



C.R.P.(MD).No.601 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2026

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(MD).No.601 of 2026

and

C.M.P.(MD).No.2801 of 2026

Solaimalaiyan @ Thiraviyam

.. Petitioner/Petitioner/
2nd defendant

Vs.

Mookayee (died)

1.Raman

2.Ponnupillai

3.Seethalakshmi

4.Valarmathi

... Respondents 1to 4/Respondents 1to 4/plaintiffs

5.Vimala

6.Alagan

... Respondents 5 & 6/Respondents 5 & 6/

defendants 1 & 3

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order dated 13.10.2025 passed in I.A.No.8 of 2025 in O.S.No.39 of 2014 on the file of the V Additional District Judge, Madurai and to set aside the same by allowing the Civil Revision Petition.

For Petitioners : Mr.M.Rajasekar
for M/s.Dhana Law Associates

For Respondents : Mr.J.Kiruthin – for R1 to R4
for Mr.M.Gurudass



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ORDER

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The 2nd defendant is the Civil Revision Petitioner. O.S.No.39 of 2014 is a suit for partition and separate possession. It also seeks for a declaration that the sale agreement executed by the 2nd defendant in favour of the 1st defendant on 08.06.2002 in Document No.1208 of 2012 is not binding on the plaintiffs.

2. The case of the plaintiffs is that the property was an ancestral property, inherited by one, Chinnalagan. He is the husband of the plaintiff and the father of the plaintiffs 2 to 5 and defendants 2 and 3. Chinnalagan died on 12.12.1988 leaving behind the aforesaid parties as his legal heirs. They pleaded that, each of the heirs are entitled to 1/7th share in the properties left behind by Chinnalagan.

3. They further pleaded that while so, the 2nd defendant in collusion with the 1st defendant had prepared certain documents on the basis of which, the revenue records were also mutated in his name. The plaintiffs came to know that, on the strength of these documents, the 1st defendant is attempting to make a claim. As they are not parties to the documents, they sought a declaration that the agreement is not binding on them. They further pointed out that, the 1st defendant had filed a suit in O.s.No.34 of 2008 on the file of the II Additional Subordinate Judge at



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Madurai, for specific performance of the agreement of sale dated 06.07.2002 and obtained a decree on 14.09.2012. Aggrieved by the said decree, the plaintiffs and the 2nd defendant had preferred a regular appeal before the VI Additional District Judge at Madurai in A.S.No.6 of 2013. On these several pleas, they sought the aforesaid reliefs.

4. Summons were served on the first defendant. The first defendant also filed a detailed written statement. So did the 2nd defendant. The 2nd defendant thereafter, filed an application to amend the plaint to include certain properties. This application was received by the learned V Additional District Judge, as I.A.No.8 of 2025.

5. He ordered notice in the application. The plaintiffs filed a counter, not seriously opposing the application. The 1st defendant alone filed a detailed counter, opposing the application under Order 6 Rule 17 CPC.

6. According to her, the 2nd defendant had already filed a suit in O.S.No.113 of 2015 pending on the file of the very same Court and the plaint in that suit had been marked as Ex.B6. The properties that were left out in this suit were included in that suit. In addition, the 1st defendant invoked the proviso to Order 6 Rule 17 and pleaded that, as the trial had commenced, the 2nd defendant must not be permitted to amend the plaint.



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She further pointed out that P.W.1 had been examined on 24.06.2015 and the application is only meant to drag on the proceedings.

7. On the basis of affidavit and counter, the learned Trial Judge took up the application for disposal. Solely relying upon the proviso to Order 6 Rule 17, the learned Trial Judge dismissed the application. In passing, he referred to the fact that O.S.No.113 of 2015 is also pending. Hence, this Civil Revision Petition.

8. Heard Mr.M.Rajasekar, for the petitioner and Mr.J.Kiruthin, representing Mr.M.Gurudass, for respondents 1 to 4.

9. The learned counsel reiterated the contentions they placed before the trial Court.

10. Here is a suit for partition and separate possession. A relief of declaration that the agreement entered into between the 1st defendant and the 2nd defendant is null and void and not binding on the plaintiffs has also been sought for. It is the specific case of the 2nd defendant that, certain properties had been left out by the plaintiffs at the time of presentation of the plaint. The plaintiffs had not amended the plaint.



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11. In a case of partition, where parties are left out or where properties are left out, the suit runs the risk of being dismissed for partial partition. In such an event, the parties will be vexed again with another suit which can be filed including all the properties or all the persons left out in the first suit. This will only result in multiplicity of proceedings and would not put an end to the litigation. It is not in dispute that the proviso to Order 6 Rule 17 speaks about a situation that, if an amendment application is filed post trial, it should not be entertained unless and until due diligence is shown by the plaintiffs. I am not in a position to apply the said proviso, as done by the learned trial Judge, for the simple reason that, it is not the plaintiffs who has come up with the application to include the properties left out. Rather, it is the 2nd defendant who has filed the application. The bar that is placed on the plaintiffs as is evident from the proviso to Order 6 Rule 17, cannot be placed on the 2nd defendant.

12. Furthermore, this being a suit for partition, the Court must endeavour to put an end to the litigation as the persons before it are family members. By dismissing the petition, the Court has only prolonged the litigation. It is not useful to anyone, including the parties to the suit. It is admitted that the 2nd defendant has already filed O.S.No.113 of 2015, pending on the file of the very same Court. The learned District Judge could have allowed the application and directed both the suits to be tried together,



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instead of dismissing the petition and constraining the 2nd defendant to move this Revision.

13. In the light of the above discussion, the Civil Revision Petition succeeds and the order passed by the V Additional District Judge at Madurai in I.A.No.8 of 2025 in O.S.No.39 of 2014 dated 13.10.2025 is set aside. I.A.No.8 of 2025 stands allowed. Leave is granted to the 2nd defendant to amend the plaint to include the properties left out. In case, the learned V Additional District Judge is of the view that there will be no embarrassment to the trial of both the suits, he is requested to try O.S.No.39 of 2014 along with O.S.No.113 of 2015. No costs. Consequently, connected Miscellaneous Petition is closed.

30.03.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The V Additional District Judge, Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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V.LAKSHMINARAYANAN,J.

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