IN THE COURT OF THE SUBORDINATE JUDGE,
MADURANTAKAM.

Present: Mr. T.GANESH, B.A., B.L.,
Subordinate Judge,
Maduranthakam

Wednesday, the 03rd day of June, 2026
I.A.No. 2/2025
in
M.C.O.P No. 29/2020
(CNR No. TNCG13- 000023-2020)

Divisional Manager,

M/s. Kotak The Mahindra Prime Limited,

Rep.by its Authorised Signatory,

Godson Vinokaran,

Samson Towers,

6th Floor, 402L, Pantheon Road,

Egmore, Chennai – 600 008. … Petitioner/ 2nd Respondent

..Vs..

1. Chengapandiyan ....Respondents/1st Respondent
2. Selvi
3. Deepa
4. Malathi
5. Minor. Nandhini
   5th Petitioner Rep.by her Mother
   and Natural Guardian Selvi. ...Respondents/Petitioners

This petition coming up for final hearing on 17.04.2026 in the presence of Mr.M.Ajmal Azzath, counsel for the Petitioner/2nd Respondent and Mr.A.Dhayalan, counsels for the respondents 2 to 6/Petitioners 2 to 6 having heard the arguments on both sides and having perused the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioner under Order I Rule 10(2) of Civil Procedure Code to delete the petitioner/2ndRespondent on the file of M.C.O.P No. 29/2020 this court.

2. Petition in brief:

Petitioner is a non-banking Finance company registered under the banking Companies regulation act and engaged in the business of providing housing loan to their prosperous customers based on the application made by them. The claim petition ought to be filed against the 1st respondent and his insurance company by the respondents 2 to 6. Contrarily this petition has been filed against this petitioner, with baseless and unsustainable claims, also with an ulterior motive to enrich out of the above said claim petition.

The business relationship between the Petitioner and the 1st respondent herein is Mortgagor and Mortgagee and have no insurance related especially third party insurance related business relationship. This respondent has financed Loan amount to the 1st respondent to purchase of the Vehicle TN-22-DC-5698 for a Loan amount of Rs. 9,25,000/- for a tenure of 60 months which starts from 05.05.2016 to 05.05.2021 carrying an EMI of Rs. 19459/-. The above said loan was fully repaid by the 1st respondent on 02.03.2022 and this respondent has also issued NOC dated 03.03.2022 towards confirmation of closure of loan.

The contents alleged and arrayed as hypothecation owner is hereby vehemently denied and there is no such concept of Hypothecation owner. As per Hypothecation agreement dated 12.04.2016 entered between 1st respondent and this petitioner, the possession of the vehicle is with 1st respondent and as per Registration Certificate of the said vehicle the Ownership stands in the name of 1st respondent. The 1st respondent has been paid their EMI regularly and the account has been closed.

Hence the petitioner files this application to delete the petitioner/2nd Respondent on the file of M.C.O.P No. 29/2020.

3. Counter of 5th respondent/2nd Respondent in brief:

The respondent denies the allegations set out in the affidavit. Respondents 2 to 6/petitioners had filed the above main O.P for grant of compensation against the petitioner/2nd respondent and respondent/1st respondent. 2nd respondent/1st petitioner examined herself as PW-1 and posted for cross examination of her. Petitioner/2nd respondent already filed the counter in main case and the case now posted for cross of PW-1. At this juncture the petitioner/ 2nd respondent filed this application. Already the same kind of petition in I.A.No.1/2025 in M.C.O.P.No.29/2020 was filed and the same was dismissed for default on 06-11-2025. Now the petitioner/2ndrespondent again files this petition with same cause of auction and same maybe dismissed.

Petitioner/2ndrespondent is hypothecation owner of the vehicle Maruti Suzuki Ciaz Car bearing registration number TN-22-DC-5698 which involved in the accident on 29-09-2019. It is submitted that, as per section 2(30) of M.V.Act, 1988 *"owner" means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement"*

There is an agreement between the petitioner/2ndrespondent and 1st respondent/1st respondent as a owner and hypothecation owner and both are have liable to maintain the proper 3rd party insurance to drove the vehicle in a road and the petitioner/2ndrespondent cannot escape from his liability that, his contract was closed on 05-05-2021 and NOC issued dated 03-03-2022. The accident was occurred on 29-

09-2019. The contract between the petitioner/2nd respondent and 1st respondent/1st respondent was active at the time of accident. Petitioner/ 2nd respondent can contest his defense while cross examination and adducing the evidence instead of seeking deletion of party. Hence the petitioner files this petition is liable to be dismissed.

4. No oral and documentary evidence adduced by both sides.

5. Heard both sides and perused the records.

<u>6. Point:</u>

"Whether the petition can be allowed?"

The present petition has been filed under Order I Rule 10(2) of Civil Procedure Code seeking deletion of the petitioner/ 2nd respondent from the array of parties in M.C.O.P.No.29/2020.

The petitioner/2nd respondent contends that the relationship between them and the 1st respondent is only that of mortgagor and mortgagee under a hypothecation agreement in respect of the vehicle bearing Registration Number TN-22-DC-5698. It is further stated that the vehicle stood registered in the name of the 1st respondent and possession of the vehicle was also with the 1st respondent. The petitioner further submits that the loan amount was fully discharged and NOC was issued subsequently. Hence, according to the petitioner, no liability can be fastened upon the 2nd respondent in the claim petition and therefore seeks deletion from the proceedings.

The respondents oppose the petition contending that the petitioner/2nd respondent is the hypothecation owner of the offending vehicle and that the agreement between the petitioner and the 1st respondent was very much in force on the date of accident namely 29.09.2019. It is further contended that the petitioner had already filed counter in the main M.C.O.P and the matter has been posted for cross examination of PW-1 and at this stage the present petition has been filed only to protract the proceedings. The respondents further contend that under Section 2(30) of the Motor Vehicles Act, the person in possession of the vehicle under a hire purchase, lease or hypothecation agreement also comes within the ambit of ownership and therefore the petitioner cannot escape from the liability arising out of the accident.

On consideration, this Court notes that the claim petition has been filed seeking compensation for the injuries/death caused in the motor accident involving the vehicle bearing Registration Number TN-22-DC-5698. Admittedly, on the date of accident, the hypothecation agreement between the petitioner/ 2ndrespondent and the 1st respondent was subsisting. Though the petitioner contends that the vehicle stood registered in the name of the 1strespondent and possession was also with him, the records disclose that the petitioner was shown as hypothecation holder in respect of the offending vehicle at the relevant point of time.

But the deletion of a party under Order I Rule 10 CPC can be ordered only when such party is neither a necessary nor proper party for effective adjudication of the dispute. In the present case, the petitioner/2ndrespondent had financial interest over the offending vehicle under the subsisting hypothecation agreement on the date of accident. Whether such relationship would fasten any liability upon the petitioner is a matter to be decided during the course of trial on appreciation of evidence. Further it is pertinent to note that the petitioner has filed his counter in main petition and that the claim petition was posted for cross examination of 2nd respondent(Pw1). At this stage this application was filed. The petitioner can very well establish his defence during cross examination and by adducing evidence before the Tribunal. Apart from that this claim application is of more than **5 years** old. Having consumed time for filing this application, which is of its second kind, the petitioner, at this time, can took the claim petition to end for disposal on merits. Inspite he filed this application, which is clear abuse of process of court. At this stage, this Court is of the view that the petitioner cannot be deleted from the array of parties merely on the ground that the loan transaction was subsequently closed and NOC was issued after the accident. Hence, this point is decided accordingly.

7. Result:-

In the result this application is dismissed as devoid of merits. No costs.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 03rd day of June, 2026.

GANESH THIRUNAVUKKARASU
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Location: Subordinate Judge, Madurantakam.
Date: 2026.06.03 17:26:14 +0530

Subordinate Judge,
Madurantakam.

I. Petitioner side evidence and Exhibits : Nil.

II. Respondents side Evidence and Exhibits : Nil.

GANESH THIRUNAVUKKARASU
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Subordinate Judge,
Madurantakam.

FAIR/DRAFT ORDER
I.A No. 2/2025
IN
M.C.O.P No. 29/2020
D.D: 03.06.2026
SUB COURT,
MADURANTAKAM