

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 09.09.2021**

**PRONOUNCED ON : 22.09.2021**

**CORAM:**

**THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN**

**C.R.P. (PD) No.1888 of 2021**  
**and C.M.P. No.14691 of 2021**

|                   |     |                                           |
|-------------------|-----|-------------------------------------------|
| Punitha Kumari    | ... | Petitioner /<br>4 <sup>th</sup> Defendant |
| <i>versus</i>     |     |                                           |
| 1.K.R.Ashamani    | ... | Respondent /<br>Plaintiff                 |
| 2.R.Usha Devi     |     |                                           |
| 3.R.Gokul Prabhu  |     |                                           |
| 4.R.Sridevi Priya | ... | Respondents /<br>Defendants 1 to 3        |

**PRAYER:** Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 10.08.2021 made in I.A.No.318 of 2020 in O.S.No.262 of 2019 on the file of the learned Principal District Judge, Tiruppur.

For Petitioner : Mr.V.Lakshmi Narayan  
for M/s.Roshan Atiq

For Respondent No.1 : Mr.C.T.Mohan

**ORDER**

This Civil Revision Petition is filed challenging the order dated 10.08.2021 passed by the learned Principal District Judge, Tiruppur in I.A.No.318 of 2020 in O.S.No.262 of 2019.

2. The first respondent / plaintiff has filed O.S.No.262 of 2019 against the petitioner and 3 others, seeking partition of the suit property into 3 equal shares based on the Will dated 19.01.1980 and one share to the plaintiff; to grant permanent injunction, restraining the petitioner from permanently alienating or encumbering the suit property. After entering appearance, the petitioner, who is the 4<sup>th</sup> defendant in the suit filed I.A.No.318 of 2020 under Order 7 Rule 11 of C.P.C. for rejection of plaint.

3. The case of the petitioner in brief, as seen from the affidavit filed in support of this petition, is that, the suit was filed by the first respondent, claiming partition of the suit property on the basis of the Will dated 19.01.1980. The first respondent claims that the suit property

belongs to the father of Ramasamy, who purchased it on 24.08.1960. It is also alleged that his brother-in-law Palanisamy, who is the father of the petitioner fraudulently claim right in the suit property on the basis of the Certificate of the year 1962, created revenue records in his name, included the property in the Partition Deed dated 08.09.1978 with his son Balan and was in illegal possession and enjoyment of the suit property. Therefore, the suit was filed.

4. It is seen from the plaint averments that, there is no cause of action for filing the suit and the suit is barred by limitation. It is claimed that the suit property was included in the Partition Deed, between Palanisamy and his son Balan without any semblance of right. According to the case of the first respondent, petitioner's possession is illegal possession. If this is true, the suit filed for partition, cannot be maintained in law. The first respondent should have filed the suit for recovery of possession. When admittedly, the petitioner and her family members are in possession and enjoyment of the suit property from 1973 and when the first respondent, is not in the possession of the property, the suit filed now, is barred by

limitation and also barred for not properly valuing the suit under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act. Therefore, this petition.

5. This petition was opposed by the first respondent and also by other respondents alleging that, the petition under Order 7 Rule 11 of C.P.C., is not maintainable. There is sufficient cause of action for filing the suit and it is clearly explained in the plaint. The suit was filed within time. The suit was valued in line with the Tamil Nadu Court Fees and Suit Valuation Act.

6. It is the contention of the first respondent that, Palanisamy, father of the petitioner, taking advantage of the close relationship with Ramasamy and also the fact that he was working as the Village Administrative Officer, tempered with the revenue records. Without the knowledge of Ramasamy, effected change in the revenue records, as if, he is the owner of the suit property. He is sister's husband of Ramasamy. Therefore, Ramasamy believed him and signed as an attester in the Partition

Deed of the year 1978. Signing in the Partition Deed as an attestor does not mean that he has accepted the contents of the Partition Deed. Without informing the contents of the Partition Deed Ramasamy was made to believe that, he was signing in the partition of properties of Palanisamy and therefore, he signed as an attestor.

7. The respondents are in joint possession and enjoyment of the suit property and their possession is that of constructive possession. They have faith on the petitioner and Palanisamy that, they would not do anything against the respondents interest. Only now, they started investigation and found that, the revenue records had been changed in the name of Palanisamy. They sent several complaints to the concerned authorities. Finding that, there is no option, the present suit for partition was filed. There is no ground made out for rejecting the plaint under Order 7 Rule 1 of C.P.C. There is cause of action to file the suit. No question of limitation is involved. The property was valued in accordance with the provisions of the Tamil Nadu Court Fees and Suit Valuation Act. Therefore, the petition to reject the plaint, is not maintainable.

8. On considering the rival submissions, the learned trial Judge, dismissed the petition, on the ground that, it is not competent now to go into the correctness or otherwise of the allegations made in the plaint with regard to the cause of action. It is beyond the purview of Order 7 Rule 11 C.P.C. The question of limitation cannot be gone into at this stage and it is a matter for trial. On these reasons, the trial Judge dismissed the petition for rejection of plaint. Against the said order, this Civil Revision Petition is filed.

9. The learned counsel for the petitioner submitted that even as per the pleadings made in the plaint, it is clear that the first respondent's title to the suit property, is denied by the petitioner. It is also admitted in the plaint that the petitioner is in possession and enjoyment of the suit property now, and before her father was in possession and enjoyment of the suit property from 1973 itself. The possession of the suit property by her father and now by the petitioner from 1973 is admitted and there is no material filed by the first respondent to show that either the first respondent or other respondents are jointly enjoying the suit property with

the petitioner. The petitioner is enjoying the suit property in her capacity as owner of the suit property, on the basis of the Will executed by her father.

**10.** He further submitted that there are revenue records in the name of petitioner's father from 1973 itself to show that her father was the former owner of the suit property. The first respondent's father attested in the Partition Deed between the petitioner's father Palanisamy and brother Balan. The enquiry conducted by the District Registrar, found that the claim made by the first respondent with regard to the creation of the forged and fabricated document, is not correct. Therefore, the complaint given by the first respondent in this regard, was rejected on 23.11.2018. Without seeking to set aside the Partition Deed dated 08.09.1978, even after knowing the existence of this Partition Deed, the suit filed for mere relief of partition, is not maintainable. It is also barred by limitation.

**11.** When it is admitted that the first respondent is not in joint possession with the petitioner in the suit property, the suit ought to have been valued under Section 37(1) instead of Section 37(2) of the Tamil

Nadu Court Fees and Suit Valuation Act. However, without considering these aspects, the learned trial Judge has wrongly dismissed the petition. Therefore, he prayed for setting aside the order of the learned trial Judge and for allowing this petition to reject the plaint.

12. In support of his submissions, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in **KAMALA vs. K.T.ESHWARA SA** reported in **LAWS(SC)-2008-4-162** for the proposition that *“a duty is casts on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11 of Order 7, even without intervention of the defendant”*. He also relied on the judgment of this Court in **T.S.PREM KUMAR vs. S.KARPAGAM** reported in **2020 (2) CTC 504** for the proposition that *“in a suit for partition, where joint possession has not been claimed or averred in the plaint, the plaintiffs are not entitled to pay Fixed Court Fee, as has been contemplated under Section 37(2) (iii) of the Tamil Nadu Court Fees and Suit Valuation Act.”*

13. He further relied on the judgment of the Hon'ble Supreme Court in **DAHIBEN vs. ARVINDHBAI KALYANJI BHANUSALI** reported in **(2020) 7 SCC 366**, wherein it is held thus;

*"Court has to read averments in conjunction with documents relied upon in plaint as a whole, without addition or subtraction of any words - It is substance and not form which has to be seen - So read, if cause of action prima facie disclosed, court not required to further enquire about truthfulness of allegations on fact - Pleas taken by defendant in written statement also not relevant at this stage - If however, court finds suit to be manifestly vexatious, not disclosing any right to sue, it would be justified in exercising power under R.11(a).*

*Plaint shall be rejected when from averments in plaint suit appears to be barred by any law."*

14. He also relied on the judgment of the Hon'ble Supreme Court in **ANANTHULA SUDHAKAR vs. P.BUCHI REDDY** reported in **(2008) 4 SCC 594**, in which, it is observed thus;

*"Where the plaintiff's title is under a cloud and he does not have possession, held, the remedy is suit for declaration and possession, with or without consequential injunction."*

15. In response, the learned counsel for the first respondent submitted that, the petitioner claims right to the suit property on the basis of

Will executed by her father on 09.07.1981. Her father claims right to the property on the basis of the Partition Deed executed between him and his son on 08.09.1978. That must be a preexisting right for effecting partition of a property. Palanisamy is not the owner of the suit property either by purchase or by other means. There is no document filed to show that he was the owner of the property. The petitioner claims right on the basis of the Certificate of ownership. Ownership cannot be created on the basis of a Certificate. When there is no title deed or other legally acceptable documents to show that Palanisamy was the owner of the suit property, the partition entered into between Palanisamy and his son Balan on 08.09.1978, is void *ab initio*. That document has to be ignored. Therefore, the petitioner cannot claim any right on the basis of the Will executed by Palanisamy on 09.07.1981.

**16.** Palanisamy is the close relative of the respondents. That is, he is sister's husband of Ramasamy. Taking advantage of close relationship of Ramasamy, Palanisamy fabricated the document behind the back of Ramasamy, changed the revenue records and now claims right to

the property. The first respondent has narrated all these facts clearly in the plaint. The first respondent along with other respondents, are in joint and constructive possession of the suit property. The illegal occupation of the petitioner cannot be construed as possession. The issue of valuation of Court Fee, limitation, are matters to be decided in the trial. At the time of numbering the plaint, the Court has not raised any objection, with regard to the valuation of the suit and Court Fee paid. If at all, the petitioner aggrieved an issue in this regard can be framed and tried in the suit. But the plaint cannot be thrown out at the threshold. The respondents came to know about the Partition Deed and the revenue records in the name of the petitioner only recently and therefore, the suit was filed in time. Hence, the learned counsel for the respondents prayed for confirming the order of the learned trial Judge and for dismissal of this petition.

17. Considered the rival submissions and perused the records.

**18.** In order to appreciate the rival contention, it is necessary to find out the case of the plaintiff / first respondent. The case of the plaintiff / first respondent in a nutshell is that, the suit property was purchased by her father Ramasamy. Ramasamy has three daughters, Umarani, Ashamani and Ushadevi. Umarani died on 25.02.2005. Her children are respondents 3 and 4. Ushadevi is the second respondent. Her father purchased the suit property from one Venkittagiri Ammal through the Sale Deed in Document No.4744/1960. Ramasamy executed the Will in respect of the suit property on 19.01.1980 in favour of his 3 daughters. Ramasamy was enjoying the suit property, till his life time.

**19.** Palanisamy, who is the close relative and adjacent owner of the suit property, using close relationship with Ramasamy and his position as Village Administrative Officer changed the patta in respect of the suit property in his name and tampered with the revenue records in a systematic and diabolical manner. He said to have executed a Partition Deed between him and his son on 08.09.1978 and the Will on 09.07.1981. The

Partition Deed was executed, without any supporting parent document to show his title to the suit property. Using his position as Village Administrative Officer, he exercised his influence with Village Administrative Officer and effected changes in the revenue records. The illegal occupation of the petitioner cannot be construed, as legal possession.

**20.** The first respondent is in joint and constructive possession of the suit property. The first respondent sent complaints to the District Registrar, District Collector, with regard to the illegal activities after coming to know about the changes made in the revenue records in 2018. Ramasamy was made to believe that he was signing in the Partition Deed in 1978, without informing about the contents of it. Therefore, the suit was filed for partition of the suit property on the basis of the Will dated 19.01.1980.

**21.** It is seen from the plaint pleadings, the averments made in the petition for rejection of plaint that, there is a serious title dispute in respect of the suit property. The respondent's claimed title to the suit

property on the basis of the purchase made by their father and then the Will executed by their father, in their favour. The petitioner claims right to the suit property on the basis of the Will executed by her father, which is supported by the earlier Partition Deed and revenue records. The main contention of the respondents is that, without any right, without any parent document to support his right, title, Palanisamy and his son had entered into a Partition Deed in 1978. Therefore, the execution of the Partition Deed, is illegal.

22. It is the contention of the petitioner that when the very execution of the Partition Deed in 1978 is challenged, the first respondent ought to have filed the suit for declaration that the Partition Deed is not binding on her and for recovery of possession. The suit for declaration and recovery of possession cannot be filed at this point of time because is barred by limitation. The respondents answered this submissions stating that, the respondents are not parties to the Partition Deed dated 08.09.1978 and it is not necessary for them to seek the prayer for declaration and recovery of possession. They are in joint and constructive possession of the suit

property. Therefore, there is no question of limitation in filing the suit for partition. Payment of Court Fee under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act, is correct.

**23.** As narrated, there are pleadings in the plaint to make out the cause of action for instituting the suit. The Court, at this stage cannot investigate into the correctness of the averments made in the plaint. Whatever the averments made in the plaint, have to be taken as true and even then, if there is no case made out and no cause of action is made out, then alone the plaint can be rejected. That is, not the case here. The first respondent has made out a case and cause of action for instituting the suit. The issue of limitation is mixed question of fact and law. It requires some evidence to decide as to whether the suit is barred by limitation or not. It cannot be decided now. There is sufficient averment made in the plaint that the first respondent and other respondents are in joint and constructive possession of the suit property. It is a matter for trial. The issue as to whether, the suit is barred by limitation and whether the suit, is valued correctly, the appropriate Court Fee, is paid are mixed question of fact and

law and are matters to be decided on the basis of appreciation of evidence that would be let in during the trial. Therefore, this Court is of the considered view that, the issue with regard to the limitation, valuation of Suit and Payment of Court Fee, cannot be considered now and on that score, the plaint cannot be rejected. In the light of averments made in the plaint, the issue as to whether the suit filed without seeking a prayer to declare the Partition Deed dated 08.09.1978 as null and void; declare the title and for recovery of possession, is not maintainable is also required to be decided on the basis of oral and documentary evidence. The learned trial Judge has rightly considered these aspects and dismissed the petition. In view of the reasons stated above, this Court finds that the judgments relied on by the learned counsel for the petitioner are not useful to his case.

**24.** Therefore, this Court finds no reason to interfere with the order of the learned Principal District Judge, Tiruppur, in I.A.No.318 of 2020 in O.S.No.262 of 2019 dated 10.08.2021 and the order is hereby confirmed. The learned trial Judge is directed to frame issues as indicated above and dispose the suit.

**25.** Resultantly, this Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

**22.09.2021**

Speaking order / Non-speaking order

Index : Yes / No

sri

To

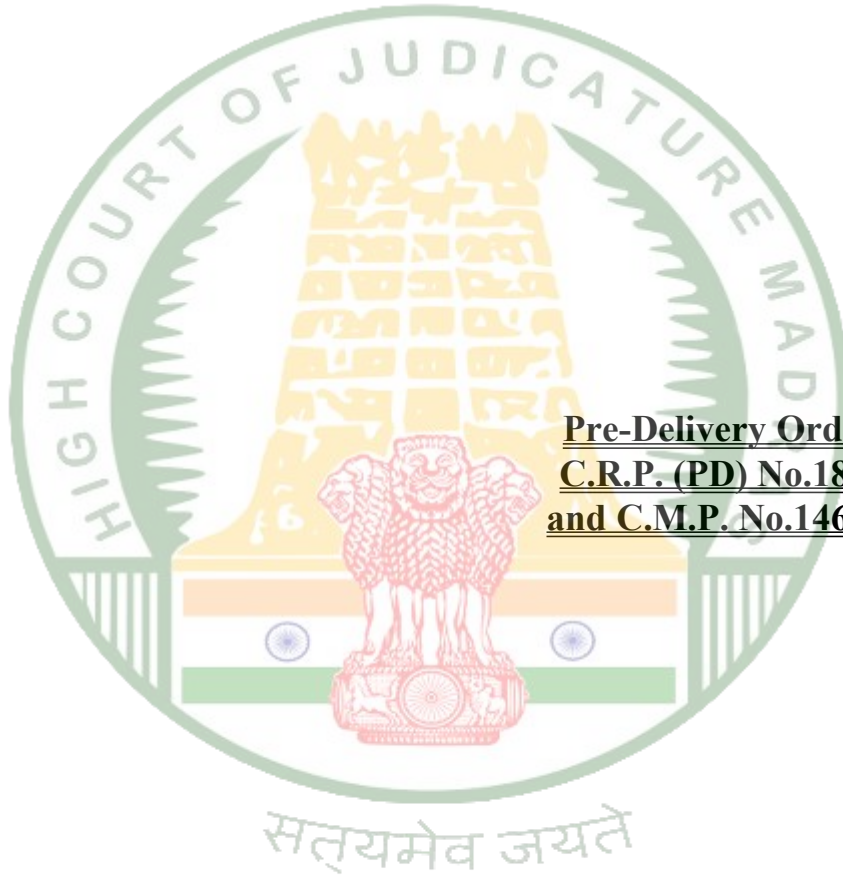
The Principal District Judge,  
Tiruppur.



WEB COPY

**G.CHANDRASEKHARAN, J.**

sri



**Pre-Delivery Order made in**  
**C.R.P. (PD) No.1888 of 2021**  
**and C.M.P. No.14691 of 2021**

WEB COPY

**22.09.2021**