



CRP.No.4597 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2025

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.4597 of 2024

and

CMP.No.25701 of 2024

G.Jayaprakash

...Petitioner

Vs.

1.G.Vijayakumar

2.S.Parvathikutty

3.S.Sasidharan

4.S.Sathish

5.J. Divya

6.R.Muthusamy

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order in IA.No.2/2024 in OS.No.322/2023 on the file of the Additional District Munsif , Pollachi dated 02.08.2024.



CRP.No.4597 of 2024

WEB COPY

For Petitioner : M/s.R.Suresh Kumar
for K.M.Vijaya Associates

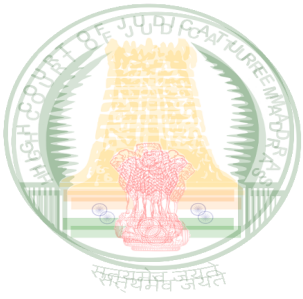
For Respondent : M/s. G.Vijaya kumar, party in person, R.1
: R.2 to R.6 - Served - No appearance.

ORDER

Aggrieved by the dismissal of his application filed under Order 7 Rule 11 to dismiss the suit OS.No.322 of 2023 on the file of the Additional District Munsif , Pollachi the 1st defendant is the revision petitioner before this Court.

2. Short facts are hereinbelow set out and the parties are referred to in the same ranking as before the Trial Court.

3. The 1st respondent/plaintiff had filed O.S.No.322 of 2023 for a declaring that the settlement deed dated 06.07.2024 in Doc.No.6131/2024 and the sale deed dated 14.10.2023 are null and void and for a permanent injunction.



CRP.No.4597 of 2024

WEB COPY

4. The 1st defendant is the brother of the plaintiff, defendants 2 to 4 are the legal heirs of the other brother Selvam, the 5th defendant is the subsequent purchaser and the 6th defendant is the power agent of the 5th defendant.

5. The 1st respondent/plaintiff had come forward with the above suit contending that he had earlier filed a in OS.No.470 of 2004 on the file of the IV Additional District Court, Coimbatore for partition, separate possession of his share in item nos. 1 to 4 and 6 to 8 of the suit property, rendition of accounts and injunction restraining the defendants 1 to 4 their men and agents from alienating the suit properties particular with respect to item no.2 of the suit property.

6. The suit OS.No.470 of 2004 was partly decreed by the judgment and decree dated 31.08.2012 as follows:-

“Preliminary decree for partition is passed for 1/8th share in item no.1, 1/7th share in item nos. 2 and 3. The



CRP.No.4597 of 2024

WEB COPY

plaintiff is entitled for rendition accounts for item nos. 2 to 4 till 14/12/1994 and share at the rate of 1/7 with regard to income till that date. The plaintiff is entitled for permanent injunction in respect of his share in item nos.2. In respect of item Nos. 6,7 and 8, the suit is dismissed. Since partition is granted in respect of item no.1, the suit in respect of main relief of recovery of possession in respect of item no.5 and recovery of money of Rs.2,00,000/- is also dismissed.”

7. Challenging the disallowed portion of the decree, A.S.No.1075 of 2012 has been filed before this Court, which is pending.

8. After the defendants had entered appearance, the petitioner/1st defendant had taken out an application to reject the plaint in OS.No.322 of 2024 on the following grounds:

i. It is a frivolous and vexatious litigation without disclosing the cause of action.



CRP.No.4597 of 2024

WEB COPY

- ii. AS.No.1075 of 2012 was pending before the High Court.
- iii. No triable issues are involved in the suit.
- iv. The respondent is the absolute title holder /erstwhile owner.
- v. The 1st respondent/plaintiff had not filed the plaint and duplicate plaint in a proper manner.

9. The 1st respondent/plaintiff had filed a counter refuting the various allegations and contending that the present suit is one relating to the subsequent event whereby during the pendency of the First Appeal, the defendants have created settlement deeds and sale deeds.

10. The Trial Court has dismissed the said application stating that no grounds were set out by the petitioner/1st defendant under Order 7 Rule 11 for rejecting the plaint and there is a cause of action in the plaint. Challenging the same, the petitioner is before this Court.

11. The primary contention of the petitioner is that the suit in question



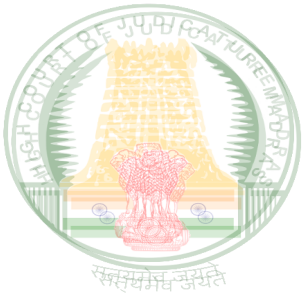
CRP.No.4597 of 2024

WEB COPY

is a case of re-litigation and that in the earlier suit OS.No.470 of 2012, it has been clearly held that the 1st respondent/plaintiff is not entitled to partition with reference to item Nos. 6 to 8 of the suit property and the same is the subject matter of the appeal in AS.No.1046 of 2012, which is pending.

12. Pending the proceedings, further alienations had taken place and it is these subsequent events in which the interest of other parties has crept in that is sought to be challenged in the suit. The suit is filed not only against the 1st defendant but also against the purchasers and settlers of the property. Whether the plaintiff can sustain all his claims has to be decided only during the course of a trial. A cause of action has been made by the plaintiff and therefore the order passed by the learned Additional District Munsif, Pollachi is in order and I see no reason to interfere with the same.

13. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.



WEB COPY

shr

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

To

The Additional District Munsif , Pollachi.



CRP.No.4597 of 2024

19.03.2025

P.T.ASHA, J.,

shr



WEB COPY



CRP.No.4597 of 2024

C.R.P.No.4597 of 2024
and
CMP.No.25701 of 2024

19.03.2025