



CRP(MD). Nos.60 and 61 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 25.02.2026

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THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

**CRP(MD). Nos.60 and 61 of 2023
and CMP(MD).No.238 of 2023**

C.Karthikeyan alias Kalyanathan ... Petitioner in both petitions
Vs.

Karthick Priya ... Respondent in both petitions

COMMON PRAYER :-Civil Revision Petitions filed under Article 227 of the Constitution of India, to pass an order setting aside the fair and executable order dated 17-11-2022 and 17.10.2022 passed in the application in I.A.No.5 of 2014 and I.A.No.458 of 2022 in O.S.No.462 of 2011 on the file of the First Additional Subordinate Court, Madurai and allow the same.

For Petitioner : Mr.J.Barathan

For Respondent : Mr.C.Lakshmanan

ORDER

These civil revision petitions have been filed challenging the order setting aside the fair and executable order dated 17-11-2022 and 17.10.2022 passed in the application in I.A.No.5 of 2014 and I.A.No.458 of 2022 in O.S.No.462 of 2011 on the file of the First Additional Subordinate Court, Madurai



2. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the records.

3. On 21.01.2026, this court passed the following order.

“2. The learned counsel appearing for the revision petitioner submitted that the revision petitioner is the son of one Dr.Chithambara Vinayagam and Saraswathi, born out of their lawful wedlock and that he is their only son.

3. It is the case of the respondent that her mother, Revathi, had a relationship with the said Dr.Chithambara Vinayagam, the father of the revision petitioner and out of the said relationship, the respondent was born on 21.09.1984. A suit was filed by Revathi before the Family Court, Madurai. After the death of Dr.Chithambara Vinayagam, a compromise was entered into between the respondent Karthickpriya, her mother Revathi, and the petitioner Karthikeyan. The said settlement was recorded by the Family Court, Madurai in I.A.No.37 of 2000 in O.S.No.15 of 1997. As per the compromise, an order was passed on 29.03.2000, to pay a sum of Rs.1,75,000/- to the respondent and her mother and as per the order, the entire amount was deposited before the Family Court. The respondent thereafter withdrew the said amount.

4. Subsequently, in the year 2003, the respondent filed an application under Order XXIII Rule 3 CPC to set aside the said compromise, which was dismissed after recording evidence. No appeal was preferred thereafter either by the



respondent or by her mother. The present suit in O.S.No.462 of 2011 has been pending since the year 2011.

5. The learned counsel for the revision petitioner contended that the matter has attained finality as the compromise was duly recorded by the Family Court and acted upon by the parties, including withdrawal of the settlement amount of Rs. 1,75,000/-. Therefore, according to him, the present suit is devoid of any cause of action as the issue already stands settled.

6. Per contra, the learned counsel appearing for the respondent contended that Dr.Chithambara Vinayagam owned substantial properties and that the compromise did not deal with or extinguish the respondent's claim over the properties standing in his name. Hence, it was contended that the respondent has every right to institute the present suit claiming her share in the properties.

7. At this juncture, considering the fact that the parties had earlier arrived at an amicable settlement, which was duly acted upon and pursuant to which, the respondent had withdrawn the settlement amount of Rs.1,75,000/-, this Court suggested that the parties explore the possibility of an amicable settlement once again.

8. Post the matter on 17.02.2026 for reporting settlement. Failing which, both the learned counsels shall proceed with the case on merits.”

4.In continuation of the earlier order dated 21.12.2026, the learned



counsel relied upon the following judgments:

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4.1.The Judgment of this Court in the case of N.Ramachandran Vs. Munisamy and others reported in AIR 1998 Madras 330, wherein it has been held as follows:

“13.I am not able to subscribe my view to the submission made by the learned counsel for the respondent. As quoted above, this Court and the Apex Court, while considering the question whether to apply S.37(2) or 37(4) of the Court Fee Act, the Court has to go into the averment of the plaint alone and it need not be influenced by the averment in the written statement.”

The above said judgment lays down the proposition that the issue has to be considered based on the averments made in the plaint and not on the defence raised in the written statement.

4.2.The Judgment of this Court in the case of C.V.Karthikeyan Vs. P.Subramaniam and another reported in (2014) 8 Mad LJ 513, wherein it has been held as follows:

“8.The eighth defendant in a suit for partition is seeking for rejection of the plaint. The first contention is that property court fee is not paid, as the plaintiffs are not in joint possession of the suit property. A perusal of the plaint averments would show that the plaintiffs have



categorically averred and asserted that they are in joint possession of the suit property and accordingly they have paid the court fee under Sections 37(2) and 27(c) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Though the eighth defendant contended that the plaintiffs are not in joint possession, such question regarding joint possession is certainly a factual aspect of the matter, which has to be considered and decided only after trial and therefore, the plaint cannot be rejected on the ground that the plaintiffs have not paid proper court fee, as contended by the eighth defendant. Even otherwise, rejection of the plaint would arise for not paying proper court fee only when the plaintiffs failed to pay proper court fee, even after they were called upon by the court to pay the requisite court fee as provided under Order 7 Rule 11 (C) CPC. In this case, admittedly, there was no such direction given by the Court and in the absence of the same, the eighth defendant cannot seek for rejection of the plaint on that ground.”

Similarly, this Court has held that the right to seek rejection of the plaint has to be determined based on the averments in the plaint and not on the contentions raised in the application or defence.

4.3.The Judgment of this court in the case of T.Suresh and others Vs. T.Sukumar and another reported in 2014-1-L.W. 500, wherein it has been held



as follows:

“26.In the instant case, the petitioners/plaintiffs have stated in the plaint that they are the children of late Thiagarajan and the first respondent is also one of the legal heirs of the said deceased, being his son. The suit properties are the self-acquired properties of the said Thiagarajan and they are in joint possession and enjoyment of the properties along with the Respondents/ Defendants. At this stage, it is clear that there is no plea of ouster of the rights claimed by the Petitioners/ Plaintiffs and further, as held by the Hon'ble Apex Court in various decisions referred to above. The Respondents / Defendants have claimed that the first respondent is the son of the deceased Thiagarajan and it is not in dispute that the suit property is the self acquired property of the said Thiagarajan, hence, the court below cannot go beyond the averments and pleadings made in the plaint. Based on the written statement, the Court cannot decide the issue that the property is not in the joint possession and enjoyment of the Petitioners, as they are co-sharers, as per the Plaint averments. Similarly, the legal aspect relating to the legitimacy of the Respondents could be gone into only at the time of trial, if it is relevant, based on the evidence and not at this stage.



CRP(MD). Nos.60 and 61 of 2023

Further, in this case, it has been held that issues raised in the written statement, such as denial of joint possession, cannot be gone into at the stage of considering the plaint and cannot travel beyond the plaint averments.

5.However, this Court finds that the above judgments relied upon by the learned counsel for the respondent are not applicable to the facts of the present case.

6.In the present case, it is seen that a statement was recorded by way of admission from the petitioner during the hearing in I.A. No. 37 of 2000 in O.S. No. 15 of 1997 as early as on 29.03.2000. It is further evident that, after receiving a sum of Rs. 1,75,000/-, the present application has been filed seeking to set aside the earlier proceedings, which was dismissed.

7.Subsequently, the present suit has been filed for partition, which, in the considered opinion of this Court, is not maintainable. The impugned order passed by the trial Court are liable to be set aside, accordingly, set aside.



CRP(MD). Nos.60 and 61 of 2023

8.In the result, these Civil Revision Petitions are allowed. No costs.

Consequently, connected miscellaneous petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
TM

25.02.2026

To

- 1.The I Additional Subordinate Judge, Madurai.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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CRP(MD). Nos.60 and 61 of 2023

N.SENTHILKUMAR, J.

TM

CRP(MD). Nos.60 and 61 of 2023

25.02.2026