



CRP(MD). No.2028 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 12/08/2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRP (MD). No.2028 of 2025 and
CMP(MD) No.11749 of 2025**

Bharathamani

... Petitioner

Vs

1. Muthulakshmi

Pandi (Died)

2. Rajangam

3. Chandran

4. Surya

5. Kasiammal

... Respondents

PRAYER :-Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in C.M.A.No.1 of 2024 on the file of the Sub Court, Usilampatti, dated 25.04.2025 which was reversed in I.A.No.129 of 2023 in O.S.No.162 of 2022 on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti, dated 22.12.2023.



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For Petitioner : Mr.T.C.S.Thillainayagam

For Respondents : Mr.P.Ammavasai for R1
No appearance for R2 to R5

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ORDER

This Civil Revision Petition is filed against the fair and decreetal order passed in C.M.A.No.1 of 2024 on the file of the Sub Court, Usilampatti, dated 25.04.2025, which was reversed in I.A.No.129 of 2023 in O.S.No.162 of 2022 on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti, dated 22.12.2023.

2. The petitioner is the defendant in OS No.162/2022 on the file of the District Munsif Cum Judicial Magistrate No.I, Usilampatti. The said suit was filed by the respondent/plaintiff for partition and declaration, in which, the petitioner filed IA No.129/2023 for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure and the said interlocutory application was allowed on 22.12.2023 against which, an appeal has been preferred in CMA No.1/2024 by the plaintiff/first respondent. The said appeal came to be allowed. Challenging the said



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judgment, the petitioner is before this Court.

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3. The learned counsel for the petitioner would submit that the order passed under Order VII Rule 11 of the Code itself is a decree in terms of 2(2) of the Code of Civil Procedure, which is appealable before the lower appellate Court instead of filing an appeal before the lower appellate Court filing Civil Miscellaneous Appeal is not at all maintainable and hence, the judgment passed vide impugned judgment in CMA No.1 of 2024 is liable to be interfered with. He would further submit that since the said impugned order is contrary to the decision in **2013(6) CTC 467 [Govindarajan Padayatchi v. Premananda Vijayakumar @ Prem Anand and others]**, he prays for interference

4. Heard the learned counsel for the first respondent/plaintiff on the above submissions, who would submit that in the case of allowing the present civil revision petition, this Court may exclude the period of limitation from the date of filing of the appeal before the lower appellate Court and the present Civil Revision Petition.



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5. It is not in dispute that in order to strike off the plaint in OS No. 162 of 2022, an application in IA No.129/2023 has been filed and the same was allowed. Against the said order, the remedy available to the plaintiff/first respondent is only before the lower appellate Court by way of appeal, since the order passed in IA No.129/2023 is appealable only before the lower appellate Court and not by way of civil miscellaneous appeal. However, without filing an appeal before the lower appellate Court, filing CMA before the sub Court is not maintainable as per the decision of this Court (supra). For easy reference, para 8 to para 10 are usefully extracted hereunder:

“8. In this case, as against the rejection of the Plaint, the Appellant has already filed an Appeal. For the sake of convenience, the definition of Decree found in Section 2(2) is reproduced as follows:

"Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the Suit and may be either preliminary or final. It shall be deemed to include the rejection of a Plaint and the determination of any question within Section 144, but shall not include

- (a) any adjudication from which an Appeal lies as an Appeal from an order, or*
- (b) any Order of dismissal for default.*



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Explanation: A decree is preliminary when further proceedings have to be taken before the Suit can be completely disposed of. It is final when such adjudication completely disposes of the Suit. It may be partly preliminary and partly final."

9. A careful reading of the said clause will make it clear that the definition of Decree shall include rejection of a Plaintiff. The rider provided thereto shows that definition of Decree shall not include any adjudication from which an Appeal lies as an Appeal from orders will make it clear that Order rejecting the Plaintiff which is deemed to be a decree shall not be included in the category of orders, which are appealable under Order 43, C.P.C.

10. For the above said reasons, this Court holds that the Order passed in I.A. No.3 of 2012 holding that the Plaintiff is liable to be rejected itself shall be deemed to be a decree and if at all any Judgment and Decree has been pronounced consequent to such Order, that will be only superfluous and an Appeal filed against the rejection of the Plaintiff as a decree shall be enough to challenge the findings made in the Interlocutory Application to the effect that the Plaintiff is liable to be rejected. Since challenge is already made in the Appeal in A.S. No.708 of 2012, the present Civil Miscellaneous Appeal is misconceived and hence, the same is dismissed. The Appellant shall work out his remedy in the Appeal Suit, by raising all the grounds of challenge to the rejection of the Plaintiff."

6. The said decision is squarely applicable to the facts of the present case. In the present case also, when the order passed in IA No. 129/2023 is appealable and it is a decree in terms of 2(2) of the Code, the



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order impugned in CMA No.1/2024 is liable to be interfered with.

Accordingly, the Civil Revision Petition is allowed and the order in CMA No.1 of 2024 is set aside. The first respondent is at liberty to work out his remedy in the manner known to law by preferring regular appeal. No costs. Consequently connected Miscellaneous Petition is closed.

12.08.2025

NCC : Yes/No
Index : Yes/No
RR

TO

- 1.The District Munsif cum Judicial Magistrate No.I, Usilampatti
- 2.VR Section
Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI,J

RR

**ORDER
IN
CRP(MD) No.2028 of 2025**

Date : 12/08/2025