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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 08.12.2025

Order pronounced on : .01.2026

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.180 of 2025

& CMP.No.1267 of 2025

Abul Kalam Azad

... Petitioner/Defendant

Vs.

A.L.Jawaharlal

... Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the docket order dated 09.12.2024 in I.A.No.22 of 2007 in O.S.No.13 of 2005 on the file of the learned Principal District and Sessions Judge, Perambalur.

For Petitioner : Mr.V.Raghavachari
Senior Counsel
for Mrs.V.Srimathi

For Respondent : Mr.G.Ilamurugu



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ORDER

The revision petitioner is the defendant in O.S.No.13 of 2005 on the file of the Principal District and Sessions Judge, Perambalur. The executing Court has passed a docket order in I.A.No.22 of 2007 in the suit, directing the Advocate Commissioner to carry out the warrant and submit his report. The said order is under challenge in the present revision petition.

2.I have heard Mr.V.Raghavachani, learned Senior Counsel for Mrs.V.Srimathi, learned counsel for the petitioner and Mr.G.Ilamurugu, learned counsel for the respondent.

3.Mr.V.Raghavachari, learned Senior Counsel appearing for the revision petitioner would submit that the suit filed in O.S.No.13 of 2005 was referred to the Lok Adalat and an award came to be passed with the consent of the parties before the Lok Adalat. He would further state that in terms of the Lok Adalat award, the parties, by resorting to sale of the common properties belonging to them, had to discharge the pending Bank loan and



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that the respondent/plaintiff had to pay the 1st defendant a sum of Rs.42 lakhs in respect of the expenses incurred by the revision petitioner. In this connection, the learned Senior Counsel would invite my attention to clause (3) of the award of the Lok Adalat dated 16.06.2006.

4.It is the contention of the learned Senior Counsel, Mr.V.Raghavachari, that after 2001, the plaintiff had abandoned the construction and it was only the revision petitioner who spent substantial monies, out of his own income, to complete the construction. He would further state that the Bank loan has been discharged from and out of the independent income of the revision petitioner and also by sale of valuable jewels belonging to his wife and sale of one of his personal properties, in order to avoid the common properties being brought for sale in public auction. The learned Senior Counsel would therefore state that it is only under such circumstances that the parties agreed for settling the matter before the Lok Adalat. He would however state that the respondent/plaintiff is now attempting to project a case, as if the sum of Rs.42 lakhs agreed to be paid by the 1st respondent was from and out of the sale proceeds of the common properties. It is the contention of the learned Senior Counsel,

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Mr.V.Raghavachari, that there was no necessity for the property belonging to the revision petitioner to be sold, in order to pay a sum of Rs.42 lakhs, which was due and payable by the respondent.

5.It is the argument of the learned Senior Counsel, Mr.V.Raghavachari, that the payment of Rs.42 lakhs by the respondent to the petitioner was independent of the sale of the common properties, which was agreed upon only for discharge of the subsisting Bank loans. The learned Senior Counsel would further state that not a single document has been filed by the respondent to establish that he has contributed monies for discharging the Bank loan. He would also invite my attention to the oral evidence adduced by the parties, where the 1st respondent has admitted that he was not possessed of sufficient funds and he was requesting the petitioner to alienate his properties, in order to avoid the common properties being brought for sale in public auction. He would refer to the fact that after sale of one of the joint properties, the Bank loan itself has been cleared by the petitioner, expending more than Rs.60 lakhs out of his pocket and referring to the passbook of State Bank of India, relating to the current account, the learned Senior Counsel would submit that after sale of a property, in August



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2006, the respondent/plaintiff has paid a sum of Rs.10 lakhs from and out of the sale consideration and on the date of sale, the revision petitioner has paid Rs.16 lakhs, thereby substantially brining down the Bank loan from Rs.32 lakhs to Rs.8,88,000/- or thereabouts.

6.The learned Senior Counsel would therefore state that even thereafter the amounts have been paid only by the petitioner, with no contribution from the respondent/plaintiff. In support of the same, the learned Senior Counsel relies on the remittances that were made by the revision petitioner into the Bank account, periodically, to wipe out the loan in entirety.

7.The learned Senior Counsel would therefore state that when the Bank loan had already been discharged, the Court below ought not to have directed the Commissioner to bring the common properties for sale when the parties had agreed to sell the said properties only for the purposes of discharging the common properties. He would further state that the executing Court, without even considering the oral and documentary evidence available on record and without appreciating the terms of the Lok



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Adalat award, has erroneously placed reliance on the Division Bench judgment of this Court and the revisional Court in CRP.(NPD).Nos.1920 of 2019 & 1045 of 2021 dated 23.02.2024. In this regard, it is the argument of the learned Senior Counsel, Mr.V.Raghavachari, that though the the petitioner challenged the Lok Adalat award in revision before this Court and the Division Bench, by judgment dated 26.07.2018, the Division Bench had only held the revisions as not maintainable as it defeats the objects of the Legal Services Authorities Act, 1987.

8.Pointing out to the liberty granted to the parties to file a writ petition under Article 226 of Constitution of India or petition under Article 227 of Constitution of India, challenging the award of the Lok Adalat, the revisions and the first appeal filed by the revision petitioner were dismissed. The learned Senior Counsel would therefore state that when the Division Bench has decided only on the maintainability of the appeal and held that the appeal and the revisions were not maintainable, then any findings given on other issues would not amount to *res judicata* and can always be challenged in independent proceedings. It is in this regard that he refers to the liberty granted by the Hon'ble Division Bench to challenge the Lok Adalat award



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under Articles 226 or 227 of Constitution of India. He would therefore state that all references to the liability of the respondent to pay Rs.42 lakhs from and out of the sale of common property cannot be binding on the revision petitioner and cannot be put against the revision petitioner on the ground of *res judicata*. In this regard, the decision of the Division Bench of this Court in *R.Srinivasa Row Vs. Kaliaperumal (Minor) by father and maternal guardian Veeran and another*, reported in 1965 SCC Online Mad 259 and *Corporation of Madras, represented by its Commissioner Vs. P.R.Ramachandran and others*, reported in 1975 SCC Online Mad 203 have been relied on by the learned Senior Counsel.

9.The learned Senior Counsel, Mr.V.Raghavachari, would therefore submit that the executing Court ought to have independently gone into the contributions made by the respective parties and decided on their respective entitlements to the amounts payable to the other, instead of directing the Commissioner to sell the common property, especially when the Bank loan had already stood discharged by the petitioner and the obligation / liability was only upon the 1st respondent to pay Rs.42 lakhs to the revision petitioner which cannot be from and out of the sale of any items of common property.



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10.Per contra, Mr.G.Ilamurugu, learned counsel appearing for the respondent/plaintiff would submit that on the date of sale of one of the common items of the property, the parties had entered into an agreement on 24.08.2006, in and by which, the revision petitioner has accepted that the entire Bank loan was substantially discharged from and out of the common funds of both the revision petitioner and the respondent and therefore, it is incorrect on the part of the petitioner to now contend that it was only the petitioner who spent entire out of his own pocket. In this connection, the learned counsel would also invite my attention to the counter affidavit filed by the revision petitioners in I.A.Nos.30 & 31 of 2007.

11.The learned counsel for the respondent would further state that the clause (3) of the award passed by the Lok Adalat is unambiguous and very clear and the steps to be taken by the parties is set out in clearly. In such circumstances, it is not open to the petitioner to contend that the sum of Rs.42 lakhs is to be paid from and out of the pocket of the respondent/plaintiff, when the compromise itself recorded that the property belong to both parties and it was only to adjust the amounts that was spent



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by the revision petitioner to put up construction, it was agreed that he would be paid an additional Rs.42 lakhs.

12.The learned counsel for the respondent would also take me through the findings of the Division Bench of this Court with regard to the payment of Rs.42 lakhs from and out of the sale of common properties. He would state that the said findings have become final with the dismissal of the Special Leave Petition in SLP.(Civil).Nos.11525 & 11526 of 2019 by order dated 09.05.2019, filed by the revision petitioner, before the Hon'ble Supreme Court. He would also invite my attention to the decision of this Court in CRP.(NPD).Nos.1920 of 2019 and 1045 of 2021, where the revision petitioner challenged the compromise award before the Lok Adalat on 16.06.2006 and also the order dismissing the application filed by the petitioner seeking a direction to the respondent to pay Rs.42 lakhs, together with interest at 24% per annum and apart from the same, pay Rs.60,90,789/-, together with interest.

13.Referring to the said order, the learned counsel for the respondent would submit that the very same issue that the sum of Rs.42 lakhs cannot be



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paid out of the sale of common properties was agitated even the above mentioned revisions and this Court did not find merit in the said argument and dismissed both the revisions. He would therefore state that when the order of this Court in the above referred revisions came to be final on 23.02.2024, it was no longer open to the petitioner to continue to harp on payment of Rs.42 lakhs to be made by the respondent from and out of his pocket. The learned counsel would therefore pray for dismissal of the revision petition, contending that there is no error committed by the executing Court.

14.I have carefully considered the submissions advanced by the learned Senior Counsel for the petitioner and the learned counsel for the respondent.

15.The fulcrum of the arguments of both sides revolves around the terms of compromise arrived at by the parties before the Lok Adalat which culminated in an award dated 16.06.2006. Under the said compromise terms, the parties, in clause (1), had agreed that all the suit properties were purchased for the common benefit and enjoyment of the petitioner and the

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respondent. In clause (2), the parties have acknowledged that the revision petitioner has expended monies, by sale of properties belonging to him, to complete the construction of the marriage hall and in this regard, it has been agreed that the total expenses incurred by the revision petitioner has been crystallized at Rs.42 lakhs. In clause (3), it has been agreed that items 1, 2, 3 and the vacant plots adjacent to the Kalyana Mandapam in the third item would be sold on first come first serve basis, depending on whichever property is capable of being sold first by joint efforts of both the parties and the subsisting loan with State Bank of India, Perambalur Branch would be fully settled first. Secondly, as agreed in clause (2), the expenses incurred by the revision petitioner to tune of Rs.42 lakhs would be paid to him. Thereafter, remaining properties would be amicably partitioned between the revision petitioner and the respondent.

16.From a reading of the above terms of compromise, it is clear that items 1, 2 and 3 were agreed to be the common properties of the revision petitioner and the respondent. The parties only agreed that an additional sum of Rs.42 lakhs would be paid to the revision petitioner on account of the expenses incurred by him. It was accepted by the respondent/plaintiff.



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Clause (3) is the most vital and relevant clause to decide whether the sum of Rs.42 lakhs is to be paid by the 1st defendant from and out of his pocket/share or the said amount is also to be paid from and out of the sale of common properties.

17.As already referred, clause (3) clearly indicates that as a first step, firstly, either items 1, 2 and 3 whichever is capable of being sold quickly was agreed to be sold and the sale proceeds were to be applied for settling/discharging the Bank loan of SBI. Secondly, the amount of Rs.42 lakhs which has been crystallized under clause (2) should be paid to the revision petitioner and only thereafter, the remaining properties were to be partitioned “அதன் பின்னர் எஞ்சிய சொத்தை மட்டும்” r/w the steps agreed upon, namely “முதலாவதாக, இரண்டாவதாக”.

18.Keeping in mind the first clause that both the petitioner and the respondent have agreed that they have an equal share in all items of suit properties clearly indicates that the amount of Rs.42 lakhs was contemplated only from and out of the sale of the items 1 or 2 or 3. No other interpretation can be given to the said clause (3) of the compromise terms arrived at before

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the Lok Adalat. In fact, this issue has been elaborately argued before the Division Bench of this Court as well and at paragraph No.42, the Division Bench has taken note of the steps contemplated in clause (3) and held that a sum of Rs.42 lakhs would have to be set apart to the petitioner only from and out of the sale proceeds of the common properties confirmed the appointment of the Advocate Commissioner in I.A.No.22 of 2007 and dismissed CRP.No.4748 of 2007. Again at paragraph No.47, the Division Bench held that after the compromise decree, the appellant has withdrawn the suits filed by him in O.S.No.18 of 2005 and O.S.No.412 of 2005 and a major portion of the compromise decree has already been performed and therefore, it is not open to the revision petitioner to question the validity of the compromise decree at a later point of time as inexecutable.

19.The said decision of the Division Bench has been confirmed by the Hon'ble Supreme Court with the dismissal of the SLP.(Civil).Nos.11525 & 11526 of 2019. The very same issue was again reagitated in CRP.Nos.1920 of 2019 and 1045 of 2021, where this Court dismissed the applications filed by the revision petitioners, seeking directions to the respondent/plaintiff to pay Rs.42 lakhs, together with interest. This Court had again gone into

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clause (3) of the Lok Adalat award and referring to the findings of the Hon'ble Division Bench, held that when the petitioner has not challenged the Lok Adalat award on the grounds of fraud, coercion, misrepresentation or undue influence, but only with regard to interpretation of clause (3) of the compromise award and in the light of the order passed by the Division Bench, it was not open to the revision petitioner to contend that there was no *consensus ad idem* and therefore, the award has to be set aside.

20. Even insofar as the direction seeking payments to be made by the respondent/plaintiff, this Court held that the amounts due and payable to the respective parties can be gone into only in the final decree proceedings. Though it is contended by Mr. V. Raghavachari, learned Senior Counsel that the Division Benches of this Court have held that when a Court dismisses the suit as not maintainable, but proceeds to give findings on other issues as well, the findings on the incidental issues will not be binding and would not operate as *res judicata* on facts of those cases before the Hon'ble Division Benches. In the present case, I am unable to press into service the ratio laid down by the Hon'ble Division Benches in *R. Srinivasa Row's case*, as well as *Corporation of Madras's case*, for the simple reason that the Division Bench was merely deciding the maintainability of the appeal, but was also deciding



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other revision petitions along with the first appeal.

21.The findings regarding clause (3) that the sum of Rs.42 lakhs would have to be paid only from the sale of common property has been rendered while dismissing the revisions filed challenging the appointment of Advocate Commissioner in the final decree proceedings in I.A.No.27 of 2007. Therefore, it cannot be stated that the findings were rendered by the Division Bench on incidental issues while holding that the appeal was not maintainable. I therefore do not see how these decisions would come to the aid of the revision petitioner. In any event, even when a revision was filed challenging the Lok Adalat award as well, this Court took note of clause (3) as well as the findings rendered by the Division Bench and came to the conclusion that the sum of Rs.42 lakhs would have to be paid only from and out of the sale proceeds of the common properties. The said order has not been challenged by the revision petitioner and therefore after having suffered adverse orders not only before the Division Bench, but again before this Court in revision petitions, it is not open to the revision petitioner to continue to harp on an interpretation that the sum of Rs.42 lakhs will have to



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be paid by the respondent/plaintiff from his own pocket and not out of sale of common properties. Even independently I have already discussed the terms of the compromise memo and found that no other interpretation can be given other than the interpretation that has been given by the Division Bench and this Court in the revision petitions.

22.However, at the same time, when one of the items, namely item 2 of the common property has already been sold and the Bank loan in 2007 was admittedly about Rs.5,90,435/-. There can be no necessity for sale of any further items belonging to the parties in common. In view of the finding that the sum of Rs.42 lakhs would have to be paid to the revision petitioner, the Advocate Commissioner can give a valuation of all the properties available and the property which is worth the money payable to the revision petitioner, namely Rs.42 lakhs plus the amounts which he has spent for the discharge of the loans, from and out of his independent sources and not from and out of the sale of item 2 of the common properties, can always be allotted to the revision petitioner, instead of selling the common properties.



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23. Admittedly, there are other items of properties which are available in common and therefore when the Bank loan has already been discharged, it may not be necessary for selling the properties held in common, unless circumstances otherwise warrant. However, though the petitioner claims that he has paid the entire money of Rs.60 lakhs to the Bank, even according to the reliance placed on the Bank statement relied on by the learned Senior Counsel, Mr.V.Raghavachari, a sum of Rs.10 lakhs has admittedly been paid by the respondent/plaintiff which was from and out of the sale proceeds of item 2 of the suit properties. Therefore, unless the trial Court goes into these aspects as to what amounts have been contributed for discharge of loans by the revision petitioner and the respondent from and out of their independent sources, apart from utilizing the sale proceeds of common properties, it cannot be ascertained with certainty as to what amounts would ultimately be payable to the revision petitioner/respondent.

24. In fact, in the counter affidavit filed by the revision petitioner in I.A.Nos.30 & 31 of 2007, the revision petitioner, at paragraph No.4 claims that the Bank loan has been paid to the tune of Rs.67,13,200/- and that he has paid Rs.23,000/-, without any contribution from the plaintiff. Similarly,



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his case is that he paid the entire amount of Rs.60,90,789/- to the Bank has been rejected in I.A.No.2 of 2019 and the said order also came to be confirmed by this Court in revision petitions. At the same time, the case not set up by the respondent that there was an agreement on 24.08.2006 cannot be looked into, especially when the said document was not exhibited before the trial Court and it is now sought to be introduced in the revision for the first time. In fact, the learned Senior Counsel would submit that the said agreement is a forged document and the truth and genuineness of the said document or its contents are not admitted to by the revision petitioner.

25.Be that as it may, the learned Senior Counsel has also brought to my notice that despite documents being marked before the trial Court, the trial Court has not even considered the same. I find from the order that Ex.P1 to Ex.P6 alone were marked on the side of the revision petitioner. Insofar as the documents that have been relied on by the learned Senior Counsel, I find that these documents are marked in O.S.No.3 of 2011 which is a much later suit and not in the final decree proceedings. The certified copies have been issued by the District Judge, Perambalur, in C.A.No.4262 of 2017 in O.S.No.3 of 2011. Therefore, I find that even in the common



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order dated 03.08.2009, only six exhibits have been marked while deciding O.S.No.13 of 2005 and I.A.Nos.21, 22, 30 & 31 of 2007. Exhibits that were marked are only the award of the Lok Adalat, the compromise terms, exchange of notices between the parties. I am unable to find that any of the document pertaining to the payments made to the Bank, sale of one item of the common property and proceeds thereof being applied to discharge the loan have been brought to the notice of the trial Court. In view of the above, the directions issued in the docket order dated 09.12.2024 is set aside. However, in view of the findings that the amount of Rs.42 lakhs is payable only out of sale of common properties, the Civil Revision Petition is partly allowed, in the manner following:

(i) The order directing the Commissioner to proceed with the sale is set aside.

(ii) The trial Court shall enable the parties to lead fresh evidence with regard to payments made individually as well as in common from and out of the sale of common properties to meet the Bank loan.

(iii) The trial Court shall give a finding with regard to the contributions made by the petitioner and the respondent individually and shall ascertain the amounts payable to the revision petitioner, including the



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amount of Rs.42 lakhs that has been agreed upon under the compromise memo.

(iv) If any of the items which are held in common can be allotted in lieu of the amount due to the revision petitioner as ascertained, on enquiry in terms of the preceding clause, then such property shall be allotted to the exclusive share of the revision petitioner. In the event of such an exclusive allotment in lieu of the amounts payable to the revision petitioner is not feasible, considering the lay and extent of the properties, then the Court shall direct sale of necessary items held in common and from and out of the sale proceeds, the amount so ascertained and payable to the revision petitioner shall be paid and the remaining amounts shall be paid to the respondent.

(v) In the event of there being any surplus properties held in common, even after settlement of the amounts due and payable to the revision petitioner as indicated in the manner herein above, then the properties shall be divided between the plaintiff and the respondent each being entitled to an equal one half share.

(vi) It is open to the parties to also factor the other available properties in order to settle the amounts due and payable to the revision petitioner by necessary allotment/adjustment between themselves.



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(viii) There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

.01.2026

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To
The Principal District and Sessions Judge, Perambalur.



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P.B. BALAJI,J.

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Pre-delivery order made in
CRP.No.180 of 2025
& CMP.No.1267 of 2025

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