



C.R..P.(PD)(MD).No.1065 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(PD)(MD)No.1065 of 2025

and

C.M.P(MD) No.5808 of 2025

1. Alagarsamy

Gopalsamy (Died)

Palanichamy (Died)

2. Subbulakshmi

3. Vijayalakshmi

4. Sridevi

5. Ushadevi

6. Lalitha

7. Rajeev Kumar

8. Swathika

... Petitioners/
Petitioners 1, 4 to 8/
Defendants 2, 9 to 15

Vs.



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1. Kosalaiyammal
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... 1st Respondent/1st Respondent/
Plaintiff

2. Gurusamy

3. Seenivasan

4. Rajasekaran

5. Ramamoorthy

6. Rajeshkannan

... Respondents 2 to 6/
Respondents 2 to 6/
Defendants 1, 4, 6 to 8

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 18.03.2024 made in I.A.No.1 of 2022 in O.S.No.200 of 2021 on the file of the Sub Court, Sankarankovil and allow the Civil Revision Petition.

For Petitioners : Mr.P.Arun Jayatram

For R1 : Mr.V.Shathurthi Raja

ORDER

The defendants 2 and 9 to 15 in O.S.No.200 of 2021 have filed the present Civil Revision Petition challenging the dismissal of their application filed under Order 7 Rule 11 of C.P.C.



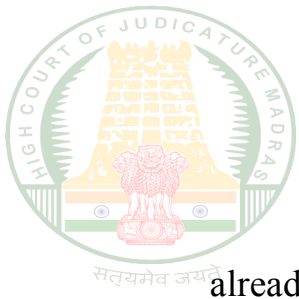
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2. A perusal of the plaint reveals that the suit has been filed for the relief of partition and separate possession.

3. As per the plaint averments the suit schedule properties were originally owned by Polappa Naicker and after his death the properties were allotted to the share of Pandarasamy Naicker. Pandarasamy Naicker and his two sons, namely, Krishnasamy Naicker and Ayyappa Naicker have entered into a registered partition deed on 02.09.1936. It is the contention of the plaintiff that after the death of Pandarasamy Naicker, the shares that were allotted to Pandarasamy Naicker remained a joint family property and it was not subjected to the partition.

4. It is the contention of the defendants in I.A.No.1 of 2022, that after the death of Pandarasamy Naicker, there was an oral partition between Krishnasamy Naicker and Ayyappa Naicker, in which, the properties were allotted to the share of Ayyappa Naicker. Thereafter, Ayyappa Naicker and his sons have entered into a registered partition in the year 1975, wherein, the properties were shared between the Ayyappa Naicker and his sons. The plaintiff was not a party to the said partition deed. Since the plaintiff has



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already received her Sreedhana, she was not allotted any share in the partition deed of the year 1975.

5. It is the further contention of the defendants that there is no cause of action for the suit and the suit having been filed in the year 2021 it is clearly barred under Section 110 of the Limitation Act.

6. Per contra, the learned counsel appearing for the first respondent/ plaintiff has contended that so far the defendants have not filed their written statement. The suit relates only to the properties that were allotted to the share of Pandarasamy Naicker which is not the subject matter of the partition deed of the year 1975. The properties that were allotted to the share of the Pandarasamy Naicker are still jointly enjoyed by the legal heirs of Krishnasamy Naicker and Ayyappa Naicker and there was no oral partition between Krishnasamy Naicker and Ayyappa Naicker with regard to the share left by Pandarasamy Naicker.

7. Heard both sides and perused the materials available on record.



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8. The facts narrated above will clearly indicate that the plaintiff had specifically pleaded that there is no partition between Krishnasamy Naicker and Ayyappa Naicker with regard to the share allotted to Pandarasamy Naicker in the partition deed of the year 1936. Whether the properties were included in the partition deed of the year 1975 or not is a factual dispute to be ascertained during the trial. That apart it is for the defendants to establish whether the plaintiff was ousted from the right to claim partition. These factual disputes cannot be adjudicated in the application filed under Order 7 Rule 11 of C.P.C. The trial Court has rightly rejected the said application and there are no merits in this Civil Revision Petition.

9. Accordingly, this Civil Revision Petition is dismissed. However, the defendants are entitled to raise these objections during trial. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

03.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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5/7



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To

1. The Sub Court,
Sankarankovil.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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