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C.S.No.362 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.11.2025

Pronounced on : 30-01-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

C.S.No.362 of 2021

1. M.Balasubramaniam
2. M.Sundaram
3. M.Muthuselvam

..Plaintiffs

Vs

1. Rajalakshmi
2. S.Govindaraj
3. S.Karthik
4. G.Jaganathan
5. M.Vijayalakshmi
6. G.Jayakumar
7. B.Renuka
8. Branch Manager,
Karur Vysya Bank
Purasaiwalkam Branch,
No.43, Gangadeeswar Koil Street,
Purasaiwakkam, Chennai
9. Branch Manager
DBS Bank Ltd., (Earlier known as
Lakshmi Vilas Bank)
Purasaiwalkam Branch,
75, Gangadeeshwar Koil street,
Purasaiwakkam, Chennai
(Amended as per order dated 18.03.2022
passed by this Court in A.No.1173 of 2022)
10. Branch Manager
Tamilnad Mercantile Bank
Purasaiwalkam Branch,
Door No.80-93, 1st Floor,
Palace Regency, Purasawalkam High Road,
Chennai – 600 010

..Respondent(s)

**Prayer:**

Civil Suit filed under Order VII Rule 1 of the Code of Civil Procedure, 1908 r/w Order IV Rule 1 of O.S.Rules (a) for partition of the Fixed Deposits morefully detailed and described in the Schedule to the plaint and to handover 1/5th share amounting to Rs.2,14,28,007/- (Rupees Two Crores Fourteen Lakhs Twenty Eight Thousand and Seven only being the plaintiffs share together (b) To render true and proper accounts of all the fixed deposits which stood in the name of Late Mr.Maruthai Chettiar, as on the date of his death on 07.10.2019 (c) for a permanent injunction restraining the defendants 1 -7 by themselves, their partners, men, servants, agents, representatives, assigns, successors in interest, licensees and/ or all other persons acting on their behalf, from in any manner using / disbursing / distributing / appropriating the amounts of monies already withdrawn by them from the fixed deposits made by Late Mr.Maruthai Chettiar (d) to pay the plaintiffs costs of the suit and (e) pass such further orders.

For Plaintiffs:

Mr.K.V.Babu for
M/s Durga V.Bhatt

For Respondent(s):

Mr.R.Thiagarajan for D1 to D3
Mr.S.Karthik for D4 to D7
Mr.V.Chandrasekaran for D10
Mr.H.Vijayakumar for D8 – No appearance
Mr.N.G.Durairajan for D9 – No appearance

JUDGMENT

This Civil Suit has been filed by the plaintiffs for the relief of partition of fixed deposits; to render true and proper accounts of all the fixed deposits stood in the name of Late Maruthai Chettiar and for permanent injunction restraining the defendants 1 to 7 from in any manner using / distributing / disbursing appropriate amounts of money already withdrawn by them from the fixed deposit made by late Maruthai Chettiar as detailed in the schedule in the plaint and for cost and other reliefs.



2. The brief averments of the plaint are as follows:-

(i) The plaintiffs are the sons of late Mr.P.M.Maruthai Chettiar, who died on 07.10.2019. The 1st defendant is the daughter of said Mr.P.M.Maruthai Chettiar and sister of the plaintiffs, defendants 2 and 3 are the sons of 1st defendant. The defendants 2 and 3 colluding with the 1st defendant have withdrawn the funds deposited in the name of Mr.P.M.Maruthai Chettiar. The defendants 4 to 7 are the surviving legal heirs of pre-deceased daughter late Mrs.Jeevarathinam and they also colluded with other defendants. The plaintiffs, 1st defendant and the said Jeevarathiam are the legal heirs of Mr.P.M.Maruthai Chettiar. The said Jeevarathinam died during the year 2016 and 4 to 7 defendants are the legal heirs of the said Jeevarathinam. The said Mr.P.M.Maruthai Chettiar was suffering from loss of memory due to the old age and unable to recognize his own kith and kin. On the pretext of taking care of Mr.P.M.Maruthai Chettiar, the defendants 1 to 3 always accompanied him, which made the plaintiffs to believe that he was taking good care and did not lead them to any form of suspicion. The defendants colluding together committed a serious illegal and arbitrary acts. The Late Mr.P.M.Maruthai Chettiar, had deposits in his name as stated in the plaint and the plaintiffs are not aware of the details of some of the deposits and do not have any receipts in their possession and the amounts have been reshuffled and adjusted subsequent to the assessment year 2018-2019. The defendants 1 to 3 have removed the jewels of Mr.P.M.Maruthai Chettiar, at the time of his death, the defendants 2 and 3 created ruckus before the Bank personnel and intimated and harassed them into transferring the amounts into



fixed deposits. After receiving death certificate of Mr.P.M.Maruthai Chettiar, on 17.10.2019, the defendants 1 to 3 approached the banks, defendants 8 to 10 to have the money transferred to them.

(ii) The plaintiffs informed the defendants' Bank 8 to 10 that there was a foul play and that the defendants 1 to 3 have committed fraud in replacing their names as nominees. The plaintiffs also addressed a letter dated 18.10.2019 to Reserve Bank of India, Madras apprising to the bank all the legal heirs of the deceased father. Thereafter, the plaintiffs also filed a police complaint, but no action was taken. Already, the plaintiffs filed a suit in O.S.No.7775 of 2019 restraining the defendants 1 to 3 from withdrawing or in any manner appropriating the amounts of the fixed deposits made by late Mr.P.M. Maruthai Chettiar and restraining the defendants 8 to 10 from releasing any funds and to direct the defendants 8 to 10 to furnish details of the deposits made by Mr.P.M.Maruthai Chettiar. Initially the Court granted interim injunction of status quo and thereafter, the defendants appeared in that case, the Karur Vysya Bank, Lakshmi Vilas Bank and Tamilnadu Merchantile Bank furnished the details of fixed deposit in the name of Mr.P.M.Maruthai Chettiar , through counter affidavits.

(iii) Thereafter, the plaintiffs realized that the defendants 1 to 3 had already withdrawn the money from the fixed deposits. On 16.10.2019, the defendants 1 to 3 withdrew the deposits to the tune of Rs.1,01,88,145/- from Tamilnadu Merchantile Bank, 10th defendant, on 18.10.2019, 19.10.2019 and



19.12.2019, the defendants 1 to 3 withdrew the deposits Rs.84,53,616/- from the Lakshmi Vilas Bank, 9th defendant-Bank, and on 06.12.2019, the defendants 1 to 3 withdrew the deposits to the tune of Rs.1,70,71,585/- from Karur Vysya Bank, 8th defendant. The defendants 4 to 7 are colluding with defendants 1 to 3 made an arrangement to divide the money equally among themselves. In total, the defendants 1 to 3, withdrew the amount of Rs.3,57,13,346/-. The said amount was not disbursed to all the legal heirs including plaintiffs and defendants 4 to 7 till date. The plaintiffs, being legal heirs of the deceased Mr.P.M. Maruthai Chettiar are entitled to 1/5th share each over the suit properties. The Banks have committed grave error by releasing the funds without even insisting legal heirs certificate or succession certificate. The defendants 1 to 3 have filed the suit for partition before this Court in C.S.No.336 of 2021 without including these deposit receipts, therefore, the plaintiffs have filed this suit.

3. The brief averments of the written statement filed by the defendants 1 to 3 are as follows:-

(i) The allegations levelled in the plaint are denied as false. The plaintiffs have to prove the averments made in the plaint except those that are specifically admitted by the defendants. The suit filed for partition of fixed deposits and other reliefs is nothing but abuse of process of court and liable to be rejected and dismissed in limini. The plaintiffs have filed the suit in O.S.No.7775 of 2019 on the file of VIII Judge, City Civil Court, Chennai and thereafter, transferred to XXI Assistant Judge, City Civil Court, Allikulam,



claiming relief of permanent injunction as against these defendants and respective Bank Managers, therefore, the present suit is barred by law under Order II Rule 2 of CPC.

(ii) The 1st defendant already filed a detailed written statement in the previous suit and the said Mr.P.M.Maruthai Chettiar was subjected to untold hardship and harassment at the hands of the plaintiffs, who have not only ill-treated him but also humiliated him and has been quarrelling with him for trivial issues. The said Mr.P.M. Maruthai Chettiar nominated the 1st defendant Rajalakshmi, as the assignee in respect of the deposits made by him in Karur Vysya Bank and similarly nominated his grand son, S.Karthik as nominee / assignee in respect of the deposits made in Karur Vysya Bank as well as Lakshmi Vilas Bank. The plaintiffs have no manner of right, title or claim over the deposits / mutual funds. In the absence of any settled right in respect of the fixed deposits or mutual funds made by Mr.P.M.Maruthai Chettiar, the plaintiffs are not entitled to seek for partition of the deposits and for rendition of accounts or for decree of permanent injunction. The rights of the plaintiffs are very much in dispute, instead of seeking for a declaration that they have a share in the fixed deposits, they have filed the suit simplicitor for partition and the same is unsustainable, liable to be dismissed. To the knowledge of the defendants, the order passed by learned VIII Assistant Judge, City Civil Court, Chennai has not been challenged and without challenging those orders, they cannot file the suit and these defendants are the absolute owners of the fixed deposits and the mutual funds by view of their nomination, which has been consciously made by Mr.P.M.Maruthai Chettiar,



the rights cannot be taken away by the plaintiffs by resorting to the proceedings to the frivolous and speculated proceedings as against the deposits funds and mutual funds as against Mr.P.M.Maruthai Chettiar. The plaintiffs are not in a possession of any of the instruments, as such, the custody of the instruments in the hands of the beneficiaries, thereby they are not entitled to any relief of injunction. Therefore, the suit is liable to be dismissed.

4. The brief averment of the written statement filed by the 4th defendant are as follows:-

The address of the 4th defendant is not correct. The 4th defendant denied the averments made against him by the plaintiffs, except those that are specifically admitted by him. The averments that the defendants 4 to 7 are colluding with the defendants 1 to 3, are false even in the plaint, a sum of Rs.3,57,13,346/- was withdrew by the defendants 1 to 3, they have not disbursed the said amount either to the plaintiffs or to the 4 to 7 defendants. Further, in the plaint they stated that children of late Jeevarathinam defendants 5 to 7 are currently in USA have no knowledge about the proceedings. The defendants 4 to 7 are the sons and daughters of Jeevarathinam, who is the elder daughter of late Mr.P.M.Maruthai Chettiar, therefore, the plaintiffs 1 to 3 each are entitled to 1/5th share. The 1st defendant is entitled to 1/5th share. The defendants 4 to 7 are jointly entitled to 1/5th share over the suit property. The reliefs sought against these defendant are not maintainable and they are also interested in getting their



lawful shares against 1 to 3 defendants and they are not colluding with the defendants 1 to 3, therefore, this Court may pass suitable and appropriate decree in respect of the suit amounts.

5. The defendants 5 to 7 adopted the written statement filed by the 4th defendant.

6. The brief averments of the written statement filed by the 8th defendant are as follows:-

(i) The plaintiffs approached this Court pursuant to the orders passed in O.S.No.7775 of 2019 on the file of City Civil Court claiming their respective shares from the amounts disbursed by this Bank following the death of Mr.P.M. Maruthai Chettiar only for the purpose of pecuniary jurisdiction, there is no specific relief sought against the bank by the plaintiffs, therefore, nothing survives in the suit as against the bank.

(ii) The deceased Mr.P.M.Maruthai Chettiar had nominated the 1st defendant as his nominee to receive the proceeds in the account in the event of his death and therefore, the allegations that the defendants had approached the bank, to transfer the fixed deposit amounts to their respective accounts immediately on the demise of Late Mr.P.M. Maruthai Chettiar is devoid of any merits and substances therefore, the suit is liable to be dismissed.



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7. The brief averments of the written statement filed by the 9th defendant are as follows:-

The plaintiffs have to prove the allegations stated in the plaint except those that are specifically admitted by the 9th defendant. The late Mr.P.M. Maruthai Chettiar had deposited six fixed deposits and maintained one current account with this bank. All the deposits were paid to the nominees as per the procedures, except fixed deposit for Rs.57,626/- and current account no.432.531.5179 with balance of Rs.10,294.85/-. The 9th defendant will abide by the decision of this Court with regard to the disbursement of the fixed deposit and the outstanding balance in the above current account held in the name of the deceased Mr.P.M.Maruthai Chettiar.

8. The brief averment of the written statement filed by the 10th defendant are as follows:-

(i) The suit is not maintainable either in law or on facts, this defendant is not necessary party to the suit. There is absolutely no cause of action against this defendant and no reliefs sought for against this defendant. One Mr.P.M. Maruthai Chettiar had two fixed deposits with the 10th defendant, namely, 'Muthukuviyal Deposits'. The said Mr.P.M. Maruthai Chettiar had named his grand son S.Karthik as nominee in the aforesaid two deposits. The said Karthik had approached the bank by furnishing death certificate of Mr.P.M. Maruthai Chettiar and also requested the bank to close the aforesaid



two deposits and transfer the same to his name, therefore, the 10th defendant had closed the said two deposits with maturity amount as on date of closure and transferred the same in the name of 3rd defendant on 16.10.2019 by following the procedures as per law.

(ii) Thereafter a suit has been filed by the plaintiff in O.S.No.7775 of 2019 on the file of the VIII Assistant Judge, City Civil Court, Chennai seeking permanent injunction against the 8th and 9th defendants and this defendant restraining from realising the funds and fixed deposits of late Mr.P.M. Maruthai Chettiar to the defendants 1 to 3 and status quo was ordered. This defendant also entered into appearance and after filing counter, the said status quo order granted by the Court also vacated. This defendant has not violated any order of the court. The defendant had no knowledge about the disputes between the plaintiffs and defendants 1 to 6. This defendant had disbursed above said fixed deposits to the nominee mentioned in the fixed deposit by following the due procedure of law, therefore, the suit is liable to be dismissed as against this defendant.

9. Based on the above said pleadings, after hearing both sides and perusing the records, this Court framed the following issues on 06.10.2023 for consideration:-

“1. Whether the plaintiffs being legal heirs of late P.M.Maruthai Chettiar are entitled to 3/5th share in the fixed deposits as prayed for in the plaint?



2. Whether the defendants 1 to 3 can claim absolute ownership in the fixed deposits of Late Mr.P.M.Maruthai Chettiar when they are mere nominees?

3. Is the court fee paid under Section 37(2) is proper or the plaintiffs ought to have paid court fee under Sections 24 or 22 of the Tamil Nadu Court fees and Suit Valuation for laying their claims?"

10. In order to prove the case of the parties, on the side of the plaintiffs, P.W.1 was examined and marked exhibits, Ex.P.1 to P.14. On the side of the defendants, D.Ws.1 and 2 were examined and marked Exs.D.1 to D.25.

11. The learned counsel appearing for the plaintiffs would submit as follows:-

(i) The plaintiffs and the 1st defendant and one late Jeevarathinam are the legal heirs of deceased Mr.P.M.Maruthai Chettiar. The said Mr.P.M. Maruthai Chettiar died intestate leaving behind his three sons and two daughters to succeed his estate. One of the daughters, namely, Jeevarathinam pre-deceased the said Mr.P.M.Maruthai Chettiar, the defendants 4 to 7 are the legal heirs of deceased Jeevarathiman and defendants 2 and 3 are the sons of the 1st defendant. The said Mr.P.M.Maruthaichettiyar had deposited money in the Banks / defendants 8 to 10.



(ii) After the demise of said Mr.P.MMaruthai Chettiar, the defendants, 1 to 3 colluding with defendants 4 to 7 have received the entire money without the knowledge of the plaintiffs, they are supposed to share the above said deposit amounts with the plaintiffs. Since the plaintiffs and the 1st defendant and the 4 to 7 defendants are the legal heirs of the deceased Mr.P.M.Maruthai Chettiar, they all are equally entitled to the said deposit amounts. The total amount deposited in the 8 to 10 banks are Rs.3,57,13,346/- the value of the plaintiffs share would come to Rs.2,14,28,007/-, therefore, the said amount have to be disbursed to the plaintiffs' share, however, without knowledge of the plaintiffs, 1 to 3 defendants, withdrew the money, already the plaintiff has filed the suit in O.S.No.7775 of 2019 on the file of City Civil Court, for permanent injunction restraining the defendants from withdrawing the amount and permanent injunction as against 8 to 10 defendants not to disburse the amount, where the banks 8 to 10 herein have disclosed the deposit receipts held in the name of Mr.P.M.Maruthai Chettiar and already the said amount was withdrawn by the defendants 1 to 3, therefore, the plaintiffs have filed this suit before this Court for partition.

(iii) Since the previous suit was filed only for permanent injunction, the plaintiffs filed the comprehensive suit and at the time of filing the previous suit, they have no knowledge about the entire deposits amount. After filing the written statement by the banks, they came to knowledge about



the deposit receipts, therefore, they filed the suit for partition, therefore, Order 2 Rule 2 of CPC would not attract in this case. The 1 to 3 defendants have already filed the suit for partition in respect of the movable property of Mr.P.M.Maruthai Chettiar in C.S.No.336 of 2021, where these deposit receipts have not been included as properties and suppressed the same, therefore, filed the present suit. In order to prove the case of the plaintiffs, the 3rd plaintiff was examined as P.W.1 and marked exhibits P.1 to P.14 and he proved his case through sufficient evidence. The defendants also admitted the deposits made in the name of Mr.P.M. Maruthai Chettiar, however, according to the defendants, the nominated the defendants 1 and 3 as nominees and thereby they withdrawn the amount and they are entitled to the said deposit amounts.

(iv) As far as nominees are concerned, they cannot be entitled to the properties and the role of the nominee is to disburse amounts to the legal heirs of the deceased. In respect of nomination made by the said Mr.P.M.Maruthai Chettiar, the defendants 1 to 3 have not produced any documents and only in the Original Side Appeal, at the time of arguments, they stated about the affidavit executed by the deceased Mr.P.M.Maruthai Chettiar and that document is marked as Ex.A.9, as per the said document, by way of gift, he handed over the deposit receipts in favour of the 2nd defendant, Govindarajan and also nominated the said Govindarajan, Karthik and Rajalakshmi, who are 1 to 3 defendants to the fixed deposits, after his demise. The said original document has not been produced before this Court, even as



per the document Ex.D.9, the said deposit receipts are pertaining to the years 2014 and 2015 and those deposit receipts maturity dates were 12 months, since all the deposits pertaining to the years 2014 and 2015, all the said five deposits would mature in the year 2016 itself. During the life time of deceased Maruthai Chettiar itself, those deposits were given to the defendants 1 to 3. These plaintiff deposits are arising out of the deposits made thereafter and there is no documents produced by the defendants 1 to 3 for the plaintiff mentioned deposit receipts. All the above said suit deposits are pertaining to the year 2019. There is no any document for the amounts deposited by the deceased Mr.P.M.Maruthai Chettiar, after the year 2016, therefore, the contention of the defendants that they were nominated as nominees and thereby they had withdrawn the amount is not acceptable one.

(v) Already this Court passed orders directing the defendants 1 to 3 to deposit the 1/3rd share of the plaintiffs before this Court and the same was challenged up to Hon'ble Supreme Court and the order passed by this Court by directing the defendants 1 to 3 to deposit the 1/3rd amount has been up held and thereafter, the amount was also deposited by the defendants 1 to 3. Now the amount is available in the Court deposit and therefore, the plaintiffs are entitled to that amount, therefore, the suit is liable to be decreed as prayed for.

12. The learned counsel appearing for the defendants 1 to 3 would submit that the plaintiffs have not come to the Court with clean hands



and already they filed the suit for permanent injunction in respect of the same deposits and thereafter, they have not conducted the suit and thereafter they filed the present suit without obtaining any liberty from the Court, for filing fresh suit, therefore, the suit is hit by under Order 2 Rule 2 CPC. These defendants 1 to 3 were nominated as nominees to the deposits made by the deceased Mr.P.M.Maruthai Chettiar. Already these defendants have filed the suit in CS No.336 of 2021 for partition over the properties of the deceased P.M.Maruthai Chettiar, since these deposit receipts were already withdrawn by the defendants, and they are entitled to the properties, those deposit amount have not been included in the said suit. The court fee paid by the plaintiffs are not correct. The plaintiffs ought to have filed the suit for declaration and recovery of money and the suit for partition in respect of the deposit receipts is not maintainable and therefore, the suit is liable to be dismissed.

13. Heard the learned counsel appearing on both sides and perused the entire documents placed on record.

14. Since the issues, viz., “1. Whether the plaintiffs being legal heirs of late P.M.Maruthai Chettiar are entitled to 3/5th share in the fixed deposits as prayed for in the plaint? 2. Whether the defendants 1 to 3 can claim absolute ownership in the fixed deposits of Late Mr.P.M.Maruthai Chettiar when they are mere nominees? 3. Is the court fee paid under Section 37(2) is proper or the plaintiffs ought to have paid court fee under



Sections 24 or 22 of the Tamil Nadu Court fees and Suit Valuation for laying their claims?” in this suit are interlinked, they are taken up together for discussion.

15. In this case, there is no dispute that the plaintiffs, 1st defendant and defendants 4 to 7 are the legal heirs of the deceased Mr.P.M.Maruthai Chettiar, who died intestate. It is also admitted fact that the said Mr.P.M.Maruthai Chettiar, deposited the suit amounts in the 8 to 10 defendants Banks, as mentioned in the plaint. The defendants also admitted that they received the said amounts from the respective banks. The plaintiffs 1 to 3, defendants 1 and 4 to 7 being legal heirs of the deceased P.M.Maruthai Chettiar are entitled to share the properties of the deceased P.M.Maruthai Chettiar. The plaintiffs 1 to 3 and the 1st defendant, each are entitled to 1/5th share and the 4 to 7 defendants, who are the legal heirs of the deceased daughter of Mr.P.M.P.M.Maruthai Chettiar, namely, Jeevarathinam are jointly entitled to 1/5 share. According to the defendants 1 to 3, the deceased P.M.Maruthai Chettiar had nominated them to receive the said amounts and thereby they approached the concerned banks after demise of Mr.P.M. P.M.Maruthai Chettiar and respective banks also disbursed the amount based on the nomination made by the above Mr.P.M. P.M.Maruthai Chettiar . Neither the defendants 1 to 3 nor the defendants 8 to 10 have produced the documents to prove that the deceased P.M.Maruthai Chettiar had nominated the 1 to 3 defendants, as nominees for all deposit amounts.



16. The defendants mainly relying upon Exhibit D-9 affidavit of Mr.P.M.Maruthai Chettiar and the defendants have not produced the original document of Ex.D.9. Even as per Ex.D.9, the said deposits were made on 22.11.2014, 21.01.2015, 13.02.2015, 28.02.2015, 08.03.2015 for a total sum of Rs.50 Lakhs. The date of maturity is one year, therefore, all the deposits would have matured on or before 09.03.2016. The said Mr.P.M.Maruthai Chettiar died on 07.10.2019, therefore, the said deposits were matured even prior to the date of death of the Mr.P.M.Maruthai Chettiar. The said deposit mentioned in Ex.D.9 are not the subject matter in this suit properties, therefore, the contention of the defendants 1 to 3 that they have been made as nominees for the deposits made by the deceased Mr.P.M.Maruthai Chettiar is not acceptable. Even assuming that the document is true, in that document Ex.D9, in the first paragraph, the deposit receipts were gifted to 2nd defendant, Govindarajan, in the paragraph no.4 in the same document, the said Mr.P.M.Maruthai Chettiar stated that S.Govindarajan, S.Karthik, S.Rajalakshmi are the nominees to the fixed deposits and settled his fixed deposits to them after his demise. The said affidavit was dated 03.07.2015. The said Ex.D9 has not been referred either in the written statement of this suit or in the previous suit and said document cannot be relied upon, therefore, the defendants 1 to 3 failed to prove that they are entitled to the above said deposit amounts, as nominees.

17. Since there is no dispute that the deposits were made by P.M.Maruthai Chettiar and the plaintiffs, defendants 1 to 7 are legal heirs of



the deceased Mr.P.M. P.M.Maruthai Chettiar and all the legal heirs are entitled to the share of the above said deposits and thereby the plaintiffs each are entitled to 1/5 share, the 1st defendant is entitled to 1/5 share and 4 to 7 defendants are jointly entitled to 1/5 share over the deposits made in the name of Mr.P.M.Maruthaichettiyar.

18. The another contention raised by the defendants 1 to 3 is that the plaintiffs already filed a suit before the City Civil Court in O.S.No.7775 of 2019, where they sought for relief of permanent injunction and in that suit, they have not filed an application under Order 2 Rule 2 CPC seeking permission of the Court to file the suit and even at the time of disposal of the suit, no liberty was given to them to file a fresh suit, therefore, the suit is hit by Order 2 Rule 2 of CPC.

19. It is true that the plaintiffs have filed the suit in O.S.No.7775 of 2019 on the file of learned VIII Judge, City Civil Court, Chennai for the relief of permanent injunction. At the time of filing the above suit, no cause of action arose for partition of the properties, since the plaintiffs have no knowledge about the particulars of the deposit receipts. Hence the suit was filed for relief of permanent injunction only not to disburse any amount to the defendants 1 to 3 and not to withdraw the amounts by the defendants 1 to 3, therefore, at that time, no question of partition would arise, therefore, this Suit filed for partition is not hit by Order 2 Rule 2 of CPC. As per Rule 3 of Order 2 of CPC every suit shall include the whole of the claim which the plaintiffs are entitled



to make in respect of the cause of action, but the plaintiffs may relinquish any portion of their claim in order to bring the suit within the jurisdiction of any Court where the plaintiff omits to sue in respect of or intentionally relinquishes any portion of his claim he shall not have afterwards sue in respect of the portion so omitted or relinquished.

ORDER II Frame of suit

2. Suit to include the whole claim.—

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish and portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

20. On a careful perusal of the above said provision, it is clear that every suit has included the whole of the claim in respect of the cause of action but the plaintiffs may relinquish any portion of their claim in order to bring the suit within the jurisdiction of any court. When he omits to sue in respect of any portion of claim, he shall not afterwards sue in respect of portion so omitted or relinquished. As per Rule 3 of Order 2 of CPC, a person entitled to more than one relief in respect of the same cause of action may sue for all of or any of such reliefs. If he omits except with the leave of the court to sue for all such reliefs he shall not sue afterwards for any relief, so omitted.



Therefore, the main ingredients is, if any claims arising out of the same cause of action, all the reliefs have to be sought for within the jurisdiction of any court.

21. In the case on hand, the previous suit was filed before the City Civil Court for permanent injunction not to disburse the amount. Admittedly, the present suit amount is more than Rs.1 Crore, where the City Civil Court has no jurisdiction, therefore as far as previous suit is concerned there is no any specific quantum of the property within the knowledge of the plaintiffs, they only filed the said suit not to disburse the amount and at the time of filing that suit, no cause of action arose and the City Civil Court has no jurisdiction to entertain the suit for the suit amount of Rs.5 crores, therefore, the suit is not hit by Order 2 rule 2 and the contention of the defendants is not acceptable to that regard.

(i) The learned counsel for the plaintiffs would submit that the previous suit is only for permanent injunction and the present suit is for partition and no cause of action arose for partition at the time of filing the previous suit and relied on the following Judgments:-

1. Sucha Singh Sodhi Vs. Baldev Raj Walia (2018 6 SCC 733)
2. Inacio Martins Vs. Narayan Hari Naik (1993 3 SCC 123)
3. Virgo Industries (Eng) P.Ltd., Vs. Venture Tech Solutions Private Limited (2013 1 SCC 625)
4. B.R.Patil Vs. Talsa Y Sawkar (2022 SCC Online SC 240)



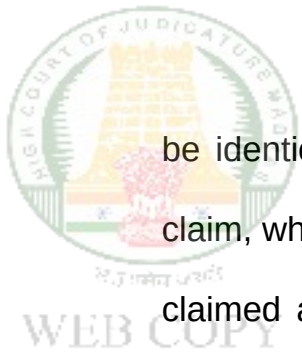
On a careful perusal of the above said judgments, it is clear that when the suit is filed claiming relief of permanent injunction restraining defendants from interfering with the possession over the property, the second suit filed claiming relief of specific performance for agreement of sale of property, the second suit, is not hit by order 2 Rule 2 CPC. The relief of permanent injunction and specific performance are not identical, cause of action are separate and reliefs claims are governed by separate Articles of Association. Further *sine qua non* for invoking order 2 rule 2 sub clause 2 against the plaintiffs by the defendants is that the relief which the plaintiffs have claimed in the second suit was also available to the plaintiffs for being claimed in the previous suit on the causes of action pleaded in the previous suit against the defendant, yet not claimed by the plaintiff. Further, it is clear that if the causes of action are different in both the suits, the second suit is not hit by Order 2 Rule 2 CPC. In the case on hand also, according to the plaintiffs, the previous suit is for permanent injunction not to disburse the amount and on that date the plaintiffs have no knowledge about the exact properties available in the name of the deceased, only after furnishing the particulars of the properties, the plaintiffs have knowledge about the properties in the name of the deceased, therefore, on the date of filing of the previous suit, no cause of action arose for partition over the entire property of the deceased Maruthai Chettiar and the previous suit was pending before the Court has no jurisdiction to entertain the present suit, on a pecuniary jurisdiction, therefore, the suit is not hit by order 2 Rule 2.



(ii) The learned counsel appearing for the defendants would submit that already the same plaintiffs filed the previous suit for permanent injunction at that time they failed to obtain orders from the court for filing this suit under Order 2 Rule 3 of C.P.C., Therefore the cause of action for the suit arose even at the time of filing the previous suit, thereby hit by Order 2 Rule 2 CPC and relied upon the following judgments:-

1. N.V.Srinivasa Murthy and Ors. Vs. Mariyamma (Dead) by Proposed Lrs. And Ors in Civil Appeal No.4500 of 2014 (2005(1) SCR 411)
2. R.Chendilvel Vs. G.Damodaran C.R.P.(PD) No.2850 of 2013 and M.P.No.1 of 2013 (AIR 2015 MAD 96)
3. Coffee Board Vs. Ramesh Exports Pvt., Ltd., in Civil Appeal No.5527 of 2014 (2014 (6) SCC424)
4. State Bank of India Vs. Gracure Pharmaceuticals Ltd., in C.A.Nos.10531-10532 of 2013 (2014 (3) SCC 595)
5. Vurimi Pullarao Vs. Vemari Vyankata Radharani & Ors. In C.A.No.9065 of 2019 (MANU/SC/1806/2019)

On a careful perusal of the above judgments it is clear that the plaintiffs could not seek leave to file the main suit later on account of necessity of paying proper court fee and simply filed suit for permanent injunction, not to alienate property, seeking leave for main relief as the alleged cause of action was not sustainable, since the relief of specific performance of agreement would be main relief or proper relief in suit. As per Order 2 Rule 2 of CPC all the claims arising out of the cause of action have to be clubbed together and cause of action in the first suit and the cause of action in the second suit must



be identical. The embargo is, Order 2 Rule 2 of CPC will arise only if the claim, which is omitted or relinquished and the reliefs, which are omitted or not claimed arise from one cause of action, if there is more than one cause of action, Order 2 Rule 2 CPC will not apply. As per Order 2 Rule 2 of CPC absence of fresh cause of action and the party had omitted certain reliefs which were available to them at the time of filing of the suit and after having relinquished the same, he cannot file a fresh suit.

22. Yet another point arose in respect of the suit filed by the defendants 1 to 3 in C.S.No.336 of 2021 is concerned, that suit was filed in respect of the immovable properties of the deceased. The defendants 1 to 3 herein being the plaintiffs in that suit have not included these properties as suit properties. According to them, these properties are not available for partition, therefore, the plaintiffs filed this suit for the relief of partition in respect of the immovable properties. At this juncture, it is relevant to refer the judgment of this Court in **Hon'ble Division Bench of this Court in Solavaiammal and Ors., Vs. Ezhumalai Goundar and Ors., in CRP.(PD) No.3006 of 2010 dated 16.11.2011.**

On a careful perusal of the above judgment it is clear that the defendants cannot compel the plaintiffs to include the properties, which were omitted by them and the remedy available to the defendants is that they can file a separate suit, therefore, in the absence of including the properties in the previous suit, the present filed by the plaintiffs for the omitted properties is maintainable.



23. The other contention raised by the defendants 1 to 3 is that the deposit receipts were already withdrawn by Defendants 1 to 3 and the plaintiffs are not in joint possession of the properties, thereby the court fee paid by the plaintiffs under Section 37(2) is not correct and the plaintiff ought to have paid Court Fee under Section 37(1) of the Tamilnadu Court Fee and Suit Valuation Act. Since the suit is filed for the relief of partition, there is no dispute in respect of the properties of the deceased Maruthai chettiar and the plaintiffs also entitled to the properties and as per the plaint, they are also joint share holders and if the right to a share and joint nature of the property remains unidentified, joint possession is presumed in law unless the exclusion is established by clear and specific averments in the plaint, therefore, the plaintiffs established that once they are entitled to the share of the deceased and so far the same has not been divided between the parties, it is deemed to be joint possession of the property, therefore, the court fee paid is correct.

24. The learned counsel appearing for the plaintiffs relied upon the judgment of the Hon'ble Supreme Court in **Neelavathi Vs. Natrajan reported in (1980 2 SCC 247)**. The learned counsel appearing for the defendants 1 to 3 relied upon the judgment of the Hon'ble Supreme Court in **Venkataraja and Others Vs. Vidyane Doureradjaperumal (D) Thr.L.Rs. And Ors. in C.A.Nos.7605-7606 of 2004**. On a careful perusal of the judgment relied by the plaintiffs counsel, it is clear that as per Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, if the plaintiffs are excluded from the possession of the property, they have to pay court fee



under Section 37(1) of Tamilnadu Court Fee and Suit Valuation in order to ascertain the Court fee, the plaint averments have to be looked into and in the plaint, there shall be a clear and specific averment that they have been excluded from the joint possession to which they are entitled in law . The question of court fee must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the plea in the written statement or by the final decision of the suits on merits and all the material allegations contained in the plaint should be construed and taken as a whole.

25. As far as above said judgment relied upon by the learned counsel appearing for the defendants is concerned it is clear that as far as court fees is concerned, the plaint averments have to be looked into, as per plaint averments, the plaintiff have not been excluded from the joint possession and exclusion from the possession of the joint property is essential. In the case on hand, as per plaint averments, the plaintiffs were not excluded from the joint possession and the property have not been divided so far. The defendants have filed the suit in C.S.No.336 of 2021 alleging that the properties are under common and joint possession of the parties, therefore, the court fee paid by the plaintiff is correct and the arguments of the learned counsel appearing for the defendants are not acceptable to that regard. Therefore the court fee paid under section 37(2) is proper and the plaintiffs need not not pay any court fee under Section 22 or 24 of Tamilnadu Court Fee Suit Valuation Act.



26. Further, the learned counsel appearing for the plaintiffs also argued that as far as nominee is concerned, the estate of the deceased depositor would devolve according to relevant rules of succession and nominees have no role in entitlement of the property. The nomination merely gives right of depositor to receive money lying in the account and it does not make nominee, owner of money lying in the account and no way concerned with question of succession. To support his contention, he relied upon the judgment of of Hon'ble Supreme Court in [Ram Chandar Talwar Vs. Devendra Kumar Talwar reported in 2010 10 SCC 671; Sarbati Devi & Another Vs. Ushadevi reported in (1984 1 SCC 424); Vishin N.Khanchandani & Another Vs. Lachmandas Khanchandani reported in (2000 6 SCC 724); Sakti Yezdani & Ors., Vs. Jayanand Jayant Salgaonkar & Ors. (2017 200 Compcas 143 (Bom)) SCC Bom 9834.

27. On a careful perusal of the above judgments it is clear that the nominations are made with a view to ensure that estates or rights of the deceased, subject matter of nomination are protected till the legal representatives of deceased take appropriate steps and it does not create a third more succession and nomination being made by the deceased his nominee cannot become owner to exclusion of all other legal heirs.

28. In the case on hand also, according to the defendants, they were nominated as nominees for the deposits made by the deceased Maruthai Chettiar, however, no any proof produced by the defendants that the



deceased nominated these defendants as nominees. Even they were nominated as nominees, their role is only to facilitate the legal heirs to entitle the properties and they cannot claim any rights over the properties, only based on the nomination made by the deposit holders. Since there are no records to show that the defendants 1 to 3 were nominated as nominees for the above said deposits, the question of nomination of these defendants would not arise at all.

29. The learned counsel appearing for the defendants also relied Judgments of Hon'ble Supreme Court in (1) Percept D'Mark (India) Pvt. Ltd., Vs. Zaheer Khan and Ors. in C.A.Nos.5573-5574 of 2004. (2). State of U.P. and Ors. Vs. Desh Raj C.A.No.5674 of 2006 (3). Bank of Maharashtra Vs. Race Shiping and Transport Co. Pvt., Ltd., and Ors. In C.A.No.2215 of 1995. 4. Anumati Vs. Punjab National Bank in C.A.No.6945 of 2004 and Judgment of this Court in Muhammad Hussain Vs. Shaik Muhammad Malumiar reported in Manu/TN/0352 /19836.

On a careful perusal of the above judgments, it is seen that they will not be applicable to the present facts of the case, as the present facts are distinguished.

30.The learned counsel appearing for the plaintiffs also relied upon the following judgments:-

1. Peirce Leslie and Co Ltd., & Ors. Vs. Miss Violet Oucherlong Wapshare & Ors. In (AIR 1969 SC 843)



2.Sangramsingh P.Gaekwad and Ors Vs. Shantadevi P.Gaekwad

in (AIR 2005 SC 809)

3. Deoraj vs. State of Maharashtra in (2004) 4 SCC 697

On a careful perusal of the above said judgments, it is seen that they will not apply to the facts of the case, as the facts of the case are distinguished.

31. Therefore, in view of the above said discussions, this Court is of the opinion that the defendants 1 to 3 failed to prove that they are absolute owners of the fixed deposit of late P.M.Maruthai Chettiar and thereby the plaintiffs, being legal heirs of late P.M.Maruthai Chettiar, are entitled to 3/5 shares in the fixed deposits. The 8 to 10 defendants have disclosed all the deposits made and the money lying in the current account in the name of Maruthai Chettiar. As per the available records deposits have already been withdrawn by 1 to 3 defendants to the tune of Rs.3,57,13,346/- and remaining deposits to the tune of Rs.57,626/- is available with the 9th defendant and also a sum of Rs.10,29,485/- is available in the current account of deceased Maruthai Chettiar with the 9th defendant, apart from that amounts no any particulars furnished by the defendants. This Court already directed the 1 to 3 defendants to deposit 3/5 share to this Court and the same was also deposited.



32. Accordingly, (i) In respect of Prayer (a) the suit is decreed in favour of the plaintiffs and the plaintiffs are entitled to 3/5 share over deposits made and money lying in the bank accounts of P.M.Maruthai Chettiar.

(ii) As far as prayer 'b' to render true and proper accounts are concerned, already 8 to 10 defendants have furnished all the particulars and the defendants also have not claimed any other deposit receipts, therefore, the above said prayer also has become infructuous. Since the share amount of the plaintiffs have been deposited into this Court, as per the interim order passed by the Court, the plaintiffs are entitled to withdraw the same along with interest if any fetched from that account, after the lapse of appeal time.

(iii) In respect of prayer 'c' with regard to permanent injunction is concerned, in view of the interim order passed by this Court the share of the plaintiffs was already deposited and thereby the said prayer has become infructuous.

(iv) In respect of prayer 'd' with regard to costs of the suit, considering the nature of suit and relationship of the parties, there is no order as to costs.

In the result, as indicated above, the suit is partly decreed.

30-01-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
ssd

**APPENDIX:****List of Plaintiffs side Witnesses:**

PW1 : Mr.M.Muthuselvam

List of Plaintiffs side Documents:

Exhibit No.	Date	Description of Documents
Ex.P.1.	-	Income Tax Return of Assessment Year 2018-2019 of late P.M.Maruthai Chettiar
Ex.P.2	-	Photocopy of the death certificate of P.M.Maruthai Chettiar
Ex.P.3	18.10.2019	Letters issued by the plaintiffs to Lakshmi Vilas Bank, Tamilnadu Mercantile Bank and Karur Vysya Bank
Ex.P.4.	18.10.2019	Complaint along with receipt filed before G3, Kilpauk Police Station bearing CSR No./302/2019
Ex.P.5	18.10.2019	Reply received from Karur Vysya Bank
Ex.P.6	-	Plaint filed before the VIII Assistant City Civil Court, Chennai in O.S.no.7775 of 2019
Ex.P.7.	25.10.2019	Order of status quo passed by the learned VIII Assistant, City Civil Court, Chennai in I.a.No.3 of 2019. O.S.No.7775 of 2019
Ex.P.8.	18.11.2019	Counter affidavit filed by the defendants 1 to 3 in I.A Nos.2 to 4 of 2019 in O.S.No.7775 of 2019
Ex.P.9.	23.11.2019	Reply affidavit filed by the Plaintiffs in I.A.Nos.2-4 of 2019 in O.S.No.7775 of 2019
Ex.P.10		Counter affidavit filed by Lakshmi Vilas Bank KVB in I.A.No.4 of 2019 in O.S.No.7775 of 2019
Ex.P.11	03.12.2019	Order passed by the learned VIII Assistant Judge, City Civil Court, Chennai vacating the status quo order in I.A.No.243 of 2019 in O.S.No.7775 of 2019
Ex.P.12	24.02.2020	Written Statement filed by Lakshmi Vilas Bank in O.S.No.7775 of 2019 indicating late P.M.Maruthai Chettiar's Deposits.
Ex.P.13	February, 2020	Written statement filed by Bank 6 th in O.S.No.7775 of 2019 indicting Late P.M.Maruthai Chettiar's deposits
Ex.P.14	13.03.2020	Memo filed by Bank 6 th respondent in O.S.No.7775 of 2019 indicating P.M.Maruthai Chettiar's deposits.

**List of Defendants side Witnesses:**

DW1 : Ms.S.Rajalakshmi
DW2 : Mr.S.Govindaraj

List of Defendants side Documents:

Exhibit No.	Date	Description of Documents
Ex.D.1.	02.01.2001	Certificate of Practice issued by Secretary to Government, Government of Tamilnadu to Mr.K.Rajasekaran
Ex.D.2	06.12.2007	Sale deed executed by P.M.Maruthai Chettiar in Favour of Indumathi Refineries Doc.No.3928 of 2007, SRO, Royapuram
Ex.D.3	11.12.2007	Letter from P.M.Maruthai Chettiar to the Manager, Punjab National Bank regarding deposit of the sale proceeds of the property (With Bank Seal)
Ex.D.4.	22.07.2010	Plaint in O.S.No.7781 of 2010
Ex.D.5	21.10.2010	Plaint in O.S.No.12948 of 2010
Ex.D.6	04.04.2011	Written statement filed by P.M.Maruthai Chettiar in O.S.No.7781 of 2010
Ex.D.7.	14.11.2011	Written statement filed by P.M.Maruthai Chettiar in O.S.No.12948 of 2010
Ex.D.8.	13.09.2013	Common Proof affidavit of P.M.Maruthai Chettiar in O.S.No.7781 of 2010 and O.S.No.12948 of 2010 on the file of learned III Assistant Judge, City Civil Court, Chennai
Ex.D.9.	03.07.2015	Affidavit of P.M.Maruthai Chettiar
Ex.D.10	28.03.2016	Deposit receipt of P.M.Maruthai Chettiar with Lakshmi Vilas Bank
Ex.D.11	14.01.2020	Photocopy of Death certificate of K.Rajasekaran, Notary Public, Chennai
Ex.D.12	23.09.2020	Plaint in C.S.No.336 of 2020
Ex.D.13	05.04.2023	Complaint issued to the Inspector of Police, Flower Bazar for missing of document.
Ex.D.14	07.04.2023	Paper publication in DT-Next english Edition
Ex.D.15	07.04.2023	Paper Publication in Malai Murasu (Tamil)
Ex.D.16	11.04.2023	Complaint in CSR No.179 of 2023 with regard to missing of Original affidavit by P.M.Maruthai



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		Cheettiar
Ex.D.17	15.04.2023	Corporation Bank Pass Book of Late P.M.maruthai Chettiar
Ex.D.18	02.08.2023	Fixed deposit receipt issued in favour of Registrar General, High Court by Punjab and Sind bank, Chennai
Ex.D.19	04.08.2023	Fixed Deposit receipt issued in favour of Registrar General of High Court, by Punjab and Sind bank, chennai
Ex.D.20	06.08.2023	Letter to Registrar General with Original fixed deposit receipt by the Applicants' counsel
Ex.D.21	30.10.2023	Certificate issued by the Registration Department, Central Chennai to S.Govindarajan
Ex.D.22	19.10.2023	Letter given to Registrar, Chennai Central
Ex.D.23	15.04.2023	Corporation Bank Statement of S.Govindrajan
Ex.D.24	19.07.2016	Income tax statement of P.M.Maruthai Chettiar Assessment year 2016-2017
Ex.D.25	01.11.2023	Online copy of encumbrance certificate.

30.01.2026



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C.S.No.362 of 2



P.DHANABAL, J.

ssd

**Pre delivery Judgment in
C.S.No.362 of 2021**

30-01-2026