



C.R.P.(MD)No.799 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.03.2026**

CORAM

THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.(MD)No.799 of 2023

and

CMP(MD)No.3677 of 2023

1.P.Ramasamy

2.R.Kasthuri

3.P.R.Selvam

4.P.R.Anand

... Petitioners

vs.

1.P.Subramanian

2.S.Rathinam

3.S.Senthil

4.S.Saravanan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.4 of 2022 in O.S.No.229 of 2020, dated 23.12.2022, on the file of the Additional District Judge, Karur.

For Petitioners : Mr.MathavaSelvam

For Respondents : Mr.M.P.Senthil



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ORDER

The defendants are the civil revision petitioners and the plaintiffs are the Respondents.

2. For the sake of convenience, parties shall be referred to as per their rank in the suit.

3. O.S.No.229 of 2020 is a suit for partition and separate possession. In the said suit, the defendants filed an application in I.A.No.4 of 2022 seeking rejection of the plaint.

4. According to them, the plaintiffs had earlier filed a suit in O.S.No.9 of 2009 on the file of Additional District Judge, Karur, seeking the very same relief of partition. The said suit was dismissed for default. Thereafter, the plaintiffs have come forward with the present suit for very same relief all over again. According to the defendants, Order 9 Rule 9 of Code of Civil Procedure bars the presentation of a fresh suit for partition. The learned Additional District Judge, Karur, dismissed the application, holding that under Order 7 Rule 11, where the issue is a mixed question of law and fact,



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the Court must not reject the plaint but should take up that issue along with the suit. Aggrieved by the same, the present Civil Revision Petition is filed.

5. I heard Mr.MathavaSelvam, learned Counsel for civil revision petitioners/defendants and Mr.M.P.Senthil, learned Counsel for respondents/plaintiffs.

6. I have gone through the records and have perused the impugned order.

7. It is not in dispute O.S.No.9 of 2009 was dismissed for default, as is evident from Paragraph No. 21 of the present plaint. The plaintiffs allege that even as on today, the properties have not been partitioned. The cause of action for a partition suit arises day to day, till the claiming co-sharer is ousted. Ouster requires evidence. Further, what is barred under Order 9 Rule 9 is filing a suit on the same cause of action. As the cause of action for a partition suit recurs day to day, the bar under Order 9 Rule 9 will not apply. Hence, the plea for rejection of plaint is absolutely untenable. [See, **Balamani V. S.Balasundaram** reported in **AIR 2009 NOC 2515 Mad**)]



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8. Insofar as the plea of Mr.MathavaSelvam that certain individual properties have also been shown as a part of the joint family property in the suit is concerned, that is an issue which has been gone into by the Trial Court, after evidence is recorded, on merits.

9. Accordingly, Civil Revision Petition is **dismissed**. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
Nsr

02.03.2026

To:

The Subordinate Court, Mudhukulathur.



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V.LAKSHMINARAYANAN, J.

Nsr

Order made in
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