

A.S.(MD).No.67 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 08.10.2025

PRONOUNCED ON : 15.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

A.S.(MD).No.67 of 2019

I.D.Indira

....Appellant/Plaintiff

Vs

1.I.Dhanaseelan

2.D.Santhakumar

3.N.Kamal

4.T.R.Ragavendran

5.Sakunthala Achi

6.Ms/.M.S.R.Health & Educational Society
Represented by its Secretary Dr.Muthu Krishnan
S/o.Late.M.S.Rajagopal
Office at No.1152, V.Madurai-Rajapalayam Road
T.Kallupatty Peraiyur Taluk
Madurai District

7.Dr.T.Thinakaran

8.K.Rajeswari

9.M.Saravanan

....Respondents/Defendants



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Prayer: The First Appeal filed under Section 96 of C.P.C, to call for the records relating to the fair and decreetal order passed in O.S.No.100 of 2007 dated 16.12.2017 on the file of the I Additional District Judge, Madurai and set aside the same by allowing the appeal.

For Appellant : M/s.T.Sathya Selvi
For Mr.D.Saravanan

For Respondents : Mr.J.Lawrance for R6

: No appearance for R1 to R4 & R7 to R9

: R5- died

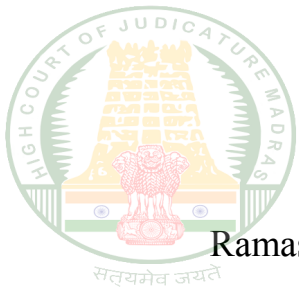
J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The plaintiff in O.S.No.100 of 2007 on the file of the I Additional District Court, Madurai has preferred the present first appeal challenging the order of rejection of plaint in a suit for partition.

(A).Proceedings before the trial Court:

2.The plaintiff is the wife of the first defendant and the second defendant is her son. According to the plaint averments, the suit schedule properties are the absolute properties of one Ramasami Mudaliar and he had executed a registered Will on 10.09.1928 in favour of his six daughters and his only son namely Irulandi Mudaliar. The said Irulandi Mudaliar had executed a registered Will on 28.04.1965 in favour of his two sons namely



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Ramasamy and Dhanaseelan (the first defendant).

WEB COPY 3. It is further contended in the plaint that the plaintiff is the daughter of one Pandiammal who is the sister of the first defendant. According to the plaintiff, her mother had executed a power deed in favour of the first defendant in the year 1965 and some properties have been sold by the first defendant in favour of the third party on 21.10.1965. There is a matrimonial dispute between the plaintiff and the first defendant.

4. The plaintiff had further contended that one of her son namely Saravanan had died unmarried on 28.09.2002 and therefore, she is one of the Class-I heir of her son. It is further alleged in the plaint that the first defendant had misappropriated the income from the schedule mentioned properties and by selling the other properties. Therefore, as a Class-I heir of her deceased son, she claims partition of her 1/3rd share in the suit schedule property.

5. The 6th defendant who had purchased one of the property from the first defendant, had filed I.A.No.292 of 2017 under Order 7 Rule 11 of C.P.C to reject the plaint on the ground that the plaintiff is not a co-sharer, since her son Saravanan would not get any share in the property during the life time of his father, namely the first defendant. This application was resisted by the plaintiff contending that there is cause of action for filing the suit and based upon the averments in the written statement, the plaint cannot be rejected.



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6.The trial Court has proceeded to allow I.A.No.292 of 2017 and consequently, rejected the plaint by way of an order dated 16.12.2017.

Challenging the rejection of plaint, the present first appeal has been preferred.

(B).Submissions of both counsels:

7.According to the learned counsel appearing for the plaintiff, when the plaint discloses cause of action, the trial Court was not right in rejecting the plaint that too relying upon the averments in the written statement. She had further submitted that the allegation in the plaint can be tested only during trial. She had further submitted that the 6th defendant who is the purchaser, does not have any locustandi to file an application for rejection of plaint, since he is not a co-sharer. He had further submitted that the plaint ought not to have been rejected at the threshold, since it results in serious consequences.

8.The learned counsel for the appellant had further submitted that, in case, if the Court had arrived at a finding that the plaintiff is not in joint possession, she should have been called upon to pay proper Court fee. However, that cannot be a ground for rejection of plaint. Hence, she prayed for allowing the appeal.

9.Per contra, the learned counsel appearing for the respondent had submitted that the suit schedule properties being the absolute properties of Ramasami Mudaliar and his son Irulandi Mudaliar, the wife of the first



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defendant cannot claim any share while the first defendant is alive. Therefore, considering the fact that there was no cause of action for filing a suit for partition, the trial Court has rejected the plaint and the said judgment and decree may be sustained.

10.We have considered the submissions made on either side and perused the material records.

(C).Discussion:

11.It is a trite law that for rejection of plaint, only the averments in the plaint and the documents annexed to the plaint can be looked into. Therefore, we restrict our discussion with regard to the averments in the plaint as well as the plaint document.

12.Paragraph No.4 of the plaint clearly reveals that the suit schedule properties are the self-acquired properties of one Ramasami Mudaliar and it had devolved upon his son Irulandi Mudaliar by way of a registered Will dated 10.09.1928. The said Irulandi Mudaliar had executed a registered Will in favour of his two sons namely Ramasamy and Dhanaseelan (first defendant) on 28.04.1965. The validity or genuineness of these two Wills are not disputed in the plaint. Therefore, it is clear that the property in the hands of Dhanaseelan namely the first defendant are his absolute properties.



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13.As per plaint averments, one Saravanan (who is born to the plaintiff and the first defendant) had died as a bachelor on 28.09.2002. The plaintiff claims that she is the Class-I heir of her deceased son and has filed the suit seeking partition.

14.When the suit schedule properties are the absolute properties of the first defendant, even if Saravanan had been alive, he would not be entitled to make a claim for any partition during the life time of his father. In such circumstances, the death of Saravanan would not in any way alter the character of the property in the hands of the first defendant. The cause of action pleaded is illusory. The suit schedule properties are not the joint family properties, but absolute properties of the first defendant. Hence, the plaintiff is not a co-sharer.

15.Since the properties in the hands of the first defendant are his absolute properties, he is entitled to alienate the same during his life time. The sixth defendant is one of the purchaser from the first defendant. Therefore, in order to protect his proprietary rights, he has got every *locustandi* to file an application for rejection of plaint. The trial Court had only considered the plaint averments for rejecting the plaint. Therefore, the judgment and decree of the trial Court cannot be found fault with.



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WEB COPY **(D).Conclusion:**

16.In view of the above said deliberations, the judgment and decree of the trial Court stands confirmed. The First Appeal stands dismissed. No costs

(C.V.K.J.,)

(R.V.J.,)

15.10.2025.

Index :Yes/No
Internet :Yes/No
NCC : Yes/No
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To

1.The I Additional District Judge
Madurai

2.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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**C.V.KARTHIKEYAN,J.
AND
R.VIJAYAKUMAR,J.**

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Pre-delivery Judgment made in
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