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CRP. PD. No.3386 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:16.06.2025

Pronounced on: 04.07.2025

CORAM

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

**CRP. PD. No.3386 of 2024  
and CMP. No.18240 of 2024**

1.M.Jothi  
2.M.Gowthaman

Petitioner(s)

Vs

1.M.Vaideeswaran  
2.M.Yuvashree

Respondent(s)

**PRAYER:** This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order of the Additional District Judge, Dharmapuri in I.A. No.09 of 2024 in O.S. No.184 of 2022 dated 12.07.2024 and consequently allow the I.A. No.09 of 2024 in O.S. No.184 of 2022 filed invoking Order 7 Rule 11 (a) and (d) of CPC.

For Petitioners : Mr.S.Sathiaseelan

For Respondents : Mr.S.Sudarshan  
for Mr.S.Subramanian

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## **ORDER**

This revision is filed by the defendants 2 and 3, challenging the dismissal of IA.No.09 of 2024 in O.S. No.184 of 2022 dated 12.07.2024 which was taken out by them for rejection of plaint under Order 7 Rule 11(a) and (d) of CPC.

2. I have heard Mr.S.Sathiaselvan, learned counsel for the petitioner and Mr.S.Sudarshan for Mr.S.Subramanian, learned counsel for the respondent.

3. The learned counsel for the petitioner, Mr.Sathiaselvan would submit that the suit is without any cause of action and also barred by law. Taking me through the plaint the learned counsel would submit that, one Mr.Vayapari Mudaliar had executed a Will on 06.02.1989 and subsequently, a Settlement Deed was executed on 09.11.1989 in favour of the 1<sup>st</sup> defendant and another Settlement Deed was executed on 28.05.1990 in favour of one Kolandaivelu. The plaintiffs claim partition and for declaration of the Will dated 06.02.1989 as null and void, in view of the settlement deeds having been executed.



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4. The primordial contention of the learned counsel for the petitioners Mr.Sathiaseelan is that, the Will was in respect of two properties which were described as Schedule A and Schedule B property and in respect of Schedule B property, admittedly the Will was not revoked or cancelled and even both the Settlement Deeds referred above were not in respect of Schedule B property. He would therefore, submit that the Will would still survive in respect of the Schedule B property and no cause of action was available for seeking the relief of partition. The learned counsel would therefore submit that the Trial Court has erred in dismissing the Application for rejection of the plaint.

5. The learned counsel would place reliance on the following judgments:

(i) *Anil Behari Ghosh vs Smt Latika Bala Dassi and Others*, reported in (1955) SCC Online SC 61;

(ii) *Smt.Jaswant Kaur vs Smt.Amrit Kaur and others*, reported in (1977) 1 SCC 369;

(iii) *Badrilal vs Suresh and others*, reported in (2021) 18 SCC 129;

(iv) *Kaikhushru Jehangir vs Bai Bachubai Jehangir & others*,



reported in (1948) SCC Online Bom 27;

(v) *Dipty Chakraborty vs Santhosh Kumar Chakraborty*, reported in (2002) 2 Gauhati Law Reports 625;

(vi) *Rupinder Singh vs Sita Devi, through her legal heirs and Another*, reported in (2023) SCC Online P&H 6939;

(vii) *Dhanammal vs Kesava Reddair (Deceased) through his Legal Heirs* in S.A.No.940 of 1993 dated 16.11.2009,

(viii) *Sridevi Amma and others Vs. Venkitaparasurama Ayyan and others*, reported in 1959 SCC Online Ker 63;

(ix) *Dahiben vs Arvinbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and others*, reported in (2020) 7 SCC 366;

(x) *S.Saktivel (Dead) by LRs Vs. M.Venugopal Pillai and others*, reported in (2000) 7 SCC 104;

(xi) *Ramti Devi (SMT) Vs. Union of India*, reported in (1995) 1 SCC 198;

(xii) *T.Arivandandam Vs. T.V.Satyapal and Another*, reported in (1977) 4 SCC 467;

(xiii) *Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead)*



by *Legal Representatives*, reported in (2020) 16 SCC 601;

(xiv) *Shipping Corporation of India Limited Vs. Machado Brothers and Others*, reported in (2004) 11 SCC 168;

(xv) *Temple of Thakur Shri Mathuradassji, Chhota Bhandar Vs. Shri Kanhaiyalal and others*, reported in (2008) SCC Online Raj 530;

(xvi) *Ranipet Municipality Rep. by its Corner and Special Officer, Ranipet Vs. M.Shamsheerkhan*, reported in 1998 (I) CTC 66;

(xvii) *B.Rajendran Vs. K.Arumugham and others*, reported in 2011-1-L.W.283; and

(xix) *Bhargavi Constructions and another Vs. Kothakapu Muthyam Reddy and Others*, reported in (2018) 13 SCC 480.

6. Per contra, the learned counsel for the respondents/plaintiffs would submit that the Trial Court has rightly dismissed the Application holding that the plaint cannot be rejected invoking provisions of Order VII Rule 11 CPC and the matter required the parties to lead oral and documentary evidence and the Trial Court further held that the case is in a part heard stage and since triable issues are arising, the grounds raised by the defendants would not entitle them to seek rejection of the plaint.



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7. The learned counsel would place reliance on the decision of the Hon'ble Division Bench of our Court in *Salem Town Bazaar Street, Kannika Parameswari Devasthanam, represented by Trustee D.V.Govindarajulu and others vs T.K Sadasivam Chettiar*, reported in (1980) SCC Online Mad 70 in support of contentions relating to the effect of the Will. The learned counsel would therefore pray for dismissal of the revision.

8. I have paid my anxious and careful consideration to the submissions advanced by the learned counsel on either side.

9. The suit has been filed for relief of partition and separate possession and mesne profits, besides relief of permanent injunction and also for a declaration that the Will dated 06.02.1989 registered as Document No.6 of 1989 on the file of the Sub- Registrar, Joint-II, Dharmapuri is null and void.

10. Admittedly, Mr.Vaiyapuri Mudaliyar, the father of the first



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defendant and paternal grandfather of the revision petitioners herein and the plaintiffs was the owner of the subject properties. The said Vaiyapuri Mudaliyar had executed a registered Will on 06.02.1989. Schedule B property in the said Will was bequeathed to the revision petitioners viz., defendants 2 and 3 in the suit. The Schedule A property was bequeathed to the Kolandaivelu, the eldest son of Vaiyapuri Mudaliyar. It is an admitted fact that subsequently a part of A Schedule property was settled by Vaiyapuri Mudaliyar himself under a registered Settlement Deed dated 09.11.1989 and the remaining part was again settled on 28.05.1990. Admittedly, no portion of B schedule property was settled or alienated to third parties during the lifetime of Vaiyapuri Mudaliyar. However, the case of the plaintiffs is that the Will dated 06.02.1989 was revoked by the subsequent Settlement Deeds referred herein above and therefore, Schedule B property has become available for partition amongst the surviving legal heirs and the Will dated 06.02.1989 is also null and void.

11. The Testator who executed his last Will and Testament is entitled to revoke, modify or cancel the Will, any time during his lifetime. There is no quarrel with regard to the said proposition. However,



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when a portion of the property that is covered under the Will alone has been alienated or dealt with by the Testator himself during his lifetime, the Will will certainly survive insofar as the properties that have not been dealt with by the Testator during his lifetime. Merely, because two settlement deeds have been executed conveying Schedule A property covered under the Will, it would not revoke the Will even in respect of Schedule B property, which admittedly has not been dealt with under the two settlement deeds or by any other document during the lifetime of the Testator.

12. It is further claimed in the plaint that the properties covered in Schedule B property were handed over to the second wife of the 1<sup>st</sup> defendant viz., Dhanalakshmi and therefore, the said property had vested with plaintiffs. The only question that remains is whether such a claim of the plaintiffs under an oral arrangement would impliedly revoke a registered Will executed by Vaiyapuri Mudaliyar.

13. In *Anil Behari Gosh's case*, (referred herein supra), the three Judges Bench of the Hon'ble Supreme Court held that, it is open to a



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person who has made a Will to alter or revoke it at any time during his lifetime, however if he died leaving a registered Will and had not taken any tangible steps to revoke such a Will, then it would not be enough to allege that the Testator has entertained the intention of doing so, as such an intention without being translated into action would have no effect on the Will and would still be treated as his last Will and Testament.

14. In *Smt.Jaswant Kaur's case*, (referred herein supra), the Hon'ble Supreme Court held that Will cannot be revoked by implication as revocation of an unprivileged Will is an act equally and probably a little less solemn than the making of Will itself and statutory requirements have to be complied with even for revocation of a Will.

15. In *Badri Lal's case*, (referred herein supra), the Hon'ble Supreme Court held that Section 70 of the Indian Succession Act, 1925 deals with revocation of unprivileged Wills and the revocation of the Will can be made only by following any of the modes available under Section 70.

16. The Bombay High Court in *Kaikhushru Jehangir's case*



(referred herein supra), again referring to Section 70 of Indian Succession Act, 1925 held that the only manner in which an unprivileged Will can be revoked is to follow the conditions set out in Section 70 of Indian Succession Act.

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17. The Full Bench of the Kerala High Court in *Sridevi Amma's* case (referred herein supra) while dealing with the question whether the Will has been revoked held that alienation of a part of the property covered by a Will would not amount to revocation of the Will itself.

18. This Court in *Dhanammal's* case, (referred herein supra) held that when the Testator has intentionally settled some of the properties which were originally included in the Will and subsequently, the Will has not been cancelled or revoked, the Will does not lapse on the death of the maker.

19. The Hon'ble Supreme Court *Dahiben's* case, (referred herein supra) held that under Order VII Rule 11 CPC, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing



the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. The Court has to determine if the assertions made in the plaint are contrary to statutory law or judicial dicta, for deciding whether the case for rejecting the plaint at the threshold is made out.

20. In *T.Arivandandam's* case, (referred herein supra) the Hon'ble Supreme Court held that, the Court, if on a meaningful and not formal reading of the plaint is able to see that the claim is manifestly vexatious and meritless, in a sense of not disclosing a clear right to sue, then the Court should exercise the power under Order VII Rule 11 CPC to see that the ground mentioned thereon is fulfilled, even if a clever drafting has created an illusion of cause of action, the Court must nip it in the bud.

21. In *Raghavendra Sharan Singh's* case, (referred herein supra) the Hon'ble Supreme Court held that, the Trial Court as well as the High Court erred in not rejecting the plaint in exercise of powers under Order VII Rule 11 CPC, when it was clear from the records that the plaintiff did not bring the suit within the period of limitation.



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22. The Hon'ble Supreme Court in *Bhargavi's Construction's* case (referred herein supra) held that the expression law occurring in Clause (d) of Rule 11 Order 7 includes “judicial decisions”.

23. In the decision on which the respondent has placed reliance on, viz., the Division Bench judgment of this Court in *Salem Kannika Parameswari Devasthanam's* case, (referred herein supra) referring to *Powell vs Powell* reported in (1860) P.R.I and D.209 at 212, held that revocation of Will would depend on the intention of the Testator and if done by the Testator or by his direction which, if amounted to an intention to revoke, would amount to a revocation. The presumption of law from that act of the Testator is in favour of existence of *animus revocandi*, but such presumption can be rebutted by evidence, showing that *animus revocandi* did not exists. Relying on the said decision, the learned counsel would submit that the Hon'ble Division Bench of this Court, has recognised the principle of *animus revocandi* and therefore, necessarily the Trial Court would have to allow the parties to lead evidence, oral and documentary to show that the Testator has intended to



revoke the Will.

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24. On carefully analysing the ratio laid down by the Hon'ble Supreme Court as well as this Court, including the Division Bench judgement relied on by the learned counsel for the respondent, the law is very clear that revocation of the Will can only be in terms of Section 70 of the Indian Succession Act, 1925 and not under any other event. Law is also equally settled that when a portion of the property which has been set out in the Will has been dealt with by the Testator during his lifetime, it would not amount to revocation of the entire Will and the Will would subsist insofar as the remaining property is concerned.

25. The decision of the Hon'ble Division Bench of this Court does not apply to the facts of the present case. In the said case, the Testator had executed a Will, but however subsequently, he has settled the property to Salem Town Bazaar Street, Kannika Parameswari Devasthanam clearly indicating that he did not want to give effect to the Will. The question before the Hon'ble Division Bench was whether the Will was rendered ineffective after the settlement and in the event of



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settlement itself being ineffective, Will would get revived, taking into account the intention of the Testator. Only in such context, the principle of *animus revocandi* has been discussed and this Court held that the Will would get revived. Therefore, I do not see this decision coming to the aid of the respondent.

26. On going through the plaint, the case of the plaintiffs is that by executing a settlement deed in respect of Schedule A property the Testator has impliedly revoked the entire Will. It is the further contention that the original Will was handed over to one Dhanalakshmi, second wife of the Testator and thereby the Schedule B property was also orally vested with the mother of the plaintiffs and that after the birth of the plaintiffs, the suit properties were orally given to the plaintiffs/defendants 1, 2 and 3 jointly. When there is nothing in the plaint to show that the Will has been revoked during the lifetime of Vaiyupuri Mudiliar, there can be no claim that the original Will was handed over to the said Dhanalakshmi and thereby the property vested

with her and that after the birth of the plaintiffs, the property was given



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orally to the plaintiffs and defendants 1 to 3. Such a claim goes against the provisions of the Transfer of Property Act, 1882 and in any event, when admittedly even on a reading of the plaint, it is clear that the Will has not been revoked in terms of Section 70 of the Indian Succession Act, 1925 and all claims are only implied and oral, certainly, the plaint does not disclose a cause of action for claiming the relief of partition, declaration of the Will being and null and void and for consequential permanent injunction being available to the plaintiffs, especially when such oral transactions are not permissible in law.

27. The trial court has erroneously dismissed the Application on the ground that triable issues arise for consideration. Infact, despite culling out the various decisions on which reliance has been placed on by the revision petitioners, the Trial Court has simply brushed aside the same stating that the authorities are not applicable to the facts of the present case, without even referring to the ratio laid down in these cases which would apply to the facts of the present case, especially pertaining to the manner and mode of revocation of the Will and also powers of the court under Order VII Rule 11 CPC.



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28. In view of the above, I am inclined to set aside the order passed by the Trial Court in I.A. No.09 of 2024 in O.S. No.184 of 2022 dated 12.07.2024 passed by learned Additional District Judge, Dharmapuri. Accordingly, this Civil Revision Petition is allowed and the plaint in O.S. No.184 of 2022 stands rejected. Consequently, connected Miscellaneous Petition is closed. No costs.

**04.07.2025**

rkp

Index : Yes / No

Internet : Yes / No

To:  
The Additional District Judge,  
Dharmapuri.



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

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**Pre-delivery order in**  
**CRP. PD. No.3386 of 2024**  
**and CMP. No.18240 of 2024**

**04.07.2025**