



C.R.P(MD).No.1695 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2025

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.1695 of 2025 and
CMP(MD).No.9063 of 2025

P.Palanichamy

...Petitioner

Vs.

1.Karuppayee

2.Aasai Thembu

3.Rabeek Raja

4.Jalal

... Respondents

(R3 and R4 are hereby given up)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair order and final order dated 12.03.2025 made in I.A.No.5 of 2024 in O.S.No.22 of 2020 (O.S.No.884 of 2012) on the file of the Subordinate Court, Melur.

For Petitioner : Mr.V.Meenakshi Sundaram



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ORDER

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This civil revision petition is filed challenging the order dated 12.03.2025 made in I.A.No.5 of 2024 in O.S.No.22 of 2020 (O.S.No.884 of 2012) on the file of the Subordinate Court, Melur.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the fourth defendant in the suit filed by the second respondent/plaintiff. The second respondent/plaintiff none other than the son of the first respondent/first defendant. Initially, the second respondent/plaintiff filed a suit in O.S.No.884 of 2012 on the file of the I Additional Subordinate Court, Madurai, seeking for partition as against his mother and the subsequent purchasers. In the said suit, an *ex-parte* decree was passed as against the first and fourth respondents herein/first and third defendants. The said suit was dismissed on 21.03.2018. Challenging the same, the second respondent/plaintiff filed an appeal before the lower appellate Court in A.S.No.90 of 2018 on the file of the Subordinate Court, Melur, wherein the learned appellate Judge allowed the appeal and remanded the matter back to the trial Court for examination of the first respondent/first defendant. After remanding the matter by the first appellate Court, the suit in O.S.No.884 of 2012 was renumbered as O.S.No.22 of 2020. Thereafter, the



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petitioner filed an application before the trial Court for examination of the first respondent. However, since the first respondent not appeared before the trial Court, he filed an interlocutory application to appoint an Advocate Commissioner to record the evidence of the first respondent. In her evidence, she deposed before the Advocate Commissioner as if the subject property was purchased through the income of the second respondent /plaintiff in order to defeat the stand of the petitioner before the trial Court and subsequently, the first respondent filed I.A.No.5 of 2024 in O.S.No.22 of 2020 to set aside the decree and for filing a written statement. The said interlocutory application was allowed with one line order. Challenging the same, the present revision petition is filed.

3. The learned counsel appearing for the petitioner further would submit that as per Order 9 Rule 7 of the Code of Civil Procedure, immediately after the plaint averment, the defendant would have filed a written statement. However, in the present case, after the examination of the first respondent, interlocutory application was filed to file a written statement and set aside the *ex-parte* order. Such a reversal stand is impermissible one. Hence, he pleads before this Court to grant liberty to the petitioner to canvass the ground before the trial Court relating to the *malafide* intention of the first respondent, who reverse her stand to defeat the claim of the petitioner, who



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purchased the property from her in the year 2008, whereas the suit is filed in the year 2012, wherein the first respondent /first defendant was set as *ex-parte* and has not filed a written statement and now, she cannot take a different stand in her evidence and file a subsequent written statement to defeat the rights of the innocent purchaser.

4. In view of the limited relief sought for by the petitioner, this Civil Revision Petition is disposed of with liberty tot he petitioner to canvass all those alleged *malafide* intention of the first and second respondents before the trial Court at the time of trial. No costs. Consequently, connected Miscellaneous Petition is closed.

18.06.2025

NCC:Yes/No
Index:Yes/No
Rmk

To:-

1. The Subordinate Judge, Melur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI, J.

Rmk

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