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C.R.P. NO.4007 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 09 / 12 / 2025

ORDER PRONOUNCED ON : 27 / 03 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

C.R.P. NO.4007 OF 2022

AND

C.M.P. NO.20826 OF 2022

D.Deepak
S/o.R.V.Durairaj
No.18/2, East Street, Sreeranga Palayam,
Salem – 636 007.

... Petitioner /
Petitioner /
6th Defendant

Versus

1.Sumathi
W/o. Varadhraj @ Sakthi
1-95, TNHB Sankari RS,
Sankari Taluk, Salem District.

... 1st Respondent /
1st Respondent /
Plaintiff

2.Kumaravel
S/o. Chinnapaiya Gounder
Kattuvalavu, Chellapillaikuttai,
Omalur Taluk, Salem District.

3.Muthammal
W/o. Kumaravel
Kattuvalavu, Chellapillaikuttai,
Omalur Taluk, Salem District.

4.Venkatachalam
S/o. Manika Gounder
Kattuvalavu, Chellapillaikuttai,
Omalur Taluk, Salem District.



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5.Chinnapaiyan
S/o. Kandhasamy
Kattuvalavu, Chellapillaikuttai,
Omalur Taluk, Salem District.

6.Sidhammal
W/o. Chinnapaiyan
Kattuvalavu, Chellapillaikuttai,
Omalur Taluk, Salem District.

7.Arul Balaji
S/o. Chinnathambi
2/129, Saminaickenpatty,
Omalur Taluk, Salem District.

... Respondents 2 to 7 /
Respondents 2 to 7 /
Defendants 1 to 5 & 7

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950 praying to set aside the Fair and Decretal Order dated August 12, 2022 passed in I.A. No.2 of 2022 in O.S. No.48 of 2019 by the Subordinate Judge, Omalur.

For Petitioner	:	Mr.Shangar Murali
For Respondent-1	:	Mr.B.Jawahar
For Respondents 2 and 3	:	Mr.M.Nanda Kumar
For Respondent 4	:	Not ready in notice
For Respondents 5 to 7	:	Served – No appearance

ORDER

Feeling aggrieved by the Fair and Decretal Order dated August 12, 2022 passed by 'the learned Subordinate Judge, Omalur' ['Trial Court' for convenience] in I.A. No.2 of 2022 filed under Order VII Rule 11 of 'the Code of Civil Procedure, 1908' ('CPC' for short) in O.S. No.48 of 2019,



the Petitioner / sixth Defendant therein has preferred this Civil Revision Petition under Article 227 of the Constitution of India, 1950.

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2. Heard Mr.Shangar Murali, learned Counsel appearing for the Revision Petitioner, Mr.B.Jawahar, learned Counsel appearing for the first Respondent and Mr.M.Nanda Kumar, learned Counsel appearing for the respondents 2 and 3.

3. Mr.Shangar Murali, learned Counsel appearing for the Revision Petitioner would submit that the first respondent is the daughter of respondents 2 and 3. The first respondent instituted a Suit in O.S. No.48 of 2019 seeking partition and also declaration that the decree dated August 14, 2008 passed in O.S. No.48 of 2008 on the file of the Sub Court, Mettur, is null and void. The first respondent further sought for a declaration that the Sale Deed dated April 23, 2009 is null and void and not binding on her. Further, the first respondent prayed for a declaration that the Sale Deed dated October 16, 2019, standing in the names of defendants 6 and 7, is void and not binding on her, along with consequential relief of permanent injunction.

3.1. He would further submit that in paragraph No.5 of the plaint in O.S. No.48 of 2019, the first respondent / plaintiff averred that the Suit



Property was acquired by her under a registered Partition Deed dated August 17, 1988, annexed as Document No.1 in the list of documents filed along with the plaint. A conjoint reading of the averments of the plaint and plaint Document No.1 would clearly disclose that the Suit Property, along with some more extent of properties, were originally owned by one Kandhaiammal, who is the mother of the second respondent. The Suit Property was purchased by Kandhaiammal under registered Sale Deed dated January 24, 1963. After her demise, her sons namely Kandasamy, Kumaravel [second respondent] and Palanivel, along with the wife of her late son Perumal, entered into a registered Partition Deed. Under the said Partition Deed, the Suit Property was allotted to Kumaravel, the second respondent herein. Therefore, as per the plaint averments and plaint Document No.1, the Suit Property is not a joint family property. On the contrary, the same was inherited by the second respondent from his mother - Kandhaiammal under Section 15 of the Hindu Succession Act, 1956, and hence, the Suit Property in the hands of the second respondent was his absolute property and not joint family property as alleged by the plaintiff. Consequently, the plaintiff has no right or title over the Suit Property.

3.2. He would further submit that the second respondent, being the absolute owner of the Suit Property, is fully entitled to alienate, encumber



or otherwise deal with the same and that the plaintiff has no right whatsoever over the Suit Property. He further would submit that the second respondent entered into a Sale Agreement with the fourth respondent on October 22, 2007. Subsequently, the fourth respondent instituted a Suit in O.S. No.48 of 2008 on the file of Sub Court, Mettur, seeking specific performance of the said agreement, which came to be decreed *ex-parte*. Pursuant to the said *ex-parte* decree, the fourth respondent obtained a Sale Deed through the process of Court. Thereafter, during the pendency of the Suit, the fourth respondent executed a Sale Deed in favour of the revision petitioner and the seventh respondent.

3.3. He would further submit that the first respondent had earlier instituted a Suit in O.S.No.222 of 2008 on the file of the District Munsif Court, Omalur seeking partition and permanent injunction, which came to be dismissed for default on February 2, 2015. Hence, according to him, the present Suit is barred by law, barred by limitation and also hit by the provisions of Order II Rule 2 of CPC. He would further contend that the present Suit is vexatious in nature and has been instituted collusively, solely with a view to harass the fourth respondent and the subsequent purchasers claiming under the fourth respondent. Accordingly, he would pray to allow the Civil Revision Petition, set aside the order of the Trial



Court, allow the Interlocutory Application in I.A. No.2 of 2022 and consequently reject the plaint.

3.4. In support of his submissions, learned Counsel for the Revision Petitioner would rely on the following judgments: (i) Sopan Sukhdeo Sable -vs- Assistant Charity Commissioner, reported in (2004) 3 SCC 137; (ii) Smt. Uma Devi -vs- Sr. Anand Kumar, reported in (2025) 5 SCC 198; (iii) Nikhila Divyang Mehta -vs- Hitesh P. Sanghvi, reported in 2025 (2) CTC 857; (iv) Indian Evangelical Lutheran Church Trust Association -vs- Sri Bala & Co., reported in 2025 (2) CTC 538; (v) Hope Plantations Ltd., -vs- Taluk Land Board, Peermade, reported in (1999) 5 SCC 590; (vi) Tamil Nadu Handloom Weavers Cooperative Society -vs- S.R.Ejaz, reported in 2009 (5) CTC 710; (vii) Mahindra World City Developers -vs- M.Natarajan, reported in 2024-4-L.W.37; (viii) Mani alias Nagamani -vs- P.Ramakrishnan, reported in (2018) 4 MLJ 182; (ix) Nesammal -vs- Edward, reported in 1998 (2) CTC 537; (x) A.Muthusamy -vs- M/s.Pollachi Classic Club Resorts, reported in AIR 2023 Mad 174.

4. Per contra, Mr.B.Jawahar, learned counsel appearing for the first respondent/plaintiff would contend that the Suit Property is an undivided ancestral and joint family property. The plaintiff had earlier filed a Suit in



O.S. No.222 of 2008, which came to be dismissed for default; however, there is no legal bar for instituting a fresh Suit for partition. The learned Counsel would further contend that at the time of filing the earlier Suit, the first respondent/plaintiff was not aware of the pendency of the specific performance Suit in O.S. No.48 of 2008. Hence, the present Suit has been filed as a comprehensive Suit seeking declaration, partition and other consequential reliefs. He would further submit that the present Suit was originally instituted on March 6, 2013 before the Sub Court, Mettur and was subsequently transferred to the Trial Court on June 26, 2018, where it was renumbered as O.S. No.48 of 2019.

4.1. The learned Counsel would further contend that the question as to whether the Suit Property is a joint family property as alleged by the plaintiff, or an absolute property of the second respondent as contended by the revision petitioner/sixth defendant, is a question of fact that can be decided only upon the conclusion of trial. Further, the plaintiff instituted the present Suit within three years from the date of her knowledge of specific performance Suit and the decree passed therein, and therefore, the Suit is well within the period of limitation. The learned counsel would also submit that the issue of limitation is a mixed question of law and fact in this case, which cannot be decided in a petition filed under Order VII Rule



11 of CPC, and necessarily requires a full-fledged trial. According to the learned Counsel, the Trial Court, upon due consideration of the entire facts and circumstances of the case, rightly dismissed the petition filed under Order VII Rule 11 of CPC and there is neither any irregularity nor illegality in the said order. Accordingly, he would pray for dismissal of the Civil Revision Petition and to sustain the Order passed by the Trial Court.

4.2. In support of his contentions, learned Counsel for the first respondent / Plaintiff would rely on the following judgments: (i) John Kennedy -vs- Ranjana, reported in (2014) 15 SCC 785; (ii) Seshadri -vs- Paramasivam (Decided in CRP (PD) Nos.1190 of 2018 and 411 of 2019 on June 4, 2019); (iii) Smt.Ashwathamma -vs- Smt.Girijamma, reported in 2019 (1) AKR 736; (iv) Jagbir Singh -vs- Roshni, reported in 2025 (2) RCR (Civil) 625; (v) Narsing Das -vs- Srikanth Jaju, reported in 2019 SCC OnLine TS 358.

5. This Court has considered the submissions made on either side and perused the materials available on record.

6. It is well settled legal position that while considering an application under Order VII Rule 11 of CPC, the Court has to look only into the averments made in the plaint and the documents filed along with



the plaintiff and not the defense set up by the defendants. In the present case, the plaintiff has pleaded that the Suit Property is an ancestral property, which was acquired by the second respondent under a registered Partition Deed dated August 17, 1988. Certified Copy of the said Partition Deed has also been filed along with the plaint. This Court has perused the photocopy of the same. A bare reading of the document would show that the properties partitioned thereunder were purchased by Kandhaiammal under Sale Deed dated January 24, 1963. After her demise, the properties including the Suit Property devolved on her legal heirs who began enjoying the same as joint family properties which was later partitioned under the aforesaid Partition Deed. Whether the Suit Property is an ancestral property, or a separate property of Kandhaiammal subsequently thrown into common hotch-pot and treated as joint family property is a matter of fact that can be decided only upon appreciation of evidence after trial.

7. Further, the plaintiff has filed the present Suit *inter-alia* seeking a declaration that the decree passed in O.S. No.48 of 2008 in favour of fourth respondent is null and void and also challenging the subsequent Sale Deeds executed in favour of the respondents 6 and 7. According to the first respondent / plaintiff, the Suit has been instituted within three years after



she acquired knowledge of the judgment and decree passed in O.S.No.48 of 2008. In such circumstances, this Court is of the view that the question of limitation involved in the present case is a mixed question of law and fact, which requires a full-fledged trial for deciding on it.

8. As regards the contention of the revision petitioner with regard to Order II Rule 2 of CPC, it is seen that the plaintiff had earlier filed a Suit in O.S. No.222 of 2008 seeking partition and permanent injunction, which came to be dismissed for default. Subsequently, the present Suit has been filed seeking declaration, partition and other consequential reliefs as a comprehensive Suit, without obtaining leave under Order II Rule 2 of the CPC. Cause of action in a partition Suit is recurring in nature and dismissal of earlier Suit for default would not be a bar for filing of fresh Suit for partition. Moreover, this Court is of the view that for deciding the applicability of Order II Rule 2 of CPC, it is necessary to examine the plaint, written statement, judgment and decree in the earlier Suit. Such an issue cannot be decided in an application filed under Order VII Rule 11(d) of CPC.

9. The Trial Court, upon considering the entire facts and circumstances of the case, has rightly dismissed the petition filed under



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Order VII Rule 11 of CPC. This Court finds no reason to interfere with the said order. Needless to mention that the revision petitioner, who is a purchaser *pendente lite* claiming through the fourth respondent, is entitled to raise all the pleas urged in the Revision Petition, in the Suit, by way of filing a written statement. In such circumstances, the Trial Court shall frame the necessary issues, including the issues relating to limitation and the bar under Order II Rule 2 of CPC, and decide the same on merits and in accordance with law, uninfluenced by any observations made in this order by this Court.

10. There is no dispute with regard to the legal propositions laid down in the decisions relied upon by the learned Counsel appearing on either side.

11. In fine, the Civil Revision Petition is dismissed. Considering the facts and circumstances, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

27 / 03 / 2026

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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R. SAKTHIVEL, J.

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To

The Subordinate Court
Omalur.

PRE-DELIVERY ORDER MADE IN
C.R.P. NO.4007 OF 2022

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