



C.R.P.No.1140 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2025

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.1140 of 2025

C.M.P.No.6712 of 2025

1.Shanmugasundaram

2.Varadhaiyan ...Petitioners

Vs

1.Rooba

2.Saranya

3.Krishnasamy

4.Gokilavani ...Respondents

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the Fair and Decree order in I.A.No.11 of 2024 in O.S.No.133 of 2006 dated 03.12.2024 passed by the District Munsif Court, Mettupalaiyam and thereby allow the CRP.

For Petitioners : Mr.B.Sundarapandiyan

For Respondents : Mr.J.Pothiraj



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ORDER

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plaint the defendants 3 and 5 are before this Court.

2.The short facts are as follows:-

The respondents 1 and 2/plaintiffs had filed the suit O.S.No.133 of 2006 on the file of the learned District Munsif, Mettupalayam, for partition and separate possession of their 2/4 share in the suit schedule properties. It is their contention that the plaintiffs are the daughters born to the first defendant through one Rajathi. The lands comprised in S.No.31/2A, 32/2B, 28/1, 31/2B and other properties are ancestral properties of the first defendant where he was carrying on agricultural operations. From out of the income from the ancestral properties the first defendant had purchased the properties under two registered sale deeds dated 23.04.1990 and 28.02.1995. Therefore all the properties partook the character of an ancestral properties. The first defendant was originally married to one Sundarammal in the year 1979 and out of this wedlock the second defendant was born to them. In the year 1984, Sundarammal deserted the first defendant and is living separately. Thereafter, the first defendant had developed a relationship with the

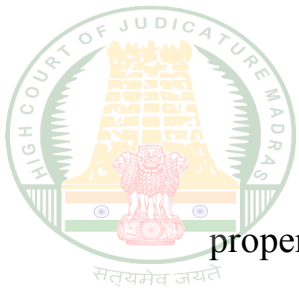


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mother of the plaintiffs and through this relationship the plaintiffs were born. Subsequently, the first defendant had become addicted to alcohol and gambling and he had borrowed from several persons. The attempts of the plaintiffs to reform the first defendant was unsuccessful. The plaintiffs on several occasions demanded partition of the properties, however, the same had not fructified. The second defendant had filed a suit for partition in O.S.No.133 of 2002 and the same was decreed. The plaintiffs were allotted 1/4 share in the ancestral property. That point in time, the plaintiffs were minors. They have now come to know that the present suit properties are also ancestral properties and in the year 1996 the first defendant had borrowed money for his personal pleasures from the third defendant and since he could not repay the said amount the third defendant had got executed a general power of attorney from defendants 1 and 2 regarding the suit properties in the year 1999 and thereafter got a sale agreement in favour of fourth defendant.

3.The plaintiffs would submit that all of them were acting in collusion with the power of attorney. The third defendant had pressurized the first defendant to settle the loan amount. The third defendant had executed a sale deed in favour of the fifth defendant in respect of the suit



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property. The plaintiffs would submit that the third defendant is the leading financier on Mettupalayam Road. The plaintiffs would submit that the sale is only a sham and nominal one, since the possession continues to be with the plaintiffs and defendants 1 and 2. Very recently a house was put up in the property which has been assessed in the name of first defendant. That apart since the plaintiffs also have a share in the ancestral property the sale executed by the third defendant on the strength of the power of attorney will not bind the share of the plaintiffs. Therefore, they have come forward with the suit for partition.

4.The defendants 3 to 5 had filed their written statement and also come forward to file an application for rejecting the plaint. It is their contention that the suit was not maintainable on the ground of partial partition, limitation etc., and that apart plaintiffs had filed an amendment petition to include the relief of declaration to declare the sale deed dated 04.02.2000 as null and void by filing I.A.No.6 of 2023. This petition was dismissed after contest on 30.11.2023 on the ground that it was belated. Against the order no revision has been filed. Thereafter, when the matter was posted for arguments, the respondents/plaintiffs had come forward to file another petition to produce the alleged partition deed and



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Will by filing I.A.No.10 of 2024. The same is pending. The petitioners

further submit that in the order in I.A.No.6 of 2023 the Court had clearly

held that the petition was barred by limitation. Therefore, it is the contention of the defendants 3 and 5 that the suit is liable to be rejected.

The learned District Munsif, Mettupalayam, dismissed the application on the ground that the only ground on which the the plaint is sought to be rejected are both mixed question of fact and law which has to be decided after trial and challenging the same, the petitioner is before this Court.

5.Heard the learned counsels on either side and perused the records.

6.Even according to the revision petitioners/defendants 3 and 5 the suit is now at the stage of defendant's side evidence. At this stage, the application for rejecting the plaint has been filed and that too on the ground of partial partition and ground of limitation. The Order 7 Rule 11 sets out the grounds under which the plaint can be rejected which are:-

- a)where it does not disclose a cause of action
- b)where it is under valued.
- c)properly valued by insufficiently stamped.



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d)where from the statement in the plaint it is barred by any law.

e)where duplicate copy of the plaint has not been filed and

f)where the plaintiff has not complied with the provisions Order 7 of Rule 9.

7.The grounds on which the plaint is now sought to be rejected does not fall within any of these parameters. The plaint is sought to be rejected on the ground of partial partition, limitation etc. These issues are mixed question of fact and law and the plaint cannot, at the threshold, be rejected. Therefore, the dismissal of the application I.A.No.11 of 2024 in O.S.No.133 of 2006 by the learned District Munsif, Mettupalayam, is very much in order and I see no reason to interfere with the same.

8.Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
ep



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To
The District Munsif Court, Mettupalaiyam.

P.T.ASHA, J,

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