

In the Court of the I Additional District Court, Madurai.

Present: Thiru.G.Muthukumaran, B.Sc., M.L.

I Additional District Judge, Madurai

On the 11th day of February 2026, Wednesday

IA No.1/2025 in OS No.17/2016

1. Sardar Batcha, S/o.Rahman Sheriff,
No.6/6A, Ansari Nagar 6th Street,
Mahaboobpalayam, Madurai – 10.

2. Jaitha Begum, W/o.Sardar Batcha,
No.6/6A, Ansari Nagar 6th Street,
Mahaboobpalayam, Madurai – 10.

...Petitioners/ Plaintiffs

V/S

1. Syed Abuthakir, S/o.Syed Batcha,
Door No.6, Ansari Nagar 6th Street,
Mahaboobpalayam, Madurai – 10.

2. The Branch Manager,
Repc Home Finance Ltd.,
Madurai Branch.

... Respondents /Defendants

3. The Director,
Bajaj Housing Finance Ltd.,
Cerebrum IT Park, B2 Building,
5th Street, Kumar City, Kalyani Nagar,
Pune – 411 014.

4. The Assistant Manager,
Bajaj Housing Finance Ltd.,
No.181, 2nd Floor, DSP Nagar,
Bye Pass Road, Madurai – 625 016.

... 3 & 4 Respondents/Proposed Parties

In this petition Advocate M.Mohamed Rafi M.A., B.L., has appeared for the Petitioners and Advocate Mr.T.C.S.Thillainayagam B.Sc., B.L., has appeared for the 1st Respondent and Advocate Mr.B.Baskar has appeared for the 3rd and 4th Respondents. R2 remain set exparte on 18.03.2025. On 05.02.2026 this petition came up for final hearing before me and on hearing both side arguments and on perusing the records having stood over for consideration of this court till this date this court delivers today the following

Order

1. This petition is filed Under Order 1 Rule (10) of C.P.C to implead the director of Bajaj Housing finance limited Pune and the Assistant Manager of the Bajaj Housing Finance Limited, Madurai as party to the suit.

2. Brief statement of the petition averment:-

That the 1st petitioner is the 1st plaintiff in the suit and the 2nd petitioner is the 2nd plaintiff in the suit. That without the knowledge of the petitioners the 1st respondent has borrowed a loan from the 2nd respondent and hence the 2nd respondent is added as the 2nd defendant in that suit and the 2nd defendant remains exparte. That the 1st respondent has borrowed a sum of Rs.45,27,999/- from the respondents 3 and 4 under a loan agreement dated 27.09.2019 and handed over the entire original documents that stands in the name of the daughter of the petitioner Parveen Banu. That under Muslim law the petitioners are entitled to share in the property of their daughter . That the 1st respondent is getting loan from one bank to another bank and making encumbrance of the suit property and he has build a new house at Sri Vari Nagar near Mangayarkarasi college, Paravai, Madurai. That the 3rd and 4th respondent are essential and proper parties to the suit. If they are not

impleaded the petitioner will be much prejudiced and will be put to irreparable loss and hardship. Hence pray to implead the 3rd and 4th respondents are parties to the main suit in OS No.17/2016.

3. Brief statement of the counter filed by the 1st respondent:-

That the proposed parties are necessary parties to the suit. If at all the petitioner wants to elicit any particular regarding the loan, payment and reimbursement they can very well summon the bank officials to prove it. That this petition is filed vexatiously to protract the trial. Hence pray to dismiss the petition.

4. The 2nd respondent is called absent and set exparte on 18.03.2025.

5. Brief statement of counter filed by the 3rd and 4th respondent:-

Except that are the averments mentioned in the petition that are admitted by this respondents all others are denied as false. This petition is not maintainable in law and on facts and there is no cause of action for partition. That the averments that during the pendency of the suit without knowledge of the petitioners the 1st respondent borrowed sum of Rs.45,27,999/- from 3rd and 4th respondent is denied as false and misleading. The further allegation that the 1st respondent is getting loan bank from one bank to another bank and he has constructed a new house at Sri vari Nagar near Mangayarkarasi college, Madurai is denied as false and misleading. That the petitioners are not parties to the loan transaction between the 1st respondent and the 2nd respondent and between the 1st respondent and the respondents 3 and 4 .That the petitioner has to know locus standi to seek any relief against the 3rd and 4th respondent. That the 1st respondent has deposited the title deed and he furnished encumbrance detail and pledged the suit property with 3rd and 4th respondent. That the petitioner has not assigned any valid reason to implead the 3rd and 4th respondent. That the respondents are not necessary parties to the suit. Hence pray to dismiss the petition.

6. Point for consideration:

Whether the respondents 3 and 4 are necessary parties to the suit?

Finding for point for consideration:

7. The learned counsel for the petitioner has submitted that the suit property is purchased by the 1st respondent and the daughter of the petitioners. That the daughter of the petitioners died and the petitioners as parents entitled to share under Mohameden law and hence they have filed a suit for partition. That without the knowledge of the petitioners the 1st respondent is borrowing loan from one bank after the another and the 1st respondent has borrowed a sum of Rs.45,27,999/- from the respondents 3 and 4 on 27.09.2019 by depositing original documents in the name of the daughter of the petitioner Parveen Banu. That from the loan amount the 1st respondent has build a new house at Sri Vari Nagar near Mangayarkarasi college, Paravai, Madurai. That the 3rd and 4th respondent are essential and proper parties to the suit and hence pray to impleaded the petitioner as parties to the suit and submitted that if this petition is not allowed the petitioners will be much prejudiced and will be put to irreparable loss and hardship and prayed to implead the 3rd and 4th respondents are parties to the main suit in OS No.17/2016.

8. The learned counsel appearing for the 1st respondent has submitted that the petitioners have no right to claim share and the proposed parties are not necessary parties and prayed to dismiss the petition.

9. The 3rd and 4th respondents side counsel has submitted that the 3rd and 4th respondent are not necessary parties and hence prayed to dismiss the petition.

10. That the 3rd and 4th respondent has admitted that the 1st respondent has obtained loan by creating mortgage by deposit of title deed.

11. The plaintiffs and the 1st defendant are Muslims. The suit property stands in the name of Parveen Banu the daughter of the plaintiffs. Unlike in Hindu Joint family system the properties stands in the name of a Muslim will only belong to that particular Muslim and it cannot be contended that it was purchased out of the income of the father or mother or by the Husband. Hence on the demise of Parveen Banu the 1st plaintiff as father of deceased Parveen Banu will have 1/3 share and the 2nd plaintiff the mother of the Parveen Banu will have 1/6 share and the 1st defendant the husband of the Parveen Banu will have ½ share. Unless the daughter of the petitioner has obtained any loan it will not bind the estate of Parveen Banu. In this case it has not been pleaded that Parveen Banu obtained any loan from the 3rd and 4th respondent . In a suit for partition a person not the creditor of the deceased are not a necessary party to the suit. There is no specific prayer against the 3rd and 4th respondent. Hence this court finds that it is not necessary to implead the respondents 3 and 4 as they cannot enforce any right against the plaintiffs unless Parveen Banu obtained loan from the 3rd and 4th respondent. If at all the 1st defendant obtained any loan from any respondent it can be recovered only from the share of the 1st defendant. In order to decide the extend of share and to make division of the property the proposed parties are not necessary party to the suit and if at all the respondents 3 and 4 have any claim against the 1st respondent they can workout their remedy only by a separate suit.

12. This suit is filed in the year 2016. The Hon'ble High Court has already ordered for speedy disposal of the suit. The said loan is alleged to have been obtained on 27.09.2019 after filing of the suit and the 3rd and 4th respondent will be bind by the decree on the principal of lis pendence. If this kind of petition are allowed there may be further encumbrance and applications and the object of speedy trial will be defeated. Further only on proof of loan and on getting decree the 3rd and 4th respondent can proceed to recover the amount legally.

13. Under this circumstances this court finds that respondents 3 and 4 are not necessary parties to decide the extend of share of the parties to the suit and hence this petition is liable to be dismissed. Point for consideration is answered accordingly.

In the result this petition is dismissed. Both parties are directed to bear their own cost.

Dictated to Steno-Typist and typed by her direct to in the computer, printed out corrected, signed and pronounced by me in the Open court on this the 11th day of February 2026.

I Additional District Judge,
Madurai.

Petitioners side witness and documents : NIL

Respondents side witness and document : NIL

I Additional District Judge,
Madurai.