



Cro.Obj.(MD)No.4 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 09.02.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**Cros.Obj.(MD)No.4 of 2026
in
A.S.(MD)No.194 of 2025
and
C.M.P.(MD)No.845 of 2026**

Hameetha Beevi

... Cross Appellant / 9th Respondent

Vs.

1.Shanmugavel

2.Kaniammal

3.M.Velammal

4.Murugammal ... Respondents 1 to 4 / Appellants

V.A.Seyad Muhammed (Died)

5.Asiya Banu

6.Syed Ismayil Muhaitheen

7.Syed Alima Parveen

8.V.A.Syed Appas

9.V.S.Yasmin Banu

Madasamy (Died)



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10.Seethaiammal
11.Balasubramanian

12.M.Esakumuthu ... Respondents 5 to 12 / Respondent 1 to 8

Prayer : Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to set aside the judgment and decree passed in O.S.No.127 of 2015 dated 20.01.2023 on the file of the 3rd Additional District Court, Tirunelveli insofar, rejecting the appellant / 9th defendant's claim alone.

For Cross Appellant : Mr.H.Arumugam

ORDER
(By G.R.SWAMINATHAN, J.)

The Registry has raised an objection as to whether the cross-objector in A.S.(MD)No.194 of 2025 can file cross-objection by paying standard court fee of Rs.150/- by nominally valuing the appeal at Rs.5,000/- or whether court fee has to be paid on *ad valorem* basis.

2.Before answering this legal question, the facts of the case may be summarized. O.S.No.127 of 2015 was filed on the file of the III Additional District Court, Tirunelveli by one V.A.Seyad Muhammed



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seeking the relief of specific performance. According to Seyad **WEB COPY** Muhammed, he had entered into sale agreement with the appellants through their power agent for purchasing the suit property. During the pendency of the suit, Seyad Muhammed passed away. I.A. was filed by Asiya Banu and her children to come on record to prosecute the suit. The IA was allowed. Subsequently, Hameetha Beevi (cross-objector) filed an application to implead herself as one of the defendants. Hameetha Beevi pointed that the marriage between Asiya Banu and Seyad Muhammed was dissolved in the manner known to law and that it was also confirmed by a decree of declaration. She also pointed out that the marriage between herself and Seyad Muhammed was duly registered. Seyad Muhammed was a municipal employee. It is Hameetha Beevi who is receiving the family pension and not Asiya Banu. She categorically asserted that she alone enjoyed the status of wife of Seyad Muhammed since the marriage between Seyad Muhammed and Asiya Banu was dissolved in the manner known to law.

3. The Court below while granting the relief of specific performance vide judgment and decree dated 20.01.2023 did not grant



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any relief to Hameetha Beevi. The denial rested on two grounds: (a)

WEB COPY Hameetha Beevi was not a party to the agreement and (b) she did not join herself as a co-plaintiff. Aggrieved by the decree passed by the Court below, the defendants have already filed A.S.No.194 of 2025. In the said appeal, Hameetha Beevi filed cross-objection. The Registry raised the issue regarding payment of court fee. Since the Hon'ble Supreme Court in the decision reported in **(2019) 9 SCC 154 (P.Surendran Vs. State)** had held that the issue of maintainability has to be decided only by the Court and not by the Registry, we directed the Registry to number the cross-objection and list the same for maintainability. Accordingly, the matter stands posted before us today.

4. The learned counsel for the cross-objector relied on the decision reported in **1995 (98) L.W. 200 (Madhavan Vs. Muniammal)** in support of his contention that court fee need not be paid on *ad valorem* basis by the cross-objector. We regret to remind the learned counsel that this decision far from supporting his case is actually against him. That was a case in which the revision petitioners had preferred cross-objection in a regular first appeal. The first appellate Court had directed payment of



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court fees on the cross-objections. The High Court noted that the **WEB COPY** revision petitioners had not questioned the trial Court's decree but challenged only an adverse finding and therefore, the question of payment of court fee did not arise. In the case on hand, the cross-objector questions the trial Court's decree since no relief was granted to her. She has not assailed the findings alone. In ***Madhavan Vs. Muniammal***, it was held that a cross-objection in the real sense partakes the character of an appeal for all practical purposes including payment of court fees. The real test is to find out whether the cross-objector attacks the decree or supports the decree. If the cross-objection is in respect of the decree in the sense it attacks the decree, it cannot escape being treated as an appeal as such and it would have all the incidents of an appeal annexed to it including payment of court fees. In our view, the above decision of Hon'ble Mr.Justice Nainar Sundaram settles the issue and the Registry need not have any doubt on this score.

5. But as a matter of practice, it appears that cross-objections had been numbered without insistence on payment of court fee on *ad valorem* basis. But Courts have been careful enough to direct the cross-



objector to pay court fees when relief was finally granted in favour of the **WEB COPY** cross-objector. For instance, in the decision reported in **2010 (2) CTC 1**

(The Special Tahsildar, Adi Dravidar Welfare Scheme, Thiruvallur Vs. M.Gopinathan), while dismissing the department's appeal and partly allowing the cross-objection by enhancing the compensation amount payable to the claimant, the Hon'ble Division Bench passed the following directions:-

“32. In the result, the compensation amount payable to the respondent/claimant is enhanced to Rs. 55,38,960 and Cross-Objection is partly allowed. It is stated that appellant has deposited Rs. 44,10,000/- along with 15% solatium and the accrued interest. The appellant is directed to deposit the balance of enhanced compensation along with 15% solatium and 6% interest from the date of award to the credit of L.A.O.P. No. 100 of 2000 within a period of twelve weeks from the date of receipt of a copy of this order.

33. On such deposit, the claimant is permitted to withdraw the entire amount less Rs. 7,50,000/. After withdrawal of the amount respondent/claimant is directed to pay the requisite Court Fee payable in L.A.O.P. No. 100 of 2000 under Section 51 Tamil Nadu Court Fees and Suits Valuation Act and also in the High Court in this Appeal Suit within a period of two weeks from the date of withdrawal of the amount. On payment of necessary Court



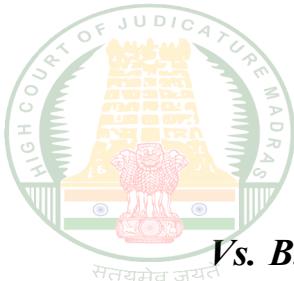
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Fee, both in the Additional District Court, Thiruvallur as well as in the High Court, and on production of necessary certificate for payment of Court Fee respondent/claimant is permitted to withdraw the balance of Rs. 7,50,000/-.”

We can cite many such judgments rendered in first appeals / second appeals **[2019] SCC OnLine Mad 29945]** / civil miscellaneous appeals **[1999 (2) CTC 271]** . Unless, the cross-objections were allowed to be numbered in the first instance without payment of *ad valorem* court fee, the question of directing payment of court fee to enjoy the benefit of the decree passed in the cross-objection would not have arisen at all.

6. The Hon'ble Supreme Court in the decision reported in **(1999) 4 SCC 423 (Superintending Engineer Vs. B.Subba Reddy)** had held that a cross objection is nothing but an appeal and that it has all the trappings of an appeal and is filed in the form of memorandum under Order 41 Rule 22 of CPC and that all the provisions that apply to an appeal would apply to cross-objections / cross-appeals also. We hesitantly refer to this decision because in **Urmila Devi Vs. National Insurance Company Limited (2020) 11 SCC 316**, a three Judges Bench of the Hon'ble Supreme Court held that **(1999) 4 SCC 423 (Superintending Engineer**



Vs. B.Subba Reddy) has been partly overruled. The Court noted that in

WEB COPY *MCD Vs. International Security and Intelligence Agency Limited*

(2004) 3 SCC 250, the issue that arose was whether the cross-objection must be heard and decided on merits though the appeal by reference to which cross-objection has been filed is itself dismissed as not maintainable. ***B.Subba Reddy*** was overruled on this point in ***MCD Vs. International Security and Intelligence Agency Limited***. It was held in this decision that the observation in ***B.Subba Reddy*** that filing of cross-objection is not procedural in nature is incorrect and proceeds on the wrong premises. It was laid down that form of cross-objection is procedural and it is only a manner of exercising right of appeal which is substantive. Even though the 2004 decision had expressly expressed their disagreement with ***B.Subba Reddy***, interestingly in ***Hari Shankar Rastogi Vs. Sham Manohar (2005) 3 SCC 761***, it was observed that ***MCD Vs. International Security Agency Limited*** does not lay down any proposition contrary to ***B.Subba Reddy***. Justice V.Ramkumar, former Judge of the Hon'ble Kerala High Court in his article published in LiveLaw on 09.04.2015 titled “My understanding of Order 41 Rule 22 CPC” remarks that ***B.Subba Reddy*** decision will have to be understood



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only with reference to that category of cross-objections which assail a **WEB COPY** part of the decree appealed from in the main appeal and that the observations in ***B.Subba Reddy*** cannot obviously apply to cross-objections which merely assail an adverse finding.

7. Be that as it may, the case on hand involves payment of court fee which issue did not arise in any of the aforesaid decisions. But once we take the view that cross-objection to the decree is like a substantive appeal warranting payment of court fee on *ad valorem* basis, we have to hold that on account of non-payment of requisite court fee, this cross-objection is not maintainable. To sum up the legal position, if the cross objection is against the decree, court fee has to be paid accordingly. If it is against a mere finding, the question of paying *ad valorem* court fee does not arise at all.

8. This view also receives strength from the decision of the Hon'ble Kerala High Court reported in **2012 SCC OnLine Ker 31993 (Peethambara Panicker Vs. Pratheepkumar)**. It was held therein that if the cross-objection is against any part of the decree, cross-objectors may



have to pay court fee as required by law. But, when a cross-objection is **WEB COPY** against a finding, it is not necessary for the cross-objectors to pay *ad valorem* court fee.

9. In fact, all these academic discussions may not even be necessary because as per Section 3(i) of the Tamil Nadu Courts Fee and Suits Valuation Act, 1965, appeal includes a cross-objection. Section 16 of the Act states that the provisions of Sections 10 to 14 relating to the determination and levy of fee on plaints in suits shall apply mutatis mutandis to the determination and levy of fee in respect of the memorandum of appeal, cross-objections or other proceedings in second appeal or in an appeal under the Letters Patent. Section 16 is silent about a first appeal filed under Section 96 of CPC. Section 52 states that the fee payable in an appeal shall be the same as the fee that would be payable in the court of first instance on the subject matter of the appeal. Thus, the cross-objector will have to pay the same court fee on the cross-objection which he / she would have had to pay if the relief sought for before the appellate Court was sought before the Court of first instance. In the case on hand, the plaintiff passed away and the cross-objector has



to be recognized as one of his legal heirs. Decree for specific performance has been granted in favour of plaintiffs 2 to 6. The trial Court ought not to have included Asiya Banu as one of the decree holders. On the other hand, the defendants 1 to 8 should have been directed to execute the sale deed in favour of plaintiffs 3 to 6 and the cross-objector. The suit could not have been dismissed as against the cross-objector. She should have been included as one of the decree holders. The plaintiff had paid court fee of Rs.1,20,000/-. The cross-objector is one of the five legal heirs. As widow, her 1/8th share of court fee would come to Rs.15,000/-.

10. Even though we have held that this cross-objection is not maintainable, considering the special facts obtaining in this case and to render substantial justice, in the event of this Court finally upholding the decree for specific performance, the power under Order 41 Rule 33 of CPC will have to be invoked in favour of Hameetha Beevi. The object of the rule is to empower the appellate Court to do complete justice between the parties (*Mulla's 21st edition by Justice K M Joseph and Sharath Chandran, Volume 3, Pages 4207 to 4209*). The Hon'ble Supreme Court



in ***Mahant Dhangir Vs. Mathan Mohan AIR 1988 SC 54*** held that the **WEB COPY** appellate Court could exercise the power under Order 41 Rule 33 even if the respondent may not have filed any appeal or objection. The sweep of the power is wide enough to determine any question not only between the appellant and respondent but also between respondent and co-respondents. The appellate Court could pass any decree or order which ought to have been passed in the circumstances of the case to meet the ends of justice. The power under this rule is in derogation of the general principle that a party cannot avoid a decree against him without filing an appeal or cross-objection. The Court will exercise the power according to justice, equity and good conscience (***Choudhary Sahu Vs. State of Bihar (1982) 1 SCC 232***).

11. In the above decision (***Choudhary Sahu***), the Hon'ble Supreme Court held that while exercising the power conferred under Order 41 Rule 33, the Court should not lose sight of the provisions of the other laws, viz., the law of limitation or the law of court fees etc. Therefore, in the event of this Court invoking the power under Order 41 Rule 33 CPC, decree can be drafted in favour of Hameetha Beevi and issued to her only



if the court fee as mentioned above is paid by her. But then, she runs a **WEB COPY** risk. Suppose the appellants and the plaintiffs compromise the matter among themselves and this appeal itself is withdrawn, Hameetha Beevi may be left in the lurch. If Hameetha Beevi pays court fee and maintains this cross-objection, even if the appellants withdraw the appeal, Hameetha Beevi can independently pursue her cross-objection. Hence, we answer the issue of maintainability in the following terms:-

The cross-objector is given eight weeks from today to pay the *ad valorem* court fee failing which the cross-objection will be dismissed as not maintainable. Even in that event, if the decree for specific performance were to be upheld, this Court would invoke the power under Order 41 Rule 33 in favour of Hameetha Beevi with a caveat that she would have to pay *ad valorem* court fee. This Court can even indicate that failure to remit such court fee by her would lead to affirmation of the trial Court's decree as such. We say so because the other contesting respondents namely, the children of the deceased plaintiff should not be prevented from executing the decree on account of non-payment of court fee by Hameetha Beevi. She should not be allowed to ride piggy back on their shoulders.



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12. We have made such elaborate observations to avoid future

WEB COPY ambiguities. But we should not be understood even remotely as having

suggested anything adverse to the case of the defendants / appellants.

We have not ventured into the merits of the matter at all.

13. The objection raised by the Registry is sustained and this cross-objection is ordered as above. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.,) & (R.K.M. J.,)
09.02.2026

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

The III Additional District Court,
Tirunelveli.

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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