



C.R.P.No.61 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.61 of 2025

and

C.M.P.Nos.577 & 3835 of 2025

Gajaganapathy

... Petitioner

Vs.

- 1.Rathinasabapathy
- 2.K.Vijayakumar
- 3.Rajamani
- S.Arumugam (deceased)
- A.Ramachandran (deceased)
- Kuppusamy (deceased)
- Sivakama Sundari (deceased)
- Vasanthakumari (deceased)
- 4.Hemalatha
- 5.Gajalakshmi
- 6.Mangayarkarasi
- 7.Ranganayagi
- 8.Mala
- 9.Singaravel
- 10.R.Manian
- 11.K.Vijayakumar



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- 12.Vijaya
- 13.Usha Ammal
- 14.Kuttyammal
- 15.Rajeswari
- 16.Lalitha
- 17.Kuttiyappan
- 18.Kanniappan
- 19.Karuppaiah
- 20.Thirupurasundari
- 21.Jyothimani
- 22.Shankar
- 23.Swaminathan
- 24.Thilagavathy
- 25.Nagavalli

... Respondents

Prayer : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decretal order dated 16.11.2024 made in E.P.No.796 of 2024 in O.S.No.12148 of 1998 on the file of the X Assistant City Civil Court, Chennai.

For Petitioner	:	Mr.V.C.Janarthanan for M/s.P.Rajkumar Pandian
For R2	:	Mr.A.Jayachandran for Mr.A.R.Nixon



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For RR4, 5, 9, 10,
11, 12, 14, 15, 18,
19, 21, 22, 23, 24
and 25

: No appearance

RR1, 8, 13, 16,
17 & 20

: No more

R3 & R7

: Unserved (No such person)

R6

: Unserved (Incomplete address)

ORDER

Challenging the order passed by the learned X Assistant Judge, City Civil Court, Chennai, in E.P.No.796 of 2024, dated 16.11.2024, ordering delivery of 11/12th share of the suit schedule property in O.S.No.12148 of 1989 on the file of the XIII Assistant City Civil Court, Chennai, pursuant to the decree dated 23.10.2002, to the 2nd decree holder namely K.Vijayakumar, the present revision has been filed by the 26th defendant/26th judgment debtor.

2.Brief background of the case is as follows :



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2.1.The suit in O.S.No.12148 of 1989 was filed by one Rathinasabapathy for division of the suit property into 12 equal shares by metes and bounds and to allot 11 such shares to him and for separate possession. In the said suit, a preliminary decree was passed by the trial Court on 23.10.2002, dividing the suit property into 12 equal shares and allotting 11 such share to the plaintiff.

2.2.Challenging the judgment and decree in the suit, the 26th defendant in the suit, namely Gajaganapathy, preferred an appeal in A.S.No.251 of 2006 on the file of the City Civil Court, Chennai. The First Appellate Court, by judgment and decree dated 24.01.2008, set aside the decree and judgment of the trial Court and passed a preliminary decree to the effect that the plaintiff is entitled to half share in the suit property and the legal heirs of the 1st defendant are jointly entitled to the remaining half share in the suit property.



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2.3. Aggrieved by the judgment of the First Appellate Court, the plaintiff preferred a Second Appeal before this Court in S.A.No.1610 of 2008. The 26th defendant also filed a Cross-Objection in Cross Obj.No.9 of 2011. This Court, by judgment dated 09.03.2011, set aside the judgment of the First Appellate Court and held that the 26th defendant is the adopted son of the plaintiff/Rathinasabapathy and therefore, modified the decree of the trial Court to the extent that the 26th defendant is not entitled to any share in the 1/12 share of the 1st defendant.

2.4. The matter was further taken on appeal to Hon'ble Supreme Court in Civil Appeal Nos.652 & 653 of 2019, wherein, the Hon'ble Supreme Court held that the 26th defendant has a right in the share of the property received by the plaintiff and therefore, liberty was also granted to the 26th defendant to work out his remedies as may be available to him in law as an adoptive son of the plaintiff in respect of the property which came in the share of the plaintiff S.Rathinasabapathy.



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2.5. Thereafter, final decree proceedings have been initiated in I.A.No.16976 of 2011 in O.S.No.12148 of 1989 by the original plaintiff Rathinasabapathy and K.Vijayakumar, who was originally 13th defendant in the suit and thereafter, transposed as 2nd plaintiff since he has purchased the share of the 1st plaintiff, Rathinasabapathy. The trial Court passed a final decree in favour of the 2nd decree holder allotting 11/12 share marked as BLUE portion in the plan submitted by the Advocate Commissioner. While passing the final decree, the trial Court has taken note of the report and plan of the Advocate Commissioner. The Commissioner, in his report, has stated that, he has visited the place on 02.03.2013 and after the parties had identified the property, the Commissioner inspected the property and filed his report. In fact, it is stated that the property was measured in the presence of the 26th defendant/revision petitioner. It is relevant to note that the Commissioner has marked the 11/12 share of the property in BLUE colour and the remaining 90 sq.ft., which is the 1/12 share, has been marked in RED colour. The Commissioner's report was not objected by the 26th



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defendant/revision petitioner before the trial Court. Based on the said report, the final decree has been passed and the same has not been challenged and it has also reached finality.

2.6. Thereafter, the present Execution Petition in E.P.No.796 of 2024 has been filed for taking delivery of 11/12 share of the property. The Execution Court has ordered delivery of 11/12 share to the 2nd decree holder namely K.Vijayakumar. Challenging the order of delivery, the 26th defendant has filed the present revision.

3. Though a ground has been raised in the revision as if the decree holder has described the property in the schedule of the Execution Petition as a vacant land, but a building is available, the fact remains that the building has been put up by the revision petitioner during the pendency of the proceedings. This Court has already clearly held in Para No.65 of the judgment in S.A.No.1610 of 2008, dated 09.03.2011, that, since the new structure in the suit property came into existence during the pendency of the litigation, the 26th defendant/revision petitioner cannot lay any claim over the newly constructed building and he cannot also claim that money has



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been spent by him for such new construction. Further, this Court has observed that, during the final decree proceedings, while partitioning, the trial Court shall effect partition ignoring the benefit in favour of the revision petitioner regarding the new building raised by him during the pendency of the proceedings. Similar view has been taken in Para No.68 also. Therefore, the contention of the revision petitioner as regards availability of a superstructure on the suit property, cannot be countenanced.

4.The main contention of Mr.V.C.Janarthanan, learned counsel appearing for the revision petitioner is that the revision petitioner has acquired right in respect of 1/12 share by way of release deed dated 27.08.2008 executed by the legal heirs of the 1st defendant in the suit to whom 1/12 share has been declared. Further, the revision petitioner is declared as an adoptive son of the plaintiff and he is residing in the property for a long time and he also has built a separate room for worship and placed an idol and he has some sentimental value attached to the building. Therefore, according to him, though he is a minority share holder, he, as a legal heir and co-owner, is entitled to invoke preferential right to purchase the remaining shares. According to him, the 2nd decree holder is not a direct



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legal heir to the plaintiff. Therefore, the revision petitioner has preferential right than a stranger to the family. Therefore, he urged before this Court that the Court may either direct the 2nd decree holder to sell the property to the revision petitioner or bring the property to public auction and sell the property to one who bids highest value.

5. In support of his submissions, the learned counsel relied upon the judgment of this Court in *N.Manickam v. Kanagaraj and others* reported in **(2012) 2 LW 739** and contended that the right under Section 22 of the Hindu Succession Act, 1956, can be exercised even after the sale by one of the co-sharers to a stranger. According to him, the revision petitioner gets a right to exercise the right of pre-emption in the property as against a stranger. The learned counsel also relied upon the judgment of this Court in *Kulasekaran Chettiar (deceased) and others v. Meenakshi Ammal* reported in **(2002) 2 LW 294**, wherein, it is held that preferential right is given to a sharer to keep out strangers from the family property and to maintain integrity of the property. Further, the learned counsel also relied upon the judgment of the Hon'ble Supreme Court in *Ghantesher Ghosh v. Madan Mohan Ghosh and others* reported in **(1996) 11 SCC 446**.



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6.Heard the learned counsel on other side and also perused the entire materials available on record.

7.The facts, as narrated above, make it clear that the petitioner/26th defendant was not allotted any share in the property originally. In fact, he is given liberty to work out his remedy in respect of the plaintiff's share, since he is held to be the adoptive son of the plaintiff Rathinasabapathy. The property was originally owned by one Veerammal. Thereafter, it came to one Singaravelu, the only brother to succeed Veerammal. Singaravelu died leaving behind his sons Angamuthu, Shanmugasundaram and Mayandi. Angamuthu died leaving behind his only son Ramachandran (D2). Ramachandran's legal heirs are D8 to D12. Shanmugasundaram died leaving behind the plaintiff in the suit and D1 and also other sons Singaravel and daughter Sivakamasundari (D4). These facts are not in dispute.

8.The 26th defendant/revision petitioner is the son of D1. He is said to



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have been given in adoption to the plaintiff. The issue of adoption has also been decided and the same has reached finality and the Hon'ble Supreme Court has clearly held that the petitioner, being the adoptive son of plaintiff, can work out his right in the share of the property received by the plaintiff.

9.The main contention of the petitioner is that the petitioner, being a family member, is entitled to invoke right of pre-emption to purchase the major shares from the 2nd decree holder, who purchased the shares of the plaintiff. However, the fact remains that the 2nd decree holder Vijayakumar was originally arrayed as 13th defendant in the suit and later on, he was transposed as 2nd plaintiff after purchasing the share of the original plaintiff. In fact, he is also a Class-I legal heir of Sivakamasundari (D4). He has not only purchased the share of the plaintiff, but has also acquired the property from the other co-sharers. Therefore, it is relevant to note that the 2nd plaintiff Vijayakumar is not a stranger to the family. Therefore, the principle propounded before this Court that the original family co-owner is entitled to invoke preferential right as against a stranger, cannot be applied.

10.Though, in ***Ghantesher Ghosh's case (supra)*** relied upon by the



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learned counsel for the petitioner, it is held that, where pursuant to a final decree for partition, a co-owner transferred his share in the house to a stranger and the stranger transferee thereafter files petition for execution of the decree, Section 4 of the Partition Act, 1893, can be invoked by any other co-owner family member for purchasing the stranger's share, the said principle cannot be applied here. Because, admittedly, the 2nd decree holder is also a family member and he was originally arrayed as D13 and he has acquired the major shares. Therefore, in such a situation, the right of pre-emption cannot be sought by a minority share holder as a matter of right.

11.It is relevant to note that, even when the property was demarcated and allotment was made in the final decree proceedings, no objection was raised by the revision petitioner either to the Commissioner's report or the plan submitted by him. In such view of the matter, when final decree has been passed after identification of the property, demarcation, and allotment of shares to the parties, that too in their presence, now, in the execution proceedings, particularly at the stage of delivery, right of pre-emption cannot be sought as a matter of right.



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12.In ***Kulasekaran Chettiar's case (supra)*** relied upon by the learned counsel for the petitioner, it is held that preferential right is given to a sharer to keep out strangers from the family property and to maintain integrity of the property. Non-transferee co-sharers would get a right of preference to acquire such interest proposed to be transferred, in preference to other third parties. Absolutely, there is no dispute with regard to the above proposition. The fact remains that the 2nd plaintiff was originally arrayed as 13th defendant in the suit and later, he was transposed as plaintiff. Admittedly, he is also a family member and he is also one of the co-owners of the property. Therefore, it cannot be said that he is a stranger to the family and that preferential right should be given to the petitioner to protect the integrity of the property.

13.In fact, the revision petitioner was not given any share from the property of D1, since he has been held to be the adoptive son of the plaintiff. He has acquired the 1/12 share from the legal heirs of D1 by way of release



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deed. If he is considered as legal heir along with other heirs of the plaintiffs, his share will diminish further. However, 90 sq.ft. has been demarcated separately in the Commissioner's report. Be that as it may, nobody has challenged it. Therefore, this Court is not going to delve upon that issue. Further, this Court has clearly recorded that the building has been put up by the petitioner during the pendency of the litigation and it is clearly held that he has no right to lay any claim over the building constructed during the pendency of the suit. Such being the position, sympathy cannot be shown against the person who constructed the house during the pendency of the suit to lay a claim that sentimental value is attached to the building. When he has no right over the construction, as already held by this Court in Para Nos.65 and 68 of the judgment in S.A.No.1610 of 2008, the revision petitioner cannot invoke preferential right as against the other co-owner, who has major shares in the property. In such view of the matter, I do not find any merit in this revision.

14. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.



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15.The Commissioner's report indicates that the property is divisible.

If the revision petitioner still wants to take out any value for the land, he is entitled to negotiate with the other co-owners and take the value.

mkn

23.07.2025

Internet : Yes

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

To

1.The X Assistant Judge,
City Civil Court,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.



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N. SATHISH KUMAR, J.

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