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C.R.P.No.3111 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2026

PRONOUNCED ON : 26.02.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3111 of 2023
and C.M.P.No.19270 of 2023

Ramasamy (Died)

2.Lakshmi

3.R.Parameshwari

4.A.Kamalam

5.R.Gandhimathi

... Petitioners

(Sole Petitioner Died. Petitioners 2 to 5 are brought on record as LR's of the deceased Sole Petitioner Viz., Ramasamy vide court order dated 03.12.2025 made in CMP.No.9997 and 9993 of 2024 in CRP.No.3111 of 2023 and CMP.No.19270 of 2023)

vs.

Marathal (Died)

1.Palanathal

2.Lakshmi

3.P.Saraswathy

4.Sumathi

1/10



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5.A.Moorthy

6.Komathi

7.Vijayalakshmi

... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order dated 08.06.2023 made in I.A.No.1 of 2019 in O.S.No.987 of 2014 on the file of the I Additional Subordinate Judge, Coimbatore.

For Petitioners : Mrs.AL.Ganthimathi
Senior Advocate
for M/s.M.Sriram

For Respondents : Mr.S.S.Swaminathan

ORDER

The Civil Revision Petition is filed challenging the order passed by the I Additional Subordinate Judge, Coimbatore in I.A.No.1 of 2019 in O.S.No.987 of 2014, dated 08.06.2023 dismissing the application filed by the deceased 1st petitioner seeking rejection of the plaint.

2. The respondents herein field a suit for partition against the deceased 1st petitioner. The deceased 1st petitioner was the sole defendant in



the suit. Pending revision, he died and his legal representatives were brought on record as petitioners 2 to 5. The respondents herein are the plaintiffs in the suit. For the sake of convenience, the parties are described as per their ranking in the suit.

3. According to the plaintiffs, the suit property originally belonged to one Marappa Gounder (Senior), father of the plaintiffs 1 to 3, Marathal, Palanathal and Lakshmi. The defendant is one of the brothers of the plaintiffs 1 to 3. They also have another brother by name Marappa Gounder (Junior). The plaintiffs 4 to 8 are the legal representatives of the deceased 1st plaintiff-Marathal. As per the plaint averment, the properties are self-acquired properties of Senior Marappa Gounder and after his death, his five children are entitled to 1/5th share each. Thus, plaintiffs 1, 2 and 3 are entitled to 1/5th share each. The defendant and Junior Marappa are entitled to 1/5th share each. It was claimed by the plaintiffs that after the death of Senior Marappa Gounder, the defendant and his brother Junior Marappa Gounder entered into a Partition on 08.06.1983, dividing the properties between themselves, without knowledge of the plaintiffs and therefore, a notice was issued to them demanding Partition.



4. Subsequently, a suit was filed in O.S.No.709 of 2012 before the III Additional Subordinate Court, Coimbatore against the defendant and the legal heirs of Junior Marappa Gounder. During pendency of the said suit, the legal heirs of Junior Marappa agreed to give share in the property to the plaintiffs and as per their demand, another one separate suit was filed in O.S.No.553 of 2014 against the legal heirs of Junior Marappa Gounder in respect of other part of the suit property and the said suit was compromised and based on the said settlement, the suit in O.S.No.709 of 2012 filed by the plaintiffs were not pressed. Even though the legal heirs of Junior Marappa Gounder admitted the plaintiffs right and agreed for partition, the present defendant evaded the request of the plaintiffs and hence, the present suit was filed seeking partition.

5. The deceased 1st petitioner/defendant filed an application in I.A.No.1 of 2019 seeking to reject the plaint. It is the specific case of the defendant that the earlier suit filed by the plaintiffs in O.S.No.709 of 2012 was withdrawn based on the compromise and therefore, the present suit for partition on the same cause of action is not maintainable. It is the specific case of the defendant that the suit in O.S.No.553 of 2014 was filed by the plaintiffs only in respect of portion of the property allotted to Junior



Marappa Gounder and against the legal heirs of Junior Marappa Gounder alone and the said suit was compromised and based on the said compromise, the first suit filed by the plaintiffs in O.S.No.709 of 2012 was withdrawn. By filing a suit in O.S.No.553 of 2014 in respect of the portion of the property allotted to Junior Marappa Gounder, the plaintiffs admitted earlier partition between the present defendant and his brother Junior Marappa Gounder. Therefore, they are estopped from reagitating the issue and relitigating the matter by filing the present suit for partition.

6. When the partition between the present defendant and Junior Marappa Gounder dated 08.06.1983 was admitted by the plaintiffs by filing the suit in O.S.No.553 of 2014 in respect of the share allotted to the Junior Marappa Gounder in the partition deed, the plaintiffs accepted the partition and therefore, they are not entitled to 5 equal shares by way of partition in respect of share allotted to the defendant alone. It is also stated that the present suit filed by the plaintiffs without impleading the legal heirs of Junior Marappa Gounder and without including the property allotted to Junior Marappa Gounder in the earlier partition, is not maintainable.



7. A perusal of the cause of action Paragraph No.IX in the plaint would indicate that the earlier suit filed by the plaintiffs against the legal heirs of eldest son of late Marappa Gounder (Senior) namely Junior Marappa Gounder was filed only in respect of other part of the properties. The relevant averment reads as follows:-

“IX. when the plaintiff filed one suit for partition in O.S.No.709 of 2012 before Hon’ble III Additional Subordinate Judge of Coimbatore against this defendant and the legal heirs of late Marappa gounder and after their due appearance when pendency of the said suit except this defendant other defendants were agreed to give share in the property and as per their demand another one separate suit was filed in O.S.No.553/14 against the legal heirs of eldest son late Marappa gounder’s and in that one compromise petition was filed in respect of other part of the properties and when both suits were dismissed as settled out of court”

8. Therefore, it is clear that the present suit has been filed only in respect of portion of the property allotted to present defendant-Ramasamy and earlier suit in O.S.No.553 of 2014 was filed against the legal heirs of Junior Marappa Gounder in respect of the portion of the property allotted to



Junior Marappa Gounder in 1983 Partition. On the basis of the averment contained in cause of action paragraph, it is clear that the suit has not been filed in respect of entire estate of the deceased Senior Marappa Gounder. The suit has been filed in respect of half of the estate of Senior Marappa Gounder allotted to Ramasamy under 1983 Partition. It is also admitted that as far as other half portion, O.S.No.553 of 2014 was filed by the plaintiffs and the said suit was compromised.

9. From the averment, it is clear that in the present suit for partition, all the sharers are not impleaded. According to the plaintiffs, Senior Marappa Gounder had two sons namely Ramasamy and Junior Marappa Gounder and three daughters namely the plaintiffs 1 to 3. The present suit has been filed by the daughters against one son namely Ramasamy and the legal heirs of other son namely Junior Marappa Gounder have not been impleaded. Therefore, the suit is bad for non-joinder of sharers.

10. Further as mentioned earlier, the entire estate of Senior Marappa Gounder has not been shown as the suit property, only half of the estate which was allotted to Ramasamy in 1983 Partition has been shown as suit



property. Therefore, the suit is also bad for partial partition. It is settled law that in a suit for partition, partition shall be prayed for in respect of the entire properties of the family, there cannot be a prayer for partial partition. The plaintiffs claim in respect of the share allotted to the Junior Marappa, the dispute was already compromised. There cannot be partial compromise, without including one of the sharer namely the present defendant. Therefore, on the face of the averment found in the plaint, this Court feels that the suit is bad for partial partition and non-joinder of necessary parties.

11. However, this Court is not inclined to reject the plaint on the ground of non-joinder of sharers and partial partition without affording an opportunity to the respondents/plaintiffs. Therefore, the respondents/plaintiffs are given four weeks time from the date of receipt of copy of this order, to amend the plaint, to implead the legal heirs of Junior Marappa and to include the other half share of the estate of the Senior Marappa Gounder which was allotted to Junior Marappa Gounder in the 1983 partition. If the plaintiffs failed to cure the defects with regard to non-joinder of necessary parties and partial partition within the time stipulated, the plaint shall stand rejected.



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12. With this direction, the Civil Revision Petition stands disposed

of. No costs. Consequently, the connected civil miscellaneous petition is closed.

26.02.2026

Index :Yes / No
Speaking order :Yes / No
Neutral Citation :Yes / No
dm

To

The I Additional Subordinate Judge,
Coimbatore.



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S.SOUNTHAR, J.

dm

Pre-delivery order made in
C.R.P.No.3111 of 2023

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