



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.06.2025**

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THE HONOURABLE MR JUSTICE P.B. BALAJI

**CRP. No.1484 of 2025
and CMP. No.8680 of 2025**

Mr.Govindasami

Petitioner(s)

Vs

1.Revathi
2.Elumalai
3.Minor Mohanraj
4.Minor.Vetheshwaran
(Minor represented by Guardian
the 2nd respondent)

Respondent(s)

PRAYER: This Civil Revision Petition under Article 227 of the Constitution of India, to set aside the order in I.A. No.3 of 2024 in O.S. No.41 of 2024, dated 14.02.2025 on the file of the Subordinate Judge, Polur, Tiruvannamalai District.

For Petitioner : Mr.K.V.Sajeevkumar

For Respondents : Mr.R.Natarajan for R1 to R4

ORDER

The petitioner/defendant in O.S. No.41 of 2024 having been unsuccessful in attempting to reject the plaint under Order VII Rule 11 of CPC in I.A. No. 3 of 2024 has come up by way of this Revision Petition.

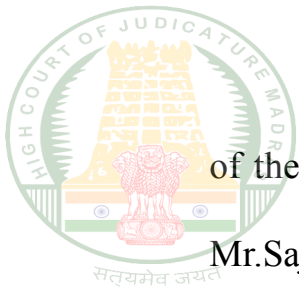


2. I have heard Mr.K.V.Sajeevkumar, learned counsel for the petitioner and Mr.R.Natarajan, learned counsel for the respondents.

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3. The learned counsel for the petitioner would state that the suit was filed by the petitioner in O.S. No.36 of 2022, before the District Munsif Court Court, Polur for specific performance of an agreement of sale dated 24.04.2012. Apart from the relief of specific performance, the relief of declaration to set aside deed dated 07.11.2019 and 04.02.2022 in favour of the two minor children as null and void was also sought for. In the said suit, the minors were arrayed as defendants and their father who had entered into the agreement of sale deed with the plaintiff was arrayed as the first defendant. The minor children were represented by none else, than the father/first defendant. In the said suit, the father virtually submitted to a decree by admitting to the suit reliefs as well as allegations made by the plaintiff. Pursuant to the same, sale deed came to be executed in favour of the revision petitioner.

4. The learned counsel would further invite my attention to the release deed executed by the first respondent/herein who is the mother of the minor children, wherein she has relinquished all her rights in favour



of the purchaser one Suganya from the revision petitioner. Therefore, Mr.Sajeevkumar, contends that after voluntarily having executed a release deed, the first respondent having full knowledge of entire development that have transpired and the property being purchased by the revision petitioner, woke up after one year and filed O.S. No. 41 of 2024, alleging that the decree in O.S.No.36 of 2022, was brought about by playing fraud and that the interest of the minor children has been thrown to the winds.

5. The learned counsel would further state the decree in O.S. No.36 of 2022 has become final and no appeal has been filed therefrom and there is no infirmity in the decree passed by the Trial Court in O.S. No.36 of 2022 that the interested parties were all impleaded and there was no necessity to implead the first respondent/mother as on that date. He would therefore states that on the ground of there being no cause of action available to the first respondent, the revision petitioner moved an Application under Order VII Rule 11 of CPC to reject the plaint.

6. However, the said Application, on enquiry has been dismissed by the Trial Court holding that when the gift deed in favour of the minor



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children was sought to be nullified, the guardian should be appointed under the said gift deed, ought to have been impleaded as a guardian representing the minors and having not done so, it cannot be contended that the decree in O.S. No.36 of 2022 is a final and binding decree between the same parties or between the parties under whom the parties to the suit litigate., under a title. The Trial Court also found that the minors were not represented by the guardian appointed for the specific property in issue and therefore, the question of applying the principles of *res judicata* would also not apply. The learned counsel would state that the Trial Court has erroneously held that the mother has subsisting interest in the property and therefore, the suit has to be tried on its merits and cannot be dismissed at the threshold.

7. Per contra, the learned counsel for the respondents would state that the Trial Court has passed a well considered order. Fraud has been played upon the Court and the interest of minor children has been taken away under the guise of a decree in O.S. No.36 of 2022 and the same has been rightly questioned in O.S. No.41 of 2024 and it will not give a window to the petitioner to avail the remedy available under Order VII Rule 11 CPC. He would therefore pray for dismissal of the Revision



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8. I have carefully considered the submissions advanced by the learned counsel on either side.

9. The reliefs sought for in O.S. No.41 of 2024 are as follows, (i) to declare the decree in O.S. No.36 of 2022 dated 23.04.2022 is null and void; (ii) to declare the minor children as the lawful owners of the suit property and (iii) for setting aside the sale deed 08.07.2022 in Document No.2759 of 2022 in favour of the revision petitioner. When allegations of fraud and collusion have been made in the plaint attacking the judgment and decree in the earlier suit in O.S. No.36 of 2022, provisions of Order VII Rule 11 CPC are certainly not to be invoked, to hold that the parties have finally resolved their disputes and decree in O.S. No.36 of 2022 has worked itself out and therefore, the present suit is hit by principles of *res judicata* and there can be no cause of action to the mother to file the present suit.

10. It is seen from the above, the mother only seeks for a declaration that the minor children are the owners of property. The

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

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interests of minor children is at stake in the present suit and serious allegations of fraud and collusion also made against the husband of the first respondent. In such circumstances, the Court has rightly held that the Application under Order VII Rule 11 CPC cannot be entertained and the parties would have to necessarily under go the rigors of trial before the Court finally adjudicates the issues that arise for consideration. I do not find any serious infirmity or illegality in the findings arrived at by the trial Court.

11.In fine, this Civil Revision Petition is dismissed. Connected Miscellaneous Petition is also dismissed. No costs.

25.06.2025

rkp

Index : Yes / No

Internet : Yes / No

To:

The Subordinate Judge, Polur, Tiruvannamalai District.

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