



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.01.2025

Pronounced on : 12.03.2025

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.No. 4813 of 2024 in CS.No.89 of 2022

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1. Mr.P.V.K.Raja Mahendran
- 2.Malliga
- 3.Mangairkarasi
4. Santhi
5. S.Kavitha
- 6.S.Bhuvaneswari ...Applicants

Vs.

1.Mr.P.Kandasamy Thevar

2.K.Thavamurugan

3.K.Thanigaivel

4.K.Manikandan

5.Arunodhayam

6.Rajeswari

7.P.Gurusamy

8.Shenbaga Pandian

9.The Sub-Registrar

Vilathikulam Sub-Registrar Office

Vilathikulam, Tuticorin District

10.The Sub-Registrar,

Sayalkudi Sub-Registrar Office,



PRAYER: This application has been filed for rejection of the plaint in CS.No.89/2022

on the grounds of the plaint does not disclose the cause of action in the above suit.

For Applicants :

Mr.K.V.Subramanian
Senior Counsel
for Mr.S.Chandrasekharan

For Respondents:

Mr.N.A.Malai Saravanan
Mr.V.Vijayarajan
Mr.C. Rajan for D-19
Mr.S.Deenadayalan for D-20

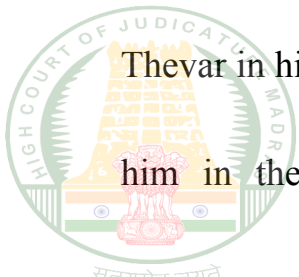
ORDER

This application is filed seeking the above stated reliefs.

2. Learned counsel for the applicants submitted that the plaint schedule properties are only a self acquired properties in the name of his father Mr.Velliah Thevar and his wife/D-1. He further submitted that the plaint do not disclose the cause of action for granting a decree for partition and neither there are relevant and material contentions in the suit nor have the plaintiff filed any document on record to support their allegations and premise on which the present suit is based. The plaintiff has no locus standi to seek partition of the said property. Hence the plaintiffs cannot raise any claim towards the said property since it is an individual property of the late

P.V.Karuppasamy Thevar. He further submitted that schedule mentioned properties

viz., Item Nos.1 part, 2, 4, 9, 11, 16 and 19 were purchased by Mr.P.V.Karuppasamy



Thevar in his own fund and Item Nos.1 part, 3, 5, 6, 7, 20, and 21 were purchase

him in the name of his father and item Nos.8 and 13 were purchased by

Mrs.Lakshmi Ammal /D1 and item Nos.12 and 18 were purchased by 1st applicant

in his own fund. It is submitted that there are no averments or document which

fulfill even the bare modicum of the minimum pre-requisites to plead an actionable

case in relation to the existence of the alleged HUF. To a main suit, the plaint must

disclose cause of action. In the case on hand, the cause of action has been 'made up'

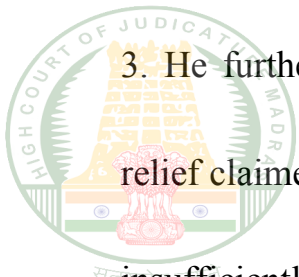
and not 'made out'. In a case of *Church of Christ Charitable Trust & Educational*

Charitable Society Vs Ponnamman Educational Trust, it is observed in paragraph

No.10 as follows:

“10. It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same”.

In the case of *Dahiben Vs.Aravindbai Kalyanji Bhanusaliji - 2020 (7) SCC 366*, it was held that while considering an application under Order 7 Rule 11 CPC, what is required to be decided is whether the plaint discloses a



3. He further submitted that if the plaint does not disclose a cause of action

relief claimed is undervalued and not corrected within the time allowed by the court,

insufficiently stamped and not rectified within the time fixed by the court, barred by

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any law, failed to enclose the required copies and the plaintiff fails to comply with

the provisions of Rule 9, the court has no other option except to reject the same.

Hence, he prays to allow this application.

4. Learned counsel for the 3rd respondent /4th plaintiff submitted that the 3rd

respondent denied all the averments stating in paragraph numbers 1 to 9 of the

affidavit. The suit is pending for final stage. He further submitted that the above

application filed under Order XIV Rule 8 of OS. Rules r/w Order VII Rule 11(A) of

CPC seeking an order to reject the plaint, which is not at all maintainable. In order to

evade and protract the proceedings and to make delay the entitlement of the legal

rights to the plaintiffs, the applicants have filed this frivolous application at this

stage. The above suit was originally filed in the year 2019 and the applicants herein

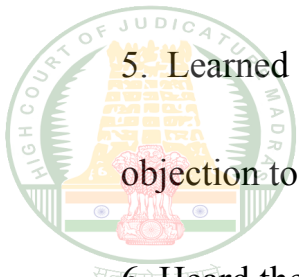
successfully dragged the case for the past five years and delayed the justice to the

plaintiffs. He further submitted that the 1st plaintiff gave her evidence before this

Court as PW1. But she died pending the case and subsequently the respondents have

been trans-positioned as plaintiffs 2 to 7 in the main suit. Hence, he prays for

dismissal of the suit.



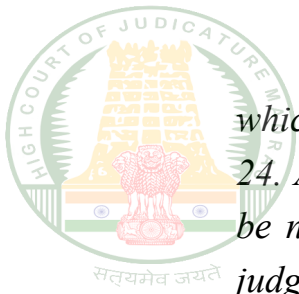
5. Learned counsel for the respondents 11 and 12 submitted that they have no objection to allow this application.

6. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

7. Upon hearing arguments on either side and perusing the materials available on record, it is seen that this is a suit for partition and in the suit for partition, there is no limitation. In every case, both the parties have to adduce their oral and documentary evidences and put forth their arguments and then only the court can arrive at a just and proper conclusion. The suit is originally filed before the District Court, Ramanathapuram. It is a mofussil area wherein the pleadings are to be construed liberally and hence, liberal view can be taken in respect of the pleadings. In respect of application filed under Order 7 Rule 11, the plaint averments are germane and other documents and evidences cannot be looked into.

8. It is relevant to refer paragraph Nos.23 and 24 in (2005) 10 SCC 51 reported in *Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others*, which reads as follows:

"23. Osborne's Concise Law Dictionary defines "cause of action" as the fact or combination of facts which give rise to a right or action. In Black's Law Dictionary it has been stated that the expression cause of action is the fact or facts which give a person a right to judicial relief. In Stroud's Judicial Dictionary a cause of action is stated to be the entire set of facts that give rise to an enforceable claim; the phrase comprises every fact



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which, if traversed, the plaintiff must prove in order to obtain judgment.

24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. "

9. It is relevant to refer the paragraph No.21 in *Ram Prakash Gupta Vs. Rajiv Kumar Gupta*, reported in (2007) 10 SCC which reads as follows:

" 21. While deciding the application under Order 7 Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. we are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint. "

10. Relying on the above Judgments, this court, is not inclined to allow this application at this stage. Hence, this application is liable to be dismissed.

11. Accordingly, this application is dismissed.

12.03.2025

gv (1/2)

Pre-delivery Order made in

A.No. 4813 of 2024

in CS.No. 89 of 2022