.07.2026



SA(MD).No.88 of 2026

Neutral Citation Case : Yes / No

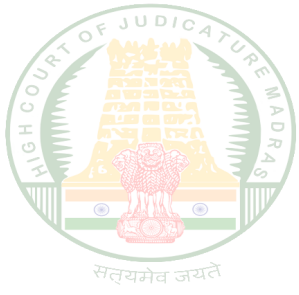
Speaking / Non-speaking order

Index : Yes/No

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To

1. The Principal Subordinate Judge, Karur.
2. The Principal District Munsif, Karur.



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SA(MD).No.88 of 2026

P.B.BALAJI.J,

trp

Pre-delivery Judgment made in
SA(MD) No.88 of 2026 and
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03.07.2026