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CRP No. 2064 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-08-2025

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

CRP No. 2064 of 2022

Vijaya

W/o.Devarajan, 93A Middle Street,
Venbavur, Veppanthattai Taluk,
Perambalur District

Petitioner(s)

Vs

1. Janarthanan

S/o.Late. Vaithi Nattar, Kallakurichi
Main Road, Sankarapuram, Villupuram
District

2.Srinivasan

S/o.Late. Vaithi Nattar, Kallakurichi
Main Road, Sankarapuram, Villupuram

3.Vasantha

W/o.Jagadeesan, D/o.Late. Vaithi
Nattar, No.55, Second Cross, Street,
Rainbow Nagar, Puducherry-UT
605011

Respondent(s)



PRAYER

Civil Revision Petition filed under Section 227 of the Constitution of India praying to set aside the Judgement and decree dated 24.11.2021 passed by the Principal district Judge Villupuram in Un numbered OS No. of 2021 (19R No.12917) and to direct the Registry to number the suit and pass such further orders and thus render justice.

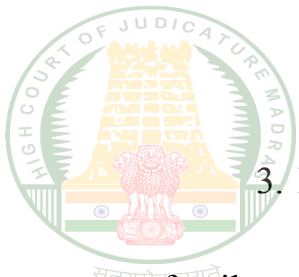
For Petitioner(s): K.Shanmugakhani

For Respondent(s): S.Prem Auxilian Raj
for R1 And 2
R3- served, no appearance

ORDER

This Civil Revision Petition challenges the order of the learned Principal District Judge, Villupuram in an unnumbered O.S.No.2021 (19R No.12917), dated 24.11.2021.

2. There is no dispute in the relationship between the parties. The Civil Revision Petitioner/plaintiff is the sibling of defendants 1 to 3. The parties to the suit were born to one, Vaithi Nattar and Periyamayagi Ammal. The plaintiff pleads that her grandfather Ramasamy Nattar gave birth to three sons, namely, i) Vaithi Nattar, ii) Sivalinga Nattar and iii) Chockalingam Nattar.



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3. Ramasamy Nattar and his sons partitioned the properties of the joint family on 26.04.1955. Arraying her parents, siblings, her elder sister-in-law and nephew, the petitioner presented O.S.No.97 of 2011 on the file of the District Judge, Villupuram. In the said suit, she demarcated the 'A' schedule mentioned properties as the properties, which came to the hands of her father by virtue of the 1955 partition, the 'B' schedule properties being the properties which came to her father on the death of her grandfather Ramaswamy Nattar in the year 1972, and the 'C' schedule mentioned properties as the properties which were purchased out of the income from 'A' and 'B' schedule mentioned properties.

5. On summons being served, the defendants entered appearance. They filed a detailed written statement, denying the averments made in the plaint, seeking for dismissal of the suit. Thereafter, her brother Janarthanan, the first respondent herein, filed an application in I.A.No.463 of 2011 under Order VI Rule 16 of the Court seeking to strike off the suit from the file of Court. Initially, the plaintiff was successful as the learned District Judge dismissed the application. Aggrieved by the same, the 3rd defendant preferred a revision to



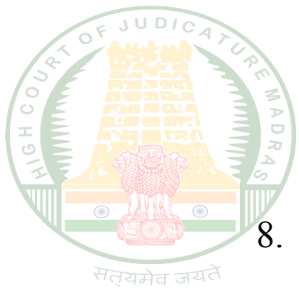
this court in CRP.(PD).No.2096 of 2012 This Court, agreed with the contention of the 3rd defendant/Civil Revision Petitioner, allowed the revision on

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24.06.2015. Challenging the same, the plaintiff preferred a Special Leave Petition to the Supreme Court in SLP (Civil) No.35434 and 35435 of 2015. After hearing both sides, the Special Leave Petition came to be dismissed on 04.07.2017.

6. Subsequently, taking note of the fact that certain additional properties are available for partition, the plaintiff presented an un-numbered O.S.No.(19R No.12917) on 16.09.2021. The learned Principal District Judge, Villupuram did not number the suit and took the suit for disposal immediately. The learned Principal District Judge returned a finding that the properties which are the subject matter of partition in O.S.No.97 of 2011, and the present suit are the one and the same. On that basis, the learned Judge rejected the plaint as not maintainable. Aggrieved by the same, the present Revision.

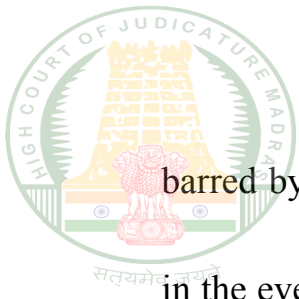
7. I heard Mr. K. Shanmugakhani, for the petitioner and Mr.S.Prem Axilian for the respondents 1 and 2.



8. Mr.K. Shanmugakhani, took me through the plaint in O.S.No.97 of 2011, as well as the present plaint and pointed out that the suits are not for the same properties, though there might be some overlapping of the items. He further urged that the procedure followed by the learned Principal District Judge is contrary to a judgment of this Court, and therefore the impugned order requires to be set aside.

9. Per contra, Mr. Prem Auxilian submitted that the Civil Revision Petition itself is not maintainable on the ground that the order passed by the learned Principal District Judge amounts to a “decree” and as against a decree, only an appeal is maintainable and not a Revision. Reading extensively from the order passed by this Court in C.R.P.(PD).No.2096 of 2012, he urged that the present suit is an abuse of process of Court and therefore, the order passed by the learned Principal District Judge does not require any interference.

10. He further relied upon the judgment rendered by the Supreme Court in *Indian Evangelical Lutheran Church Trust Association Vs. Sri Bala & Co* reported in 2025 SCC Online SC 48 and urged that the suit for partition is



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barred by time. Having made these submissions, Mr.Prem Auxilian added that

in the event this Court feels that the suit should be numbered, liberty should be

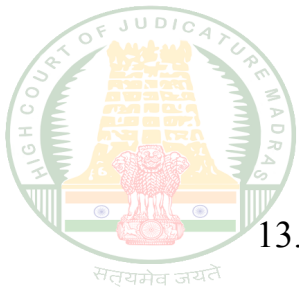
granted to the defendants to take out appropriate application for rejection of

plaint under Order VII Rule 11 or to dismiss the suit as an abuse of process of

Court under Order VI, Rule 16 of Code of Civil Procedure.

11. I have carefully considered the submissions of both sides. I have gone through the records. I have paid my anxious consideration to both sides.

12. The suit is one for partition. The cause of action for a partition suit accrues everyday. A plaintiff, in a suit for partition, can file a suit in the forenoon, withdraw the suit in the afternoon, and file a fresh suit yet again the next day. This is because the cause of action for a suit for partition accrues *de-die in diem*. He loses the right to sue on such right, only when the plaintiff is ousted from possession by virtue of lapse of time. Even then, the suit will be dismissed as barred by time, rather than on the ground it does not have a cause of action.



13. In so far as the judgment cited supra in ***Indian Evangelial Lutheran***

Church Trust Association Vs. Sri Bala & Co reported in 2025 SCC Online SC

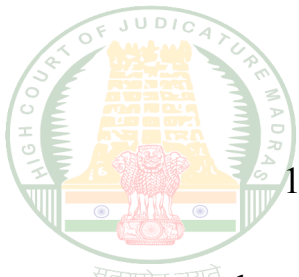
48 is concerned, I am afraid that I am not in a position to apply the principles laid down in that case to the facts of the present case. That was a case where a suit for specific performance had been rejected in the year 1998. A second suit for the same relief was filed in the year 2007. Hence, the court held that the second suit is barred. Insofar as the suit for specific performance is concerned, the period of limitation of such a suit is governed under Article 54 of the Limitation Act. The Limitation Act contemplates a suit for specific performance should be presented within three years, where date is fixed for performance or within three years from the date of denial of the agreement. Such is not the position in case of a partition suit. That being the position of law, the plea of Mr.Prem Auxilian that the suit is barred by time is rejected. Furthermore, limitation is a mixed question of law and facts. It requires a written statement and some evidence on record. Unless and until the court, by reading the plaint itself, is convinced that the suit is barred by time. That not being the position in the present case, the plea that the suit is barred by time



stands rejected.

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14. In so far as the preliminary objection of Mr.Prem Auxilian that the Revision is not maintainable is concerned, I should point out that section 2(2) of the Code of Civil Procedure contemplates, by a deeming provision, that rejection of a plaint is also treated as a decree. Rejection of plaint arises by virtue of an order being passed under Or.7, Rule 11 of the CPC. The Court, even prior to numbering in this case had come to the conclusion that both the properties are identical, and hence rejected the plaint. There was enough occasion for the defendant to have filed an application, thereby giving an opportunity to the plaintiff to file a counter, and for the court, after going through the plaint and hearing the arguments of the parties, to pass a considered order. The proceedings of the court shows that the suit had been presented and registered even before numbering. Such a procedure is not contemplated under CPC. This issue is no longer *res-integra* and has been settled by a judgement of the Honourable Mr.Justice N.Seshasayee in ***Selvaraj vs. Koodankulam Nuclear Power Plant India Limited reported in (2021) 3 LW 677.***

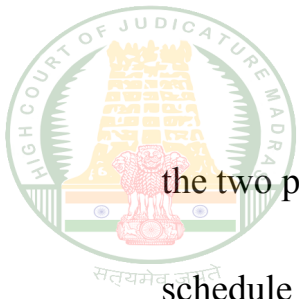


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15. The learned Judge held that while numbering a plaint, the Court merely exercises a ministerial function and does not exercise any judicial powers. He pointed out that the appropriate procedure in which a suit should proceed, the plaint after completion of ministerial process, should be numbered and thereafter, leaving it open to the defendants to file an application for rejection of plaint, if they so desire or are so advised. In this case, the learned Judge did not follow the binding decision of this Court and straight away rejected the plaint, after coming to the conclusion that the properties are one and the same.

16. In case, the procedure adopted by the Trial Court is contrary to the Code of Civil Procedure, then it is the constitutional duty of this Court in exercise of the powers vested under Article 227 of the Constitution of India to keep the trial court within its bounds. That being the position, certainly a revision against such an order which is impugned in the present case is maintainable.

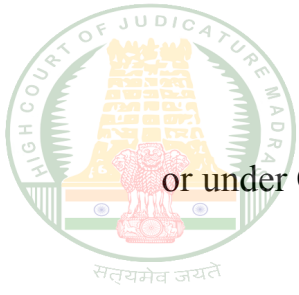
17. Another crucial error is that the learned trial court without comparing



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the two complaints had come to the conclusion that both the cases relate to the same schedule of properties. Mr. Prem Auxilian has been kind enough by producing the plaint in O.S.No.19 of 2021, as well as the plaint in the present case. A perusal of the same shows that there are some similarities or identical properties included in both the suits. Certain new properties had been included in this plaint. Therefore, the conclusion arrived at by the Principal District Judge that both suits relate to the same properties is erroneous. Apart from this, it is the duty of the trial court to decide whether the properties which have been inserted in this suit are susceptible to partition or not. Without undergoing such an exercise, the learned Judge ought not to have rejected the suit on the basis of the erroneous conclusion that both the suit properties are one and the same.

18. In the light of the above discussion, this Civil Revision Petition succeeds. The order of the learned Principal District Judge in OS.No.2021 (19R No.12917) dated 24.11.2021 is set aside. The learned District Judge shall number the plaint and issue summons to the defendants. Needless to add, the defendants will be entitled to file an appropriate application under Or.6 Rule 16



or under Or.7, Rule 11 of CPC, as they may be advised.

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19. With the above observations, this Civil Revision Petition is allowed.

No costs.

msr

25-08-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. Janarthanan

S/o. Late. Vaithi Nattar, Kallakurichi

Main Road, Sankarapuram, Villupuram

District

2. Srinivasan

S/o. Late. Vaithi Nattar, Kallakurichi

Main Road, Sankarapuram, Villupuram

3. Vasantha

W/o. Jagadeesan, D/o. Late. Vaithi

Nattar, No.55, Second Cross, Street,

Rainbow Nagar, Puducherry-UT

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4. The Principal District Judge, Villupuram.



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V.LAKSHMINARAYANAN J.

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