



C.R.P.(MD)No.608 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.03.2026**

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(MD)No.608 of 2026 &
C.M.P.(MD)No.2839 of 2026

Thirumadanji Konar (died)

1.Rajamanickam

2.Balasubramanian

...Petitioners

vs.

1. Jayam @ Pappa rep. By her
Power Agent Thanjavur District,
Pattukottai S. Nagarajan,
S/o. Subbaiyan,
No. 3/3, Irandam Puzhikadu post,
Puthirivayal village,
Pattukottai Taluk and Munsif,
Thanjavur District.

2. Thamayanthi

Rajamani (Died)

3. Indiragandhi

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution
of India to set aside the Fair and Decretal Order dated 07.02.2026 made



C.R.P.(MD)No.608 of 2026

WEB COPY

in I.A.No.7 of 2025 in O.S.No.33 of 2007 on the file of the Learned District Munsif Court, Pattukkottai, and allow this Civil Revision Petition.

For Petitioners : Ms.S.Prabha
for Mr.D.Rameshkumar

For Respondents : Mr.A.N.Ramanathan

ORDER

Heard Ms.S.Prabha for the petitioners and Mr.A.N.Ramanathan for the respondents.

2. This Civil Revision Petition challenges the order passed by the learned District Munsif, Pattukottai in I.A.No.7 of 2025 in O.S.No.33 of 2007, dated 07.02.2026, whereby an application filed under Order XVI Rule 1 of the Code of Civil Procedure by the defendants came to be dismissed.

3. For the sake of convenience, the parties shall be referred to as per their ranks in the suit.



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4. The plaintiff presented O.S.No.33 of 2007 seeking the relief of declaration of title with respect to suit items 1 to 5 and for recovery of possession of the same from defendants 1 to 3. She sought declaration of her right over the 6th item of the property and for consequential injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the same. In addition, she also sought mesne profits for the period that the defendants 1 to 3 have been in possession of the suit items 1 to 5.

5. The gist of the plaint is that the plaintiff, Jayam @ Pappa, was married to one Sadaya Konar. The first defendant is the brother of Sadaya Konar and the defendants 2 and 3 are his children. She projected a partition between Sadaya Konar and his brothers, namely, Veerappa Konar, Subbaiya Konar and Thirumadanji Konar, dated 13.08.1981. She stated that the suit schedule mentioned properties fell to the share of her husband and he had been in possession and enjoyment of the same till his death. Thereafter, she has been in possession and enjoyment of the same. She pleaded that she suffered an accident and her leg had to be amputated. Being a physically challenged person, she was carrying on



C.R.P.(MD)No.608 of 2026

WEB COPY

agricultural activities over the suit items taking the assistance of her brother-in-law's son, one Nagarajan. I should point out here that the said Nagarajan is the power of attorney, who is conducting the suit on behalf of the plaintiff.

6. She claimed that defendants 1 to 3 had encroached upon suit items 1 to 5 and started cultivating the same. Insofar as the suit item number 6 is concerned, she pleaded that she is raising paddy and making her living. The 4th defendant, is not a member of the family and he is a stranger. As he attempted to disturb the possession of the plaintiff over the 6th item and cast a cloud over her title, she sought the relief of declaration of title and for injunction over the 6th item. Insofar as items 1 to 5 are concerned, as defendants 1 to 3 had trespassed over the same, the relief of declaration of title and for recovery of possession and mesne profits were sought.

7. Summons were served on the defendants.



C.R.P.(MD)No.608 of 2026

WEB COPY

8. The 3rd defendant filed a written statement, which was adopted by defendants 1 and 2. The defendants denied the alleged partition entered into between Sadaya Konar and his siblings on 13.08.1981. They pleaded that Sadaya Konar did not die intestate as pleaded by the plaintiff, but had executed a "WILL" on 03.08.1993, bequeathing certain extent of property in favour of the defendants 2 and 3 and one particular extent in favour of the plaintiff. The "WILL" according to them also stated that, post the death of the plaintiff, the property would vest with defendants 2 and 3. As Sadaya Konar had passed away on 09.03.1995, the properties fell to the defendants 2 and 3, as per the testament. They pleaded they had possession of the property as its owners and hence they sought dismissal of the suit.

9. The 4th defendant pleaded that for valid consideration, he had purchased the property from defendants 1 to 3 on 05.06.2002 by way of a registered sale deed. He urged that he had mutated the revenue records in his favour and is in possession and enjoyment to the knowledge of the whole world as its lawful owner. Hence, he sought dismissal of the suit.



C.R.P.(MD)No.608 of 2026

WEB COPY

10. A reply statement was filed by the plaintiff stating that the partition deed dated 13.08.1981 is a true and genuine. She claimed the alleged "WILL" dated 03.08.1993 as a fabricated and forged one prepared by the defendants 1 to 3, in order to grab the property left behind by Sadaya Konar.

11. On the basis of these pleadings, the trial Court framed as many as 11 issues. Parties went for trial. On the side of the plaintiff, PW1 and PW2 were examined. Ex.A1 to Ex.A13 were exhibited. On the side of the defendants, DW1 to DW4 were examined and they marked Ex.B1 to Ex.B13. In addition, 3 documents, namely Ex.X1 to Ex.X3 were marked. Of the witnesses examined by the defendants, DW3, Gandhi, is the attesting witness to the alleged "WILL" dated 03.08.1993.

12. After trial, the learned Judge found the "WILL" to be true and genuine and dismissed the suit without going into the other issues on 24.07.2017. Aggrieved by the same, the plaintiff preferred A.S.No.3 of 2018.



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13. The learned Appellate Judge, on reconsideration of the entire evidence, came to the conclusion that the "WILL" projected by the defendants does not inspire confidence of the Court. He held the execution and attestation thereof, had not been proved in accordance with the Evidence Act. Consequently, he rejected the "WILL". He found that he could not deal with the merits of the suit on account of the fact that Ex.B6, the "WILL" having been found genuine, the trial Judge had not gone into the other issues. Therefore, exercising his powers under Order XLI Rule 25, he framed 3 issues for the trial Court to decide, which are as follows:-

"1. What are all the properties allotted to the Sadaya Konar during the Family Partition happened in the year 1981?

2. Whether the sale deed stands in the name of 4th defendant is valid in respect of property allotted to Defendant No.1?

3. Whether the plaintiff is entitled for the relief of declaration, recovery of possession and injunction as against the defendant in respect of suit properties?"



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14. The learned Appellate Judge rejected the claim of the 4th defendant also as his sale deed was based on Ex.B6, "WILL". Since the Court had come to the conclusion that Ex.B6 had not been proved in accordance with law, the fourth defendant could have no separate claim over it. Having reached this conclusion, he remanded the case to the trial Court to deal with the aforesaid issues identified by him. The appeal was allowed on 16.10.2019 and the parties were called upon to appear before the trial Court on 15.11.2019. The application filed under Order XLI Rule 27 by the defendants in IA.No.105 of 2019 also stood dismissed.

15. It is not in dispute that this order of remand has not been challenged in a manner known to law before this Court.

16. Post the remand, the learned trial Judge took up the matter for disposal. At that stage, defendants 1 to 3 took out an application in I.A.No.7 of 2025, to summon the 4th attesting witness of Ex.B6, namely, one Chakkarapani. The other 2 witnesses, namely Palanivel and Manicka Nadar, according to the proponents of the "WILL" are no more. As stated above, during the trial before remand, they had examined one Gandhi as



C.R.P.(MD)No.608 of 2026

WEB COPY

DW3. This application was resisted by the plaintiff pleading that the "WILL" had been disbelieved by the lower Appellate Court in A.S.No.3 of 2018 and hence, the application for summoning of a witness in terms of Order XVI Rule 1 of the Code of the Civil Procedure is absolutely untenable. They pointed out that no liberty had been granted by the learned Subordinate Judge in A.S.No.3 of 2018, to let in fresh evidence on the "WILL" and consequently, it is not open to defendants 1 to 3 to take out summons to examine the surviving attesting witnesses.

17. The Learned trial Judge, on appreciation of the Judgment and Decree passed by the learned Subordinate Judge at Pattukottai in A.S.No. 3 of 2018, dismissed the application, by way of, an order dated 07.02.2026. Aggrieved by the said order, the present revision.

18. I heard the counsel, who reiterated the arguments pleaded in the Court below. I have gone through the records.

19. A perusal of the Judgment passed by the Appellate Court in A.S.No.3 of 2018 indicates that Ex.B6, "WILL" had been clearly



rejected. If defendants 1 to 3 were aggrieved over this finding and the remand, their remedy is only by way of, an appeal under Order XLIII Rule 1(u) of the Code of Civil Procedure. This is because Section 105(2) of the Code of Civil Procedure, namely, the substantive provision for appeal, points out that where any party is aggrieved by an order of remand from which an appeal lies and does not choose to file an appeal therefrom, it is not open to the said party to dispute the correctness of the findings given therein. Section 105(2) is an exception to Section 105(1). This applies only in the case of order of remand and findings given by the Court therein.

20. In the first portion of the Judgement, I have already pointed out that the learned Appellate Judge has not only set aside the judgment and decree of the trial Court dated 24.07.2017 in its entirety. He had also set aside the findings of the trial Court insofar as Ex.B6, "WILL" is concerned and since the trial Court had not discussed the other issues, he had specifically framed 3 issues for the trial Court to answer. In other words, it was not an unrestricted or full remand restoring the suit in its entirety on the file of the trial Court. The remand is confined to the 3



C.R.P.(MD)No.608 of 2026

issues that have been identified by the learned Appellate Judge in his judgment dated 16.10.2019. The trial Court on remand, is bound by not only the findings given by the lower Appellate Court, but also on the issues identified by the learned Appellate Judge. It cannot exceed the scope of remand.

21. If the present application that has been filed by defendants 1 to 3 seeking examination of another attesting witness is allowed, it will indirectly amount to rip opening the findings which have been rendered by the learned Appellate Judge in A.S.No.3 of 2018. Such a course of action, as pointed out above, is barred by virtue of Section 105(2) of the Code of the Civil Procedure. The learned trial Judge had rightly appreciated the position and had dismissed the petition. I do not find any reason to take a different view than that has been taken by the learned trial Judge. Hence, this Civil Revision Petition is dismissed.

22. There shall be a direction to the learned trial Judge to dispose of the suit within a period of three (3) months from the date of receipt of a copy of this order. She is requested to note that the plaintiff has been



C.R.P.(MD)No.608 of 2026

WEB COPY

knocking on the doors of the Court for the past 2 decades and is yet to see the end of the litigation. The purpose of the lower Appellate Court fixing a date for appearance of the parties is to ensure that, on remand, the suit is disposed of expeditiously. Though 7 years has lapsed, the suit is still languishing before the trial Court. It is a direction of this Court on the administrative side that, on remand, matters must be expedited at all stages. The learned District Munsif at Pattukottai shall adhere to the directions given on the administrative side as well as in the present revision petition. As far as the cost in the revision, it shall follow the result in the suit. Consequently, connected Miscellaneous Petition is closed.

05.03.2026

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To
The District Munsif Court,
Pattukkottai.



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C.R.P.(MD)No.608 of 2026

V.LAKSHMINARAYANAN, J.

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C.R.P.(MD)No.608 of 2026

05.03.2026