



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.07.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI
CRP.No.2236 of 2025
and CMP. Nos.12963 of 2025

1.T.Natarajan
2.T.Jawahar

... Petitioners

Vs.

Rajeswari

... Respondent

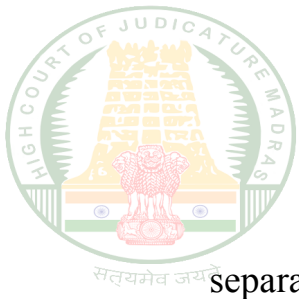
PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the impugned fair and decretal orders dated 24.04.2025 in I.A. No.9 of 2025 in O.S. No.108 of 2019 on the file of the learned Additional District Judge at Dharmapuri.

For Petitioners : Mr.S.Subramanian

For Respondent : Mr.C.Umashankar for
Mr.M.Premkumar

ORDER

The revision is at the instance of the defendants 1 and 2 challenging the dismissal of their Application in I.A. No.9 of 2025 for rejection of the plaint under Order VII Rule 11 of CPC.



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2. The suit has been filed by the respondent herein for partition and separate possession and also challenging the partition deed dated 31.01.2007 amongst the family members. The primordial ground for challenge in the Order VII Rule 11 CPC was that the suit was hopelessly barred by limitation since the partition deed was registered partition deed and in terms of Section 3 of the Transfer of Property Act, 1882, the plaintiff is deemed to have possessed constructive notice of the said document. However, the suit has been filed after lapse of 9 years after the demise of her father, Late.Thangavel and therefore, relying on Article 59 of the Limitation Act, 1963, it is contended that the suit for declaration beyond three years is not maintainable. It is also contended that the plaintiff has not paid proper Court fee, since the plaintiff is not in physical possession of the suit property.

3. On behalf of the respondent/plaintiff, it is contended that under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, the plaintiff has valued the suit and paid Court fee and the plaintiff's right in the suit property which is subject matter of the suit for partition. The plaintiff is deemed to be constructive possession of the subject property and



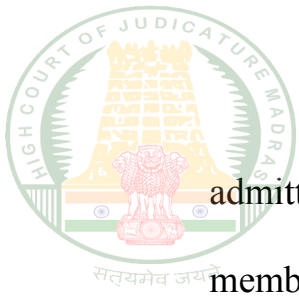
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therefore, the valuation under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act is not improper. As regards the limitations, the respondent has stated the suit has been filed within a period of three years from the date of knowledge of the alleged partition deed and therefore, there is no ground to reject the plaint under Order VII Rule 7 of CPC.

4. On enquiry, the Trial Court has dismissed the Application finding that on reading of the plaint, the question of limitation cannot be finally decided and put against the plaintiff and that triable issues arise for consideration of the suit. The Application under Order VII Rule 11 of CPC, was consequently dismissed. Challenging the said order, defendants 1 and 2 are before this Court.

5. Heard learned counsel for the petitioners, Mr.S.Subramanian and Mr.C.Umashankar, learned counsel for the respondent.

6. The learned counsel for the petitioner taking me through the plaint averments more specifically, paragraph 8 of the plaint would contend that the plaintiff by clever drafting has created an illusion of cause of action and



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admittedly, the partition deed is a registered document amongst the family members and was executed in the year 2007, the plaintiff cannot feign ignorance of the said document outside, especially since she admits the plaint that she resides in the vicinity, the learned counsel therefore contend that the suit has not been filed within the requisite period of three years especially since the relief of declaration is also sought for.

7. The learned counsel also places reliance on the decision of the Hon'ble Supreme Court in *Rajpal Singh Vs. Saroj (deceased) through Legal Representative and Another*, reported in (2022) 15 SCC page 2260, where, the Hon'ble Supreme Court held that when the suit is for recovery of possession and was filed within a period of 12 years, it is not barred by limitation. The Hon'ble Supreme Court finding that the relief of possession was only a consequential prayer and substantive prayer of cancellation of sale deed dated 19.04.1996 was sought, held for the purposes of calculating the period of limitation, it is required to consider whether in respect of substantive relief claim, the suit was filed in time. The Hon'ble Supreme Court further held that the relief of declaration being the substantive relief, it was filed within three years from the date of knowledge of sale deed and



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on facts, it was found that the suit was filed beyond the period of three years and hence, the Hon'ble Supreme Court held that the suit was clearly barred by limitation.

8. Per contra, Mr.C.Umashankar learned counsel for Mr.M.Premkumar, the learned counsel for the respondent would contend that there is no error or infirmity in the findings arrived at by the Trial and rightly, the Trial Court has held that the issue of limitation was a mixed question of law and facts, especially in the light of specific date being averred in the plaint with regard to date of knowledge of the partition deed.

9.The learned counsel for the respondent would also place reliance on the decision of *Daliben Valjibhai and others Vs. Prajapati Kodarbhai Kachrabhai and Another*, reported in (2024) SCC Online SC 4105, where the Hon'ble Supreme Court held on facts, the suit filed after 13 years, after the execution of sale deed will not by itself render the suit, barred by limitation as the question would be whether the plaintiffs had knowledge of the execution of the sale deed.



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10. In *Chhotanben and Another Vs. Kiritbhai Jalkrushnabhai Thakkar and Others*, in Civil Appeal Nos.3500 of 2018, The Hon'ble Supreme Court finding that the plaintiffs had asserted in the suit that they have filed the suit after getting knowledge about the fraudulent sale deed executed by defendants 1 and 2, affirmed the view of the Trial Court and held that the issue regarding the suit being barred by limitation were triable issues and was not a ground to reject the plaint at the threshold in exercise of provisions Order VII Rule 11 (d) CPC. These two decisions would squarely apply to the facts of the present case.

11. In the light of averments in paragraph No.8 of the plaint claiming that the plaintiff had knowledge of the partition deed only on 07.11.2018 and when admittedly within a period of three years thereafter, the suit has been filed for partition. In the light of the above, I do not find any infirmity or perversity in the findings of the Trial Court, warranting interference under Article 227 of the Constitution of the India. Ofcourse, it is always open to the defendants 1 and 2 to canvass the plea of limitation at the time of trial. Accordingly, this Civil Revision Petition is **dismissed**. Considering the suit is of year 2019 and it is in a part heard stage, the Trial Court is



directed to dispose of the suit on merits and in accordance with law, within a period of four (4) months from the date of receipt of the copy of the order.

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No costs. Consequently, connected Miscellaneous Petition is also dismissed.

09.07.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No

rkp

To

The Additional District and Sessions Judge at Dharmapuri



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P.B.BALAJI.J.,

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