



C.R.P.(PD)(MD).No.662 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD).No.662 of 2025
and CMP(MD).No.3570 of 2025

1.Ramalingam
2.Kottoran
3.Gandhi
4.Bose

... Petitioners/Petitioners 1 to 4
/Defendants 1 to 4

-VS-

1.Sundari
2.Kuruvammal
3.The Sub-Registrar
Mudukulathur

...Respondents 1 & 2/Respondents 1 & 2
/Plaintiffs 1 & 2

4.The District Collector
Ramanathapuram District

....Respondents 3 & 4/Respondents 3 & 4
/Defendants 5 & 6

(Respondents 3 & 4 may be dispensed with
and notice need not be sent)

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to allow the revision and set aside the order dated 07.01.2025 made in I.A.No.7 of 2024 in O.S.No.32 of 2021 on the file of the Subordinate Court, Mudukulathur.

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For Petitioners : Mr.PT.S.Narendravasan
For Respondents : Mr.S.P.Maharajan
Special Government Pleader for R3 & R4

ORDER

The defendants 1 to 4 in O.S.No.32 of 2021 on the file of the Subordinate Court, Mudukulathur have filed the above civil revision petition challenging the dismissal of their application under Order 7 Rule 11 C.P.C to reject the plaint.

2.The respondents 1 and 2 herein have filed the above said suit for the relief of partition and separate possession. When the suit is posted for evidence of plaintiffs, the defendants 1 to 4 have filed I.A.No.7 of 2024 to reject the plaint.

3.According to the learned counsel for the revision petitioners, on 01.08.2008 the plaintiffs had issued a notice to the defendants seeking partition. The defendants have issued a reply notice 17.08.2008 disputing the rights of the plaintiffs to claim partition. The plaintiffs have kept quiet and have filed the present suit for partition only on 19.04.2021. Therefore, the suit is clearly barred by limitation. However, the trial Court has proceeded to dismiss the said application on the ground that the issue



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whether a suit is barred by limitation or not cannot be decided in the application filed under Order 7 Rule 11 C.P.C.

4.The learned counsel for the revision petitioners also relied upon a judgment of this Court in ***S.A.No.1233 of 2013 (Emperuman and others Vs. Rangarajan and others)*** dated 25.04.2016 wherein this Court has accepted the plea of limitation with regard to a suit for partition relying upon the averments in the plaint with regard to issuance of legal notice and reply notice. Hence, he prayed for allowing the revision petition.

5.Heard the learned counsel appearing on either side and perused the material records.

6.It is settled possession of law that for rejecting the plaint averments in the plaint and the document enclosed along with the plaint alone can be looked into. In the present case, the plaintiff has not pleaded anything about the issuance of notice dated 01.08.2008 or reply notice dated 17.08.2008. No such document has been enclosed along with the plaint. Only in the written statement, the defendants have pleaded that there was exchange of notice in the year 2008. In such circumstances, the judgment cited by the learned counsel for the petitioners is not applicable to the facts of the present case.



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7.The plea of limitation is a mixed question of law and facts.

Unless the facts are specific to the effect that the suit is clearly barred by limitation, the provision of Order 7 Rule 11(d) cannot be invoked. In the present case, it has to be seen whether the plaintiffs have lost their right to claim partition in view of the ouster pleaded by the defendants. The plea of ouster has to be proved by the defendants, during trial. Therefore, this Court is of the opinion that there are no merits in the revision petition. The learned counsel for the revision petitioners are at liberty to raise the plea during trial.

8.With the above said observations, this civil revision petition stands disposed of. No cost. Consequently, connected miscellaneous petition is closed.

05.03.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa



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To

- 1.The Subordinate Judge,
Mudukulathur.
- 2.The Sub-Registrar
Mudukulathur
- 3.The District Collector
Ramanathapuram District
- 4.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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