



C.R.P.(PD)(MD) No.2997 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	22.01.2025
Pronounced on	29.01.2025

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No. 2997 of 2024 and
CMP(MD).No.17135 of 2024

Subbaiah

... Petitioner / 1st defendant

Vs.

1.Pandivel

.. 1st respondent / plaintiff

2.Periyanayagi

3.Kunjaram

4.Pandi Visalakshi

.. Respondents / defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint filed in O.S.No.18 of 2014 on the file of the District Court, Sivagangai.

For Petitioner : Mr. R.Balakrishnan

For R1 : Mr.N.S.Karthikeyan

For R2 Mr.N.Dilipkumar

For R3 Mr.J.Anandkumar

For R4 Mr.K.Vigneshkumar



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ORDER

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The present revision is preferred to strike off the plaint in O.S.No. 18 of 2024 on the file of the District Court, Sivagangai.

2. The 1st respondent as plaintiff filed the above suit in O.S.No.18 of 2024 on the file of the District Court, Sivagangai for partition claiming $\frac{1}{2}$ share in the “A” schedule property and $\frac{1}{5}$ th share in “B” and “C” schedule property. While so, the revision petitioner herein / defendant filed the present revision to strike off the plaint stating that the properties originally belonged to his father Murugesan Ambalam, who had two wives viz., Visalakshi and Asalambigai. Through the first wife Visalakshi, the said Murugesan Ambalam had three children viz., Periyamayagi, Subbaiah, Kunjaram. After the demise of said Visalakshi, Murugesan Ambalam married one Asalambigai. Through the said Asalambigai, Murugesan Ambalam had two children viz., Pandi Visalakshi and Pandivel. It is submitted that the said mother Vishalakshi was born to a wealthy family and she had one brother alone. It is submitted that the said Visalakshi was gifted with landed properties and gold jewels by her father and with the aid of the said properties, the mother Visalakshi purchased



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the properties in her name. It is further submitted that the father of Visalakshi also purchased the properties in the name of Murugesan Ambalam for the welfare of Visalakshi. While so, suppressing of the above facts the 2nd respondent Periyamayaki filed the suit in O.S.No.12 of 2005 on the file of the Sub Court, Devakottai seeking for partition claiming 1/15th share in the properties mentioned in the above suit. In the above suit, the properties mentioned in the present suit also found place. The parties and properties in both the suits are one and the same. However, the said suit in O.S.No.12 of 2005 was dismissed by the trial Court after full pledged trial on the ground of partial partition. Against which no appeal was preferred. Therefore, the decree passed in the said suit in O.S.No.12 of 2005 became final. While so in order to harass the revision petitioner / defendant, the present suit is filed by the first respondent / plaintiff before the District Court, Sivagangai seeking for the relief of partition. In the present suit also the first respondent / plaintiff had not chosen to rectify the mistakes pointed out in the earlier suit in O.S.No.12 of 2005. Therefore, without including all the joint family properties, the present suit for partition is not maintainable. Further, no cause of action arose for filing the present suit and therefore, if the suit is allowed to be proceeded it would lead to abuse of process of Court and



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therefore, liable to be struck off.

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3. On the other hand, the learned counsel appearing for the 1st respondent / plaintiff would submit that the plea of rejection of plaint is beyond the scope of the Order 7 Rule 11(d) CPC and the Court is bound to refer the copies of pleadings, issues and Judgment of the former suit while adjudicating the plea of resjudicata and then issues to be framed and therefore, the present suit cannot be thrown out at the threshold without adjudication. He would further submit that unless there is any miscarriage of justice, Article 227 of the Constitution of India can be invoked. The petitioner ought to have filed an application for rejection of the plaint before the trial Court instead of filing the present Civil Revision Petition to strike off the plaint and therefore, prays for dismissing the revision petition as devoid of merits.

4. Heard. Records perused.

5. On perusal of support affidavit of the revision petitioner it is bereft of details with regard to miscarriage of justice and abuse of process of law. The petitioner ought to have approached the trial Court filing an



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application under Order 7 Rule 11 CPC for rejection of the plaint.

Therefore, in this circumstances, the revision petitioner is directed to file necessary application for rejection of plaint before the trial Court. The trial Court shall consider the said application on its own merits and in accordance with law.

6. With the above observation, this Civil Revision Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

29.01.2025

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

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Copy To:

The District Court, Sivagangai.



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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-Delivery Order made in
C.R.P.(MD) No. 2997 of 2024 and
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29.01.2025