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C.M.A.(MD)No.349 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.03.2026**

CORAM

THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

C.M.A.(MD)No.349 of 2026

and

C.M.P.(MD)No.3242 of 2026

Bathrunisa Sheik Jahangir

... Petitioner

vs.

1.S.M.Mohammed Atham

2.The Manager,

HDFC Bank Ltd, Main Branch,
Sri Nithiyakalyani Towers,
No.34, Krishna Rayar Tank Street,
Ground Floor, North Veli Street,
Madurai – 625 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(r) of the Code of Civil Procedure, to set aside the fair and decreetal order dated 27.01.2026 passed in I.A.No.2 of 2024 in O.S.No.198 of 2024 on the file of 4th Additional District Court, Madurai and allow this Civil Miscellaneous Appeal.

For Petitioner : Mr.T.R.Rajagopalan
Senior Counsel for
Ms.Deepika

For R-1 : Mrs.P.Yasmin Begum

ORDER

Heard Mr.T.R.Rajagopalan learned Senior Counsel for Ms.Deepika, for petitioner and Mrs.P.Yasmin Begum for the 1st respondent.



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2. The present appeal challenges the dismissal of the application for injunction in I.A.No.2 of 2024 in O.S.No.198 of 2024 on the file of the IV-Additional District Judge at Madurai, dated 27.01.2026.

3. The petitioner is the wife/plaintiff and the 1st respondent is the husband/1st defendant and the 2nd respondent is the Bank/2nd defendant. For the sake of convenience, parties shall be referred to as per their rank in the suit.

4. For the purpose of disposal of the appeal, I need not delve deep into the facts of the case. The following facts are not in dispute:

The parties entered into a contract of marriage as per Islamic rites and customs on 29.05.2005; two children were born from the wedlock; and, on account of disputes and differences, the parties are before the Court.

5. O.S.No.198 of 2024 is a suit for partition and separate possession. The suit has three schedules: 'A' schedule property is an immovable property situated at Madurai; 'B' schedule properties are movable properties in the form of gold jewels, which the plaintiff claims were purchased jointly by the plaintiff and the 1st defendant; and 'C' schedule properties are gold jewels which the plaintiff claims were purchased by her parents and gifted to her at the time of



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marriage and thereafter. The plaintiff and the 1st defendant deposited 1880 grams of gold with M/s.HDFC Bank/2nd defendant.

6. The plaintiff claims that out of 1880 grams of gold, she is entitled to 1400 grams of gold ornaments. In addition, she claims that 960 grams of gold were jointly purchased by the plaintiff and the 1st defendant. She also claims that she is entitled to a half share in the 'A' schedule property, a half share in the 'B' schedule properties, and the entirety of the 'C' schedule properties.

7. The suit was taken on file and summons were issued to the defendants. The 1st defendant claims that the 'A' schedule property is covered by a mortgage and that he has been servicing the mortgage. We are not concerned with the 'A' schedule property in this appeal. Insofar as the jewels are concerned, the 1st defendant denies the plaintiff's right over 960 grams of jewels. He claims that the entirety of the jewels, to an extent of 998.5 grams, were purchased by him from several private jewellers in India, Dubai, and Saudi Arabia. Insofar as other jewels contained in the suit schedule, he claims that they were gifted by his parents and other family members to his two daughters, at the time of their birth and when they attained puberty.

8. Along with the suit, the plaintiff filed an application for an interim injunction. It is also not in dispute that, as she and her



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children are in the Republic of Ireland, the plaintiff, reposing faith in her brother, executed a Power of Attorney in his favour. He filed an application in I.A.No.1 of 2024 seeking to present the plaint as the Power of Attorney invoking Order III Rule 2 of the Code. This Power of Attorney had been executed on 3rd October, 2023. The suit itself came to be presented by the Power of Attorney on 07.04.2024. Pending disposal of the suit, the plaintiff sought for Ad-interim injunction restraining the defendants from in any manner withdrawing the gold jewels in Gold Jewel Loan Account No. 73664544 and the overdraft Account No.50200043390691 which are being held by the 2nd defendant, M/s.HDFC Bank, Madurai.

9. Soon after filing of the suit, permission to sue as the Power of Attorney was granted. In addition, the Trial Court also granted an interim injunction in I.A. No. 2 of 2024, restraining the defendants as prayed for.

10. The 1st defendant filed a detailed counter to the interlocutory application and sought vacating the injunction granted.

11. One of the objections raised by the 1st defendant was that the Power of Attorney had been granted only with respect to the 'A' schedule property and not with respect to the 'B' and 'C' schedule properties.



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12. The application was taken up for arguments by the learned District Judge. No evidence was let in either by the plaintiff or by the defendants. No documents under Order XIX were filed by either of the parties.

13. The learned Trial Judge, on the basis of the judgment of the Supreme Court in **K.Akbar Ali v. K.Umar Khan, AIR 2021 SC 1114**, held that, as the power agent had not filed any Power of Attorney with respect to the 'B' and 'C' schedule properties, the petition itself was not maintainable. Consequently, he dismissed the injunction application. Hence, the present appeal.

14. It is the argument of Mr.T.R.Rajagopalan, learned Senior Counsel appearing for Ms.Deepika, that two powers of attorney had been executed by the plaintiff in favour of her brother viz., Mr.Zulfukhar Ali Sheikh Jahangir. He submits that the Power of Attorney dated 03.10.2023 authorises the agent to initiate, institute, commence, prosecute, defend, and handle any suit or proceedings, etc., before any Court. According to him, this is sufficient for the plaintiff to maintain the injunction application. In addition, he invites the attention of this Court to the deed of Power of Attorney executed by the plaintiff on 22.09.2025, which also covers the 'B' and 'C' schedule properties. Placing reliance on the judgment of the Hon'ble Mr.Justice V.Ramasubramanian in **K. Santhanam v. Ms. S.**



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Kavitha, (2011) 1 LW 66, he urges that the order passed by the learned Trial Judge is erroneous and requires interference.

15. *Per contra*, Mrs.Yasmin Begum vehemently contends that, in terms of Order III Rule 2 of the Code, the Power of Attorney not having been authorised as the agent to deal with the movable properties, the plaintiff is not entitled to maintain the application with respect to the said jewels. She argues that in **Akbar Ali's** case (referred to above), the Supreme Court pointed out that, if the Power of Attorney does not permit the agent to perform certain acts, such acts must be treated as unauthorised. Relying on paragraphs 9 and 10 of that judgment, she urges that there is absolutely no error in the order passed by the learned Trial Court. She further states that, on account of the pendency of the proceedings, the husband has been servicing loans for the past three years all by himself and that, due to the order of injunction, he is being put to irreparable loss, prejudice, and financial depredation. She urges that the appeal be dismissed and the order of the Trial Court be confirmed.

16. I have carefully considered the submissions of both sides and have gone through the records.



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17. As the facts have already been detailed above, I am not setting forth the same in this portion of the judgment.

18. Let me now examine the pleas regarding Order III Rule 2 of the Code of Civil Procedure. In case, a party seeks to sue through a Power of Attorney, the Court calls upon him/her to file an application under Order III Rule 2 and obtain permission. This is due to the bar under Order III Rule 1 of the Code, which provides that no agent can represent a party, unless so permitted by the Court. It is not in dispute that the plaint itself has been verified by the Power agent. Furthermore, in paragraph 26 of the plaint, the plaintiff has specifically pleaded that, as she is a resident of Ireland, it is not possible for her to come to India to file the suit and conduct the case. She has also referred to the deed of Power of Attorney dated 03.10.2023. The 1st defendant has not questioned the execution of the deed dated 03.10.2023. The 1st defendant has also not questioned the order granting permission in I.A. No. 1 of 2024 under Order III Rule 2 of the Code. I.A. No. 1 of 2024 having been allowed, the agent, for all purposes, has been empowered to conduct the suit, for and on behalf of the plaintiff. The 'B' and 'C' schedule properties form part of the plaint.



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19. Under Order III Rule 2(a), persons holding a Power of Attorney are entitled to make and do such appearances, file applications, and act for and on behalf of the Principal. A perusal of the Power of Attorney, reveals that in clause 10, the Principal has agreed to ratify and confirm whatever acts her brother/Power of Attorney agent does or proposes to do by virtue of the deed. The deed further authorises the agent to do all acts, deeds, and things necessary or incidental for the purposes set forth in the deed. A combined reading of the entire document shows that, as the plaintiff is a permanent resident of Ireland and is not in a position to come to India to sue her husband, she had appointed her brother as the power agent. Had an order of the Court not been passed in I.A.No.1 of 2024, the submissions of Mrs.Yasmin Begum would have been perfectly justified, and the order passed by the learned trial Judge in I.A.No.2 of 2024 would have been unimpeachable.

20. By virtue of the impugned order, the learned Judge has indirectly set aside the order passed in I.A.No.1 of 2024. Recognition of the Power of Attorney by the Court is essentially a matter between the Court and the party. The contesting party/adversary has no say in the matter. It is not for the 1st defendant to dictate as to whom the plaintiff should appoint as her Power agent to contest the proceedings and vice versa. The plaintiff had reposed confidence in her brother,



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appointed him as the power agent, and duly secured permission as pointed out above in I.A. No. 1 of 2024.

21. A careful reading of Order III Rule 2(a) and Order III Rule 2(b) would throw much light on this aspect. Under Order III Rule 2(b), where the suit relates to matters touching upon trade or business, the Court can insist that the Power of Attorney can seek for reliefs only with respect to matters connected with such trade or business. In case, there is no such authorization, then the Court can call upon the agent to produce proper authorization. This bar, on specificity of the Power of Attorney with respect to suits relating to trade or business, is absent with respect to Order III Rule 2(a). This shows that only in matters of trade or business, specificity of the Power of Attorney with respect to the manner of appearances, applications and acts can be insisted upon by the Court. In all other proceedings, a general Power of Attorney would suffice.

22. Let me now turn to the judgment very strongly relied upon by Mrs.Yasmin Begum. In that case, one Akbar Ali presented a suit challenging a sale deed executed by the first defendant in favour of defendants 2 & 3. The ground of challenge being that there was a preemption agreement in existence between the plaintiff and the 1st defendant. It was alleged that the preemption agreement was entered into between the power agent/son of the 1st defendant and the



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plaintiff. The purchasers, namely, defendants 2 and 3, moved an application for rejection of plaint. The primary point urged by them was that no Power of Attorney was executed by the 1st defendant in favour of her son, authorising him to enter into any sale or preemption agreement.

23. A learned Single Judge dismissed the said petition. Aggrieved by the same, defendants 2 and 3 preferred an appeal to the Division Bench. The Division Bench held that the Power of Attorney did not authorise the agent to execute any agreement but that the power had been granted by the 1st defendant, in favour of her son, only for conducting court proceedings. Consequently, the appeal was allowed and the plaint stood rejected.

24. It was against the said order, the Supreme Court was approached by way of a Special Leave Petition. The Supreme Court held that under Order 7 Rule 11 of the Code, a Court is entitled to read the plaint and the documents appended to it. It rejected the contention that the term “to do all lawful acts” includes the power to alienate the property or to enter into agreements of preemption. In other words, a document of Power of Attorney must be read strictly. As the power agent did not have the authority, the preemption agreement also lacked authority. Consequently, the plaintiff had no cause of action to present the plaint.



25. Essentially, the case discussed supra was a matter relating to the very power that had been granted by the principal to the agent. In other words, there seems to have been a dispute between the principal and the agent on that point. That is not the situation in the case on hand. There is no dispute between the plaintiff and her agent.

26. On the contrary, the plaintiff stands by her power of attorney and states that she has authorised her brother to do such acts that are necessary, in order to secure her a decree with respect to all the three schedules of the property. In case, there is a dispute between the agent and the principal, that would require a factual probe at the hands of the Court. However, when there is no dispute between the agent and the principal, probing into that issue at the instance of the 1st defendant, would indirectly impinge on the right of a litigant to appoint an agent to conduct the suit.

27. This is more so when, admittedly, neither the plaintiff nor the defendant is available in the country. The game of litigation would descend into chaos if the 1st defendant, is permitted to question the relationship existing between the principal-plaintiff and his or her agent. The suit may never see the light of the trial. The parties may forever be litigating on the contents of the power of attorney, even though the main parties, the principal and the agent, entertain no dispute.



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28. In any event, it is a settled position of law that even a lack of Power of Attorney amounts only to a curable defect. [See, **Varun Pahwa v. Renu Chaudhar, (2019) 15 SCC 28 and P.Nithyanandham v. G.Jayaraman, CRP(MD)No.2606 of 2023, dated 12.12.2023**] The alleged defect that had been pointed out by the 1st defendant in respect of the Power of Attorney dated 03.10.2023 stands cured by virtue of the second Power of Attorney executed by the plaintiff in favour of her agent on 22.09.2025. [See, **M/s.Haryana State Cooperative Supply & Marketing Federation v. M/s.Jayam Textiles & Anr., AIR 2014 SC 1926**].

29. The order granting Power of Attorney to institute the suit having become final, I am of the view that the learned Trial Judge placed unnecessary emphasis on that aspect of the case and had dismissed the application without even going into the merits of the claim made by the plaintiff or the 1st defendant.

30. Further, the plaintiff had the benefit of the injunction from 2024 until it was vacated on 27.01.2026. Pleadings have completed and the matter is ready for trial. Taking into consideration that the parties are related by marriage and that the marriage has produced two girl children, I am of the view that, before the parties decide to battle out the litigation like Kilkenny cats, it is better to broach the possibility of settlement by way of mediation.



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31. Having held the order as misconceived, if I were to remand the matter for fresh disposal, the parties would only be haggling over interlocutory applications and would never get to the meat of the matter. The existence of the jewels and its pledge with the 2nd defendant is not in dispute. If the 1st defendant was permitted to dispose the jewels and if the suits were subsequently decreed, it will only be a pyrrhic victory. The wedlock has produced two girls and the jewels, as it is alleged by the defendant himself, was given to them as gifts. Hence, I find a *prima facie* case in favour of the appellant. The balance of convenience is also in her favour as the jewels should not be drowned and lost in debts. The jewels have to be retained as it is, till the disposal of the suit.

32. At the same time, as contended by Mrs.Yasmin Begum, the husband cannot be called upon to bear the entire financial burden. Hence, while allowing the appeal and granting an order of injunction, I am inclined to impose certain conditions:-

- (i) CMA(MD).No.349 of 2026 stands **allowed**.
- (ii) The order passed by the learned Judge in I.A.No.2 of 2024 in O.S.No.198 of 2024, dated 27.01.2026 stands set aside.
- (iii) There shall be an order of injunction restraining the 1st respondent/husband from withdrawing the jewels covered by the 'B' and 'C' schedule mentioned properties, being held by the 2nd respondent Bank, pending disposal of the suit.



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(iv) At the time of disposal of an injunction application, this Court is empowered to impose such conditions as it may deem fit in the interests of justice. Hence, the 1st respondent/1st defendant shall inform the plaintiff of the amount that he is paying to the 2nd respondent, HDFC Bank, towards interest and retention of the jewels. On such intimation, the plaintiff shall pay 50% of the amount so incurred by the 1st defendant. In other words, at the first instance, the husband will pay the amounts, intimate the wife, and she shall reimburse him to the extent of 50%.

(v) The amount that is paid by the wife to the husband shall be adjusted at the time of accounting in terms of Order XX Rule 18 of the Code, in the event that the suit is decreed. In case, the suit is dismissed, insofar as items 'B' and 'C' are concerned, the husband shall be entitled to a charge over the extent of the amount expended by him, in the immovable property over which the plaintiff claims she has half share.

(vi) If the plaintiff is successful in proving that the loans on the jewels had been raised by the husband, exclusively for his purpose, the charge which has been created by this order will not operate.

(vii) The reimbursement to be made by the husband towards the wife as per this order will commence from **1st of April, 2026**, and shall continue till the disposal of the proceedings.



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(viii) The Court requests the assistance of Ms.Chitra Narayanan, a Senior Mediator and an Advocate practising in this Court, to mediate the dispute between the plaintiff and the 1st defendant and to attempt to settle the matter through the said process.

(ix) The learned Mediator is requested to commence the process of mediation from **06.04.2026**.

No costs. Consequently, the connected miscellaneous petition is closed.

Index :Yes / No

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Internet :Yes / No

NCC :Yes / No

Nsr

Note: The Registry shall communicate this order to Ms.Chitra Narayanan and shall send a soft copy of this order to the learned mediator.

To:

The IV-Additional District Court, Madurai.



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V.LAKSHMINARAYANAN, J.

Nsr

Order made in
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