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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-10-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

CRP Nos. 3541 and 3542 of 2018 and

CMP Nos.19833 of 2018

CNR: {HCMA013716922018}

Samanda Naicker
S/o.Natesan Naicker, No.2, Dharmaraja Koil St,
Thirunindravur-602024

..Petitioner(s) in

both CRPs

Vs

Kasthuriammal(died)

1. Siva, S/o.Kutty Naicker, No.19, Pillaiyar Koil St,
Mangulamkarai, Pattabiram Village, Ch-72,
Poonamallee Tk.

2. **Palani.(died)**
S/o.Kutti Naicker,

3. Chinnaponnu
D/o.Natesa Naicker, Maduvasal Village Via,
Periyapalayam Village, Thiruvalluvar Dist.

Lakshmanan (died), S/o.Kalyanasundaram
Mudaliar, No.3, Mandapam St, Thiruninravur
Village, Poonamallee Tk.

4. Krishnamoorthy
S/o.Not Known, No.1, Thirumurugan Nagar,
Thiruninravur - 602024.

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Balaraman(died).

5. Srinivasapriya
   D/o.Late Balaraman, Suprabatham,
   Thirumurugan Nagar -602024

6. Narnedralal
   Suprabatham, Thirumurugan Nagar -602024

7. Jamunarani
   W/o.Late Balaraman, No.1, Thirumurugan
   Nagar, Thiruninravur Village, Poonamallee Tk,
   Thiruvallur Dist.

8. Meenakshi
   D/o.Late Balaraman, No.1, Thirumurugan
   Nagar, Thiruninravur Village, Poonamallee Tk,
   Thiruvallur Dist.

9. Prabhavathi
   D/o.Late Lage Balaraman, No.1, Thirumurugan
   Nagar, Thiruninravur Village, Poonamallee Tk,
   Thiruvallur Dist.

10. Minor Nirmaladevi
    D/o. Lage Balaraman, Rep By Guardian And
    Mother Mrs. Jamuna Rani, No.1, Thirumurugan
    Nagar, Thiruninravur Village, Poonamallee Tk,
    Thiruvallur Dist.

11. Baskaran

12. Karthik

13. Umapathy

14. Devaki

15. Kala

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16. Vara @ Varalakshmi
R-11 to 16 sons and daughters of late
Lakshmanan, residing at No3,

Mandapam Street, Thiruninravur Village and Post
602024

17. P.Sudha
W/o. Late Palani No.3, Mandapam Street,
Thiruninravur Village And Post - 602024

18. P. Preetha
D/o Palani residing at PillaiyarKoil Street,
Mangulamkarai, Pattabiram Village, Chennai -
72, Poonamallee Taluk.

19. P.Lalitha
D/o Late Palani, residing at PillaiyarKoil Street,
Mangulamkarai, Pattabiram Village, Chennai -
72, Poonamallee Taluk.

20. P.Rekha
D/o Late Palani,

R 18 to R20 residing at PillaiyarKoil Street,
Mangulamkarai, Pattabiram Village, Chennai -
72, Poonamallee Taluk.

Respondent-2 Died. Respondents 17 to 20 are
brought on record as LRs of the deceased R-2
Viz. Palani vide court order dated.28/07/2025
made in CMP NOs. 17785,17788 and 17791 of
2025 in CRP No.3541 of 2018.

..Respondent(s) in

both CRPs

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Prayer in CRP No.3541 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 10.04.2018 in EA No. 91/2016 in EP No. 165/2010 in OS no.308/1990 on the file of the Subordinate Judge, Poonamallee.

Prayer in CRP No.3542 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 10.04.2018 in EA No. 90/2016 in EP No. 165/2010 in OS no.308/1990 on the file of the Subordinate Judge, Poonamallee.

For Petitioner(s): Mrs. A.L.Gandhimathi,
Senior Advocate
for Mr.B.Prashanth Nataraj

For Respondent(s): Mr.D.Gopinath for R1 and R2

COMMON ORDER

CRP No.3541 of 2018 has been filed as against the order passed by the Executing Court, dismissing the application filed by the petitioner under Section 47 of CPC.

2. CRP No.3542 of 2018 has been filed challenging the order passed by the Executing Court, dismissing the application filed by the petitioner seeking "not to record delivery ", pending disposal of the application filed under Section 47 of CPC.

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3. The respondents 1 and 2 herein and one Kasthuriammal (since deceased) had filed a suit in O.S.No.308 of 1990 for partition against the petitioner and others on the file Subordinate Judge, Poonamallee and the said suit was decreed by granting preliminary decree for partition of 1/3 share. Thereafter, final decree was passed on 16.06.2009 in I.A.No.483 of 2005. Based on the final decree, the respondents 1 and 2 herein/ plaintiffs filed an application for delivery in E.P.No.165 of 2010. In the said Execution Petition, the petitioner herein/1st defendant filed an application under Section 47 of CPC seeking declaration that the decree was in-executable. By the impugned order, the Executing Court dismissed the Section 47 application. Aggrieved by the same, the petitioner has come before this court by filing CRP No.3541 of 2018. Since the decree holder attempted to take delivery of the property, pending disposal of Section 47 application, yet another application was also filed by the petitioner in E.A.No.165 of 2010 seeking "not to record delivery" till the disposal of the Section 47 application. The said application was also dismissed, as a consequent to the dismissal of the 47 application. Aggrieved by the same, the petitioner has filed CRP No.3542 of 2018.

4. The learned Senior Counsel appearing for the petitioner would contend that the petitioner purchased a portion of the suit property i.e. the share of Murugappa Naicker and Kandasamy Naicker from the legal heirs of the said

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persons under a sale deed dated 07.02.1995. It is also contended by the learned Senior Counsel that though the petitioner had purchased the shares of three co-sharers, without taking into consideration of the interest of the petitioner over the suit property, the Trial Court has passed the erroneous decree for partition.

5. It is seen from the typed set of papers that the petitioner, namely Samanda Naicker has been arrayed as first defendant in the main suit. The petitioner remained exparte and hence, exparte preliminary decree for partition was passed against him. The points raised by the petitioner with regard to the purchase of the suit property and his entitlement of his share in the suit property ought to have been raised by the petitioner in the main suit itself. Having remained exparte in the suit, it is not open to the petitioner to raise objections in an application filed under Section 47 of CPC. In view of the Explanation IV to Section 11 of CPC, the grounds which ought to have been raised in the main suit cannot be permitted to be raised in the Section 47 application. The plea raised by the petitioner with regard to the purchase of shares of the suit property from three co-owners, etc. are all barred by constructive resjudicata. Therefore, the submission made by the learned Senior Counsel in this regard is not appealable to this court.

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6. The learned Senior Counsel appearing for the petitioner further submits that even prior to the filing of the suit, the 2nd defendant Kanniammal died. Therefore, the decree obtained by the plaintiff against the dead person is a nullity.

7. It is seen from the genealogical Tree included by the petitioner in Section 47 application and the averments in paragraph No.6 of 47 application that the said Kanniammal is none other than the wife of Natesan Naicker and the third defendant Chinnaponnu is none other than the daughter of Natesan Naicker and Kanniammal. It is also not in dispute that the petitioner herein is the son of Natesan Naicker and the respondents 1 and 2 / decree holders are also sons of Kanniammal. Therefore, the estate of the deceased Kanniammal is very well represented by the plaintiff, the defendants 1 and 3 in the suit. Hence, the submission made by the learned Senior Counsel appearing for the petitioner that decree passed against the deceased Kanniammal was nullity is not acceptable to this court. The estate of Kanniammal is very well represented by her legal heirs. I do not find any merits to interfere with the impugned order passed by the Executing Court in the Section 47 application and hence, CRP No.3542 of 2018 is liable to be dismissed.

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8. In so far as the CRP No.3541 of 2018 is concerned, it has been filed challenging the order passed by the Executing Court, dismissing the application filed by the petitioner seeking "not to record delivery" till the disposal of the Section 47 application. Since the 47 application was dismissed, as a necessary consequence, the E.A.No.90 of 2016 was also dismissed. Therefore, I do not find any error in the impugned order passed by the Executing Court in the said application.

9. The learned Senior Counsel appearing for the petitioner further submitted that pending execution petition Chinnaponnu died as spinster and her share devolved on the plaintiffs and the 1st defendant. Therefore, the shares of the plaintiffs and the 1st defendant has to be adjusted accordingly.

10. If, it is the case of the petitioner that the share allotted to the parties under the preliminary decree requires modification, due to the subsequent death of any of the parties, it is always open to the petitioner to file an appropriate application for passing modification of the preliminary decree.

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11. With the above observations, CRP Nos.3451 and 3542 of 2018 are dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

The Subordinate Judge, Poonamallee.

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S.SOUNTHAR, J.

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