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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-02-2026

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THE HON'BLE MR.JUSTICE S. SOUNTHAR

CRP No. 630 of 2026 and

CMP.No.3447 of 2026

- 1.Thulasiammal @ Ruckmai
- 2.Palaniammal
- 3.Natchimuthu

..Petitioner(s)

Vs

- 1.Nagammal @ Nagarathinam
- 2.Santhamani
- 3.Sujana
- 4.Swathi
- 5.Vijakumari

..Respondent(s)

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order made in I.A.No.2 of 2022 in O.S.No.1119 of 2022 dated 06.10.2025 on the file of the I Additional District Judge, Coimbatore.

For Petitioner(s):

M/s.S. Karthikei Balan

ORDER

The civil revision petition is filed challenging the order passed by the trial court dismissing the application filed by the petitioners/defendants 1 to 3 seeking rejection of the plaint.



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2. The first respondent herein filed a suit seeking declaration regarding her half share in item 1 of the suit property and for partition of her half share in items 2 and 3 of the suit property. He also sought for permanent injunction restraining the defendants from alienating the suit properties in any manner.

3. The petitioner/defendants 1 to 3 filed instant application seeking rejection of the plaint and the said application was dismissed by the trial court. Aggrieved by the same, the petitioners have come before this court.

4. The learned counsel for the petitioners raised two points. 1) the plaintiff prayed for declaration regarding her share in the cultivating tenancy in item 1 of the suit property and the said prayer is barred by Section 16A of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act. He further submitted that earlier the petitioners' predecessor in title instituted a suit in OS.No.635 of 1995 seeking partition in respect of very same properties and the said suit was dismissed for default under Order IX Rule 8 of CPC and therefore, the second suit on same cause of action is barred under Order IX Rule 9 of CPC.

5. In support of his contention, the learned counsel for the petitioners relied on the judgment of the Hon'ble Apex Court in the case of *Mayandi Vs Pandarachamy and another reported in (2021) 20 SCC 585* and the judgment of the Punjab and Haryana High Court in the case of *Shekhar Verma Vs Raj*



Gupta and others in CR.No.5173 of 2017(O &M).

6. As far as the contention raised by the learned counsel for the petitioners under Section 16A of Tamil Nadu Agricultural Lands Record of Tenancy Rights Act is concerned, the first respondent/plaintiff is not seeking any declaration of her status as a cultivating tenant. In the plaint, it was averred that the plaintiff's late father Senniappa Gounder was a recorded tenant. The 1st item of the suit property was leased and his name was recorded as tenant under the provisions of the relevant Act. The plaintiff only seeks a declaration that she is entitled to half share in the rights of her father. She has not sought for any declaration that she is a cultivating tenant in respect of half share. In such circumstances, we cannot say the prayer sought for by the plaintiff is exclusively within the jurisdiction of the record officer constituted under the relevant Act. Even assuming the first prayer is barred under the provisions of relevant enactment, merely because one of the prayer in the suit is barred, the entire suit cannot be rejected. The rejection of the plaint in part is not at all recognised. Therefore, the first submission made by the learned counsel for the petitioners is not appealable to this Court.

7. As far as the second submission is concerned, the present suit is for partition in respect of item 2 and 3 of the suit properties. It is the settled law that the cause of action for partition is a continuous one. In other words, so long as jointness of estate continuous in each and every day, the plaintiff will get a cause of action to maintain a suit for partition. The law in this regard was settled



by Division Bench of this Court nearly nine decades ago in ***Kannikandath***

Kizhe Purakkal Vella Vs Kannikandath Kezhe Purakkal Reported in AIR

1935 Mad 458= MANU/TN/0403/1934. The relevant observation reads as follows:

“1. The first point is whether the present suit is barred under Order 9, Rule 9 by reason of the former suit. Cases of a second suit for partition may fall under three Classes, (1) Where the former suit ended in a final decree, e.g. Soni v. Munshi (1901) 3 Bom LR 94 distinguished in Madan Mohan v. Baikanta Nath (1906) 10 CWN 839, cases where there was a preliminary decree but not a final decree example of this are Mukerji Afzul Beg 1915 All 1, Mariamanessa Bibi v. Jouyanan Bibee (1906) 33 Cal 1101 and Sethu Rama Sahib v. Ram Pershad (1906) 28 All 627. (3) Cases where the suit was dismissed for default : Bisheshar Das v. Ram Pershad (1906) 28 All 627.

2. The case before us falls under the last 'heading. Following the decisions in Bisheshar Das v. Ram Pershad (1906) 28 All 627 and Madhura Gramani v. Sesha Reddy 1926 Mad 1018, we hold that the present suit is not barred. The reason is that, even after the dismissal of the former suit, the jointness continues and there is a continuing causa of action”.

8. The above view was followed in ***Maria Francis and Others Vs M.Varghese and Others reported in 2017 (1) CTC 374= MANU/TN/2842/2016***



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“10. With regard to the first submission on the question of maintainability of the suit for partition on the ground of bar under Order IX, Rule 9 C.P.C., the arguments of the learned counsel for the appellants is not sustainable in view of the position that the bar under Order IX, Rule 9 C.P.C. is not applicable in a case where the suit is for partition. Since the suit for partition only brings about severance of status and the cause of action continues till there is actual partition, the provision, namely, the bar under Order IX, Rule 9 C.P.C., was held to be inapplicable in several decisions of this Court”.

9. Therefore, merely because the earlier suit filed by the plaintiff's predecessor in interest was dismissed as default, we cannot say the second suit is barred. Further, in order to invoke a bar under Order IX Rule 9 of CPC, the Court has to go through the pleadings in the earlier suit and the judgment and decree passed in the earlier suit to come to the conclusion the second suit is founded with very same cause of action. While considering the petition under Order VII Rule 11 of CPC, the Court is entitled to consider only the averments found in the plaint and plaint documents. It cannot take into consideration the documents relied by the defendants. In such circumstances, I do not find force in the submission made by the learned counsel for the petitioners. In order to come to the conclusion that present suit is based on very same cause of action, necessarily the Court has to take into consideration the pleadings in the earlier suit which can be brought on record only at the time of trial. The trial court rightly appreciated the position and dismissed the application. I do not find any



error in the impugned order passed by the Trial Court. Accordingly, the civil revision petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

12-02-2026

Index: Yes

Speaking order

Neutral Citation: Yes

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To

I Additional District Judge, Coimbatore



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S.SOUNTHAR, J.

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