2026:MHC:4593

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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12-11-2026 **Delivered on: 17-11-2026**

CORAM

THE HON'BLE MR JUSTICE N.ANAND VENKATESH

Civil Revision Petition No.5795 of 2025 & CMP.No.28786 of 2025

CNR:{HCMA012753172025}

Case QR

V.Radhakrishnan
S/o.V.Veerasamy,
Rep by Power of Attorney
Agent D.Vijayakumari
B-10, II Cross, Thilainagar,
Trichy

...Petitioner

Vs

1. Chithra Balakrishnan
   W/o.Late.V.Balakrishnan
   T3, Green Arcade Apartment
   New No.21, II Cross,
   Thilai Nagar, Trichy.

2. Arthi @ Vaishnavi Balakrishnan
   D/o.Late.V.Balakrishnan
   T3, Green Arcade Apartment
   New No.21, II Cross,
   Thilai Nagar, Trichy

3. V.Chandrasekar **(deceased)**

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No.25, IV Main Road,
Gandhi Nagar, Adayar,
Chennai.

4. V.Rangarajan
No.25, IV Main Road,
Gandhi Nagar, Adayar,
Chennai.

5. V.Shanthi Chandrasekar,
at No.10, Third Street,
Kamakoti Nagar,
Pallikaranai, Chennai-100.

6. Vikram Chandrasekar
at No.10, Third Street,
Kamakoti Nagar,
Pallikaranai, Chennai-100.

7. Vishal Chandrasekar
at No.10, Third Street,
Kamakoti Nagar,
Pallikaranai, Chennai-100.

(R5 to R7 are brought on record as the legal heirs of the deceased R3 vide order of this Court dated 12.11.2026 in CMP.No.20495 of 2026 by NAVJ)

...Respondents

PETITION under Article 227 of The Constitution of India against the fair and decretal order dated 09.10.2025 in I.A.No.9 of 2025 in O.S.No.5499 of 2019 on the file of the Third Additional Judge, City Civil Court, Chennai.

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For Petitioner: Mr.N.Suresh

For Respondents: Mr.B.Ravi &
Mr.R.Vivekanandan for R1

R3- died

Ms.K.Sunitha for
Mr.S.Elambharathi for R4

Mr.K.V.Ananthakrushnan for
R5 to R7/LRs of Deceased R3

ORDER

This civil revision petition has been filed under Article 227 of The Constitution of India against the order dated 09.10.2025 in I.A.No.9 of 2025 in O.S.No.5499 of 2019 on the file of the Third Additional Judge, City Civil Court, Chennai (for short, the Court below) wherein the application filed by the petitioner/D2 to eschew Ex.P.11 from consideration, came to be dismissed.

2. Heard the learned counsel for the petitioner, the learned counsel appearing for the first respondent, the learned counsel appearing on behalf of the fourth respondent and the learned counsel appearing for the newly impleaded parties namely

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respondents 5 to 7.

3. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned order.

4. **During the pendency of this revision, the third respondent/D1 died and his legal heirs namely respondents 5 to 7 were brought on record vide order dated 12.11.2026 in CMP.No. 20495 of 2026.**

5. Respondents 1 and 2, who are the plaintiffs, filed the said suit seeking for the relief of partition and for allotment of 714 sq.ft. in the suit property and for permanent injunction. Initially, the said suit was filed before this Court and it was taken on file in C.S.No.848 of 2014. The said suit reached the stage of trial and the evidence was recorded by Additional Master-III. Thereafter, the said suit was transferred to the file of the Court below and renumbered as O.S.No.5499 of 2019.

6. In the said suit, the petitioner/D2 filed the said application to eschew Ex.P.11 on the ground that a photo copy of the document

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dated 21.6.2002 was attempted to be marked by respondents 1 & 2/plaintiffs through the petitioner/D2, who was examined as D.W.1 and when the same was opposed, the issue was considered by this Court in the application filed by respondents 1 and 2/ plaintiffs namely A.No.6693 of 2018 in C.S.No.848 of 2014 (when this suit was pending before this Court) and by order dated 27.9.2018, a learned Single Judge of this Court held that the said document could not be marked through D.W.1 during cross examination and that if at all respondents 1 & 2/plaintiffs wanted to rely upon the said document, it would be left open to them to seek to mark the document through their own witness. Ultimately, A.No.6693 of 2018 was rejected.

7. The grievance of the petitioner/D2 is that in spite of the said order dated 27.9.2018 passed by this Court, a set of documents in the form of a typed set of documents was marked through D.W.1 as Ex.P.11 in the other connected suit in O.S.No.2366 of 2013 in spite of the objections raised by the petitioner/D2 and that indirectly, the disputed document dated 21.6.2002 was brought on record in complete violation of the order dated 27.9.2018 passed by this Court in A.No.6693 of 2018 in C.S.No.848 of 2014. In view of the same, the petitioner/D2 filed I.A.No.9 of 2025 seeking to eschew Ex.P.11.

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8. Per contra, both the learned counsel for respondents 1 & 2/plaintiffs as well as the learned counsel for the newly impleaded respondents namely respondents 5 to 7 in the place of the deceased third respondent/D1 submitted that a copy of the document dated 21.6.2002 was not marked through the petitioner/D2 – DW1; that it was actually marked through D.W.2, who was the third respondent/ D1 in the said suit and who admitted to the existence of this document; that therefore, when the said suit was at the stage of final hearing, the petitioner/D2 could not be allowed to file I.A.No.9 of 2025 to eschew Ex.P.11; and that such an application was filed only to drag on the proceedings.

9. The disputed document in the present case is a copy of the deed of declaration of confirmation of oral partition said to have been executed among Mr.V.Balakrishnan, Mr.V.Rangarajan and Mr.V.Radhakrishnan dated 21.6.2002. This document was denied by the petitioner/D2. An attempt was made to mark this document during cross examination of the petitioner/D2 (D.W.1.). The same was opposed at the time of joint trial. In view of the same, A.No.6693 of 2018 in C.S.No.848 of 2014 was filed by respondents 1

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and 2/plaintiffs seeking to permit them to mark the said deed of declaration dated 21.6.2002 through D.W.1.

10. A learned Single Judge of this Court, after hearing both sides, rejected I.A.No.6693 of 2018 on 27.9.2018 in the following terms:

> *"17. As noticed by me elsewhere, the purpose of the prayer in this application, specifically in so far as it relates to the marking of document through D.W.1 does not appear to be warranted. While it is certainly open to the applicants to seek to mark documents through their own witness, which request, if made will be considered in accordance with law, the prayer is sought for now before me is not liable to be granted. In fine, I reject this application."*

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11. After the said order dated 27.9.2018 was passed, the cross examination of D.W.1 continued and on 01.11.2018, during cross examination, a typed set of documents, which was said to have been filed by the third respondent/D1, in his suit in O.S.No.2399 of 2013, was marked through the petitioner/D2 as Ex.P.11 in spite of the objections raised on the side of the petitioner/D2.

12. This Court called for the original records from the Court below. On perusal of the records, it was found that a typed set of documents has been marked wholesome as Ex.P.11. This typed set of document also contained the disputed deed of declaration dated 21.6.2002.

13. At this juncture, this Court has to necessarily express its displeasure in the Master allowing the entire typed set of documents to be marked as a single exhibit. This procedure is unheard of and the entire typed set was marked as a single document without appreciating the fact that the typed set of documents contained nearly 9 independent documents including the deed of declaration

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dated 21.6.2002. While this Court, due to various reasons, has made it a practice to conduct trial through the Master, in many occasions, the trial becomes cumbersome since the Master is virtually not able to take any decision during trial and mistakes are committed while marking documents.

14. In the case in hand, the typed set of papers contained 9 documents was marked as Ex.P.11 and that too, during the cross examination of D.W.1.

15. Marking of documents during the cross examination is a process permitted under Section 145 of the Indian Evidence Act (Section 148 of the Bharatiya Sakshya Adhiniyam, 2023). This procedure is adopted where the counsel cross examining seeks to contradict a witness using a prior written statement and after eliciting an answer if a contradiction is to be made out, the said document has to be shown to the witnesses and the contradiction must be elicited. This is done more to impeach the credit of a witness rather than as a substantive proof of facts.

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16. Whenever a document is said to be marked through a witness during cross examination, the above principle must be kept in mind. However, in the present case, the entire typed set of documents has been marked without explaining the contradiction that was sought to be elicited from D.W.1 from those documents. Therefore, the evidentiary value of the typed set of documents marked as Ex.P.11 becomes questionable.

17. Coming back to the specific issue involved in the present case, the deed of declaration of confirmation of oral partition dated 21.6.2002 was denied by the petitioner/D2 and this Court, while passing the order dated 27.9.2018 in A.No.6693 of 2018 in C.S.No.848 of 2014, made it clear that this document could not be marked through the petitioner/D2 (D.W.1) during the cross examination and at the best, the respondents 1 and 2/ plaintiffs could only mark the document through their witness.

18. It now comes to light that the deed of declaration of confirmation of oral partition dated 21.6.2002 was, in fact, marked through D.W.2, who was D1 in the said suit. He admitted to the

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existence of the said document and in a way, he also supported the case of respondents 1 & 2/plaintiffs. Hence, the document that was disputed by the petitioner/D2 came to be marked through D.W.2 (D1) and he must be taken to be a witness supporting the case of respondents 1 and 2/plaintiffs. Therefore, marking of the said document through D.W.2 cannot, per se, be held to be in violation of the orders passed dated 27.9.2018 by this Court in A.No.6693 of 2018 in C.S.No.848 of 2014.

19. The Court below, while dealing with I.A.No.9 of 2025, specifically rendered a finding that Ex.P.11 was marked only through D.W.2, that the issue regarding its relevancy and proof would be independently considered and that the objection of the petitioner/D2 regarding the evidentiary value of the said document could always be raised and it would be considered.

20. The Court below specifically took note of the fact that the objections have been raised by the petitioner/D2 at the time of final arguments on the ground that the petitioner/D2 had come to know about the marking of the said document only at that stage and

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concluded that such a stand taken by the petitioner/D2 was not sustainable.

21. The disputed document that has been marked before the Court below was independently marked and therefore, even if the marking of the entire typed set of documents becomes questionable, the marking of the disputed document through D.W.2 will have to be independently assessed regarding its evidentiary value. Such marking of the document cannot be eschewed since it was not done through D.W.1. In view of the same, the impugned order passed by the Court below cannot be held to be perverse or illegal warranting the interference of this Court. It is always left open to the petitioner/D2 to question the evidentiary value of the disputed document and the same will be considered by the Court below on its own merits and in accordance with law.

22. In the result, the above civil revision is disposed of in the above terms while sustaining the impugned order dated 09.10.2025 in I.A.No.9 of 2025 in O.S.No.5499 of 2019 on the file of the Third Additional Judge, City Civil Court, Chennai. No costs. Consequently,

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the connected CMP is closed.

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Neutral Citation: Yes

To
The Registrar,
City Civil Court, Chennai.

RS

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N.ANAND VENKATESH,J

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