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CRP. No.908 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:15.07.2025

Pronounced on: 14.08.2025

CORAM

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**CRP. No.908 of 2025**

**and cMP. No.5291 of 2025**

K.Alladurai

Petitioner

Vs

1.Mrs.Pankajam

2.S.Doss

3.Mrs.Mariyammal

4.Mrs.Gajavalli

5.Mrs.Vatchala

Respondents

**PRAYER:** This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 18.11.2024 passed in I.A. No.1 of 2023 in O.S. No.56 of 2023 as unsustainable.

For Petitioner : Mrs.Narmada Sampath  
for Mr.S.Kumar Sankar

For Respondents : Mr.M.S.Mani

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### **ORDER**

The revision petitioner, as defendant in a suit for partition in O.S. No.56 of 2023 (Old No.843 of 2019), filed an Application in I.A. No.1 of 2023 under Order VII Rule 11 of CPC to reject the plaint. The said

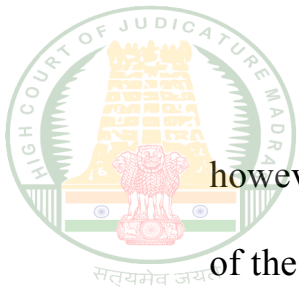


Application was dismissed by the Trial Court, as against which, the present revision has been preferred.

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2. I have heard Mrs.Narmadha Sampath, learned counsel for Mr.Kumar Shankar, learned counsel for the petitioner and Mr.M.S.Mani, learned counsel for the respondent/plaintiff.

3. Mr.Narmatha Sampath, learned counsel for the petitioner would submit that suit for partition is hopelessly barred by limitation and also on the ground of misjoinder of proper and necessary parties. Referring to the notice issued by the respondents/plaintiffs on 12.03.2014, calling upon the revision petitioner to come forward to partition the suit property on or before 30.03.2014, and thereafter having slept over the matter until 30<sup>th</sup> April 2014, suit came to be filed seeking partition without even plaintiffs' signing the plaint, the learned counsel would state that the plaint is barred under the provisions of the Limitation Act. She would further contend that Registry rightly returned the plaint and in view of the formal defect, the plaintiffs chose to withdraw the suit with liberty to file a fresh suit for partition, which the Trial Court also permitted, but



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however, on an entirely different cause of action and without joining one of the defendants in the suit, though the said defendant was a party in the earlier suit, the second suit for partition came to be filed. She would further contend that the legal notice that was issued on 12.03.2014 claiming partition was not even filed as a suit document in the subsequent suit.

4. The learned counsel referring to Section 9 of the Limitation Act, 1963 would state that the claim for partition is hopelessly barred by limitation because once the limitation starts running, it will not stop and having issued a notice on 12.03.2014 seeking partition, the subsequent suit is clearly barred by law of limitation. She would also contend that the plaintiffs have not filed any document to show that the plaintiffs are in possession. The learned counsel would further contend that the plaintiffs are not residing in the property and only in order to get over the same, the plaintiffs have alleged that, only from beginning of 2014, the defendant started giving evasive replies, despite orally agreeing for partition. She would therefore state that the Trial Court ought not to have dismissed the Application for rejecting the plaint and she therefore prays



for revision being allowed and plaint being rejected.

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5. Per contra, the learned counsel for the respondents Mr.M.S.Mani, would submit that the cause of action in the suit for partition is a continuing cause of action and there is no question of the suit being barred by limitation. He would further state that when the relationship between the parties is not in dispute and equally, the character of the property is also not disputed, the question of claiming that the suit for partition is not maintainable on account of limitation can never be an acceptable plea. Insofar as misjoinder and non-joinder of the one of the defendants in earlier suit, Mr.Mani, learned counsel would contend that the property belongs to the mother and therefore, on legal advice, the grandchildren have not been impleaded as defendants in the present suit. He would therefore state that there is no merit in the contention that the suit is also barred by misjoinder.

6. In an Application for rejecting the plaint, the plaint should be one which is liable to be rejected from a reading of the plaint and even the averments that are set out as grounds for rejection of the plaint in



support of the affidavit under Order VII, Rule 11 CPC, cannot be looked into by the Court, leave alone the written statement or defence that is taken in the suit by the defendant. In short, if the Court is able to find from a meaningful reading of the plaint that the plaint is liable to be rejected under any of limbs of Order VII Rule 11 CPC, then the Court may proceed to pass an order rejecting the plaint, after giving an opportunity to the plaintiffs to meet the contentions that are raised, seeking rejection of the plaint.

7. Admittedly, in the present suit, the plaintiffs claim relief of partition and the relationship between the parties or character of the properties as contended by Mr.M.S.Mani, learned counsel for the respondent are admitted. The arguments advanced on the side of the revision petitioner is only that, the plaintiff is not in physical possession and therefore, he cannot claim any relief of partition alleging to be possession of the suit property. Insofar as the suit for partition, physical possession is not *sine quo non* but only the entitlement of the plaintiff to a share in the property which is relevant. If the plaintiffs disclose in the plaint that as legal heir or through other means, they are entitled to a



share in the suit property, then they are deemed to be in constructive possession on the suit property. It is now settled law that the plaintiff in a suit for possession need not be in physical possession and he is entitled to claim to be in joint and constructive possession of the suit property as long as his relationship to the deceased and his claim to right over the property is not in dispute.

8. Coming to the question of the suit being barred by limitation and reliance placed on Section 9 and Article 65 of Limitation Act, 1963, I am unable countenance the said submissions of the learned counsel for the petitioner. A right to file a suit for partition is a continuing cause of action and it is settled law that there is no limitation for filing of a suit for partition, since the right of the plaintiff in the suit property continues to exist till such time, the suit is filed seeking the relief of partition. However in a case where the defendant asserts the plea of ouster or where he outright denies the entitlement of plaintiff, then it may be contended by the defendant that the cause of action for filing the suit will arise on which date the defendant has pleaded ouster or denied the entitlement of the plaintiff. In the present case, no doubt, the plaintiff has



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issued a notice in 2014. However, the said notice has not even been replied to by the revision petitioner, leave alone denying the entitlement of the plaintiffs or claiming ouster or any other separate or individual right over the suit property. While so, the mere issuance of notice claiming partition by the plaintiff will not be the starting point of limitation for filing a suit for partition. In the absence any co-heir claiming or asserting an adverse right and openly asserting title, the question of limitation cannot be put against the plaintiff, in a suit for partition. Even with regard to misjoinder, it is not a ground which is available for rejecting the plaint under Order VII Rule 11 CPC. Therefore, I do not find any material irregularity or perversity in rejecting the plaint and there is no merit and accordingly, this Civil Revision Petition is dismissed. Connected Miscellaneous Petition is also dismissed. No costs.

**.08.2025**

rkp

Index : Yes

Internet : Yes

To:

The Sub Judge,  
Ambattur.



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**P.B.BALAJI, J.,**

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**Pre-delivery order in**  
**CRP. No.908 of 2025**  
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**14.08.2025**