



**C.R.P.(MD).No.303 of 2023**

WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON: 09.02.2023**

**DELIVERED ON: 14.02.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**C.R.P.(MD).No.303 of 2023**

**and**

**CMP(MD).No.1463 of 2023**

1.Lakshmi

2.Saratha

3.Vishwanathan

4.Vijaya

....Petitioners

**Vs**

Ponnammal

...Respondent

**PRAYER:** Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the order dated 15.11.2022 made in I.A.No.331 of 2022 in O.S.No.219 of 2021 on the file of the Subordinate Court, Ramanathapuram, Ramanathapuram District by allowing this civil revision petition.

For Petitioners : Mr.D.Balamurugapandi



C.R.P.(MD).No.303 of 2023

## **ORDER**

WEB COPY

The defendants in a suit for partition are the revision petitioners herein. They had filed I.A.No.331 of 2022 under Order 7 Rule 11 C.P.C to reject the plaint in O.S.No.219 of 2021 on the file of the Subordinate Court, Ramanathapuram. The said application was dismissed. Challenging the same, the present Civil Revision Petition has been filed.

2.The respondent herein who is the plaintiff had filed the suit for partition claiming  $\frac{1}{2}$  share in the suit schedule property. According to the plaintiff, the suit schedule properties are the ancestral properties of one Arumugam who had passed away intestate in the year 1991. His wife Ramayee had predeceased him. The said Arumugam had two legal heirs namely the plaintiff and one Subramanian who had passed away in the year 2015. The first defendant is the wife of said Subramanian and defendants 2 to 4 are the children of the first defendant.

3.The plaintiff had further contended that being the sister of the said Subramanian and daughter of Arumugam, she is entitled to  $\frac{1}{2}$  share.



**C.R.P.(MD).No.303 of 2023**

4.The defendants 1 to 4 have filed a written statement in which they have disputed the fact that the suit schedule property is the ancestral property of Arumugam. The relationship between the parties has been admitted in the written statement. It has been further contended by the defendants that in the 2019 itself, there was a partition among the defendants 2 to 4 herein and the plaintiff was never in possession of the suit schedule properties. Therefore, the Court fee paid by the plaintiff as if she is in possession of the property is incorrect.

5.The defendants had further contended that the deceased Arumugam had two wives namely Ramayee and Kuppachi. The legal heirs of Kuppachi had not been impleaded in the present suit and hence, the suit is bad for non-joinder of necessary parties. The defendants had further contended that the plaintiff has taken a fraudulent plea. Hence, the suit has been dismissed.

6.The defendants have filed I.A.No.331 of 2022 to reject the plaint on the ground that the suit is barred by limitation, the children of the second wife have not been impleaded, the plaintiff has taken a fraudulent plea regarding the title and possession of the property, the plaintiff has suppressed various material facts and the Court fee paid is not correct.



**C.R.P.(MD).No.303 of 2023**

7.The trial Court after considering the submissions on either side, dismissed the said application with a finding that whether the plaintiff is in possession or not has to be decided only during the trial. The trial Court further found that whether the said Arumugam had a second wife or not also has to be decided only on the basis of deposition of the parties during the trial. Based upon the said findings, the trial Court had dismissed the application for rejection of plaint. Challenging the said order, the present civil revision petition has been filed.

8.The learned counsel for the petitioners had vehemently contended that the plaintiff was never in possession of the property and hence, the Court fee paid by the plaintiff under Section 37(2) of the Tamil Nadu Court Fee and Suit Valuation Act is incorrect and the Court fee should have been paid only as per Section 37(1) of the Act. He had further contended that fraudulent pleas have been raised by the plaintiff and there are suppression of partition that has taken place among the defendants 2 to 4 herein. He had further contended that the suit is bad for non-joinder of necessary parties for not impleading the legal heirs of the second wife of the deceased Arumugam. Hence, he prayed for allowing the civil revision petition.



C.R.P.(MD).No.303 of 2023

9.Per contra, the learned counsel for the respondent/plaintiff had contended that all the allegations raised in Order 7 Rule 11 C.P.C application have to be decided only during the trial and they do not fall within the parameters of Order 7 Rule 11 C.P.C.

10.I have considered the submissions of the learned counsel appearing for the petitioners.

11.The present application has been filed to reject the plaint in a partition suit. The defendants have not disputed the relationship of the plaintiff. Though the defendants have contended that it is not an ancestral property of Arumugam, no different source of title has been pleaded by the defendants in their written statement. The issue relating to adverse possession /ouster is a mixed question of law and facts and the same cannot be decided at this stage. The defendants had raised a specific plea that the second wife's children have not been impleaded and the suit is bad for non-joinder of necessary parties. However, the said facts is disputed by the plaintiff. Therefore, the said issue should be resolved only after letting in oral evidence. Though the plea of fraud and suppression have been pleaded, this Court does not find any material for the same.



**C.R.P.(MD).No.303 of 2023**

12.As regards the claim of plaintiff relating to joint possession is concerned, the said issue has also to be resolved only during the trial after letting in evidence. Therefore, it is clear that none of the grounds raised by the revision petitioners fall within the parameter under Order 7 Rule 11 C.P.C. Therefore, the trial Court has rightly dismissed the said application. This Court does not find any illegality or infirmity in the order passed by the trial Court. The trial Court shall proceed to dispose of the suit on merits and in accordance with law without being influenced by any one of the observations made by this Court.

13.Accordingly, this Civil Revision Petition stands dismissed.  
No costs. Consequently, connected miscellaneous petition is closed.

**14.02.2023**

Index : Yes/No  
Internet : Yes/No  
NCC : Yes/No  
msa



C.R.P.(MD).No.303 of 2023

WEB COPY

To

1. The Subordinate Judge,  
Ramanathapuram District
2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



C.R.P.(MD).No.303 of 2023

**R.VIJAYAKUMAR, J**

msa

Pre-delivery order made in  
C.R.P.(MD).No.303 of 2023  
and  
CMP(MD).No.1463 of 2023

14.02.2023