

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR**

**Present : Tmt.M.Santhosham., B.Sc., B.L.,**

**District Munsif, Sulur**

Thiruvalluvar year 2056 Visvavasu year, 29<sup>th</sup> day of Month of Aadi

Thursday the 14<sup>th</sup> day of August 2025

**I.A.No.26/2025**

**in**

**O.S.No.334/2017**

1. Subramaniam

2. Dharmaraj

**... Petitioners/ 1<sup>st</sup> and 2<sup>nd</sup> Defendants**

**/VS/**

1. Sellamuthu

2. Ranjitham

3. Karuppusamy

**...Respondents No.1 to 3 / Defendants No.3 to 5**

4. Mandhiriappan

5. Nachimuthu (Died)

6. Thangavelsamy

7. Subbulakshmi

8. Ramesh

9. Selvi

**...Respondents No.4 to 9/ Plaintiffs**

This petition is coming on this day for final hearing before me in the presence of Mr.K.Gopalakrishnan, Advocate for the Petitioners and Mr.R.Mahesan, Advocate for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and Miss.R.Krishnaveni, Advocate for 4<sup>th</sup> to 9<sup>th</sup> Respondents and upon perusing the records, and this court made the following:

**ORDER**

This petition filed by the petitioners under order 7 rule 11 and section 151 of CPC to reject the counter claim petition filed by the Respondents No.1 to 3/

Defendants 3 to 5 as it merit less, frivolous, vexatious and as it is barred by Law and Limitation and barred illusory cause of action and more over the above proceedings are brought about by guilty of fraud and misrepresentation.

**1. The brief averments of the affidavit filed by the petitioners as follows:**

1.1. The Respondent No.4 to 9 / Plaintiffs have filed a suit for partition. The Respondent No.4 to 9 / Plaintiffs have filed the above suit for partition and separate possession with fully false and untenable allegations along with a forged sale deed dated 08.10.2001. The Defendants No.1 & 2 have filed the detailed written statement on 15.04.2002 itself in which they disclosed that the vendors of the Plaintiffs sale deed dated 08.10.2001, namely Mandhiriappagounder (father of Defendant No.3 &4) and Karuppusamy (Defendant No.5) are not the sons of the deceased Muthugounder and Arunachalagounder or their lineal. The Expert opinion obtained after scrutinizing the signatures found in the alleged sale deed dated 08.10.2001 and partition deed dated 22.10.1979. Thereafter the Respondents No.1 to 3 were impleaded as Defendant's No.3 to 5 in the above suit on the application of the petitioners.

1.2. After entering into appearance the Defendant No.3 to 5 had come forward with this vexatious counter claim application with fully false and untenable allegations. They had not produced a single document to substantiate their claim. The Said 3<sup>rd</sup> Respondent and Mandhiriappagounder are the sons of another One Sellapagounder, who is not in the family nucleus of the deceased Muthugounder and Arunchala gounder. While being so the 3<sup>rd</sup> Respondent and Respondent 1 & 2 (Son & daughter of Mandhiriappagounder) are taking the undue advantage of their father name, had conspired with the plaintiffs and now claiming the suit property falsely stating that they are the sons of deceased Sellappagounder who is the brother of one deceased Muthugounder and Arunachalagounder again by fraud, misrepresentation and malafide intention to unlawful gain. No suit property was conferred to the

Plaintiffs No.1 & 2 nor the Respondent 1 to 3 at any point of time and they are not at all having any right, title nor in possession and enjoyment of the suit property at any point of time.

1.3. The Petitioners / Defendants No.1 & 2 and after impleading the Defendants No.3 to 5 in the suit, in collusion with the Plaintiffs and upon the instigation of the Plaintiffs this vexatious counter claim petition is filed, in order to substantiate the forged sale deed dated 08.10.2001 is genuine document. In any event the averments contained in the counter claim petition that the counter claim petitioners are son, grandson & granddaughter of Sellappagounder, which is totally contrary to the sale deed dated 08.10.2001. Further 3<sup>rd</sup> Respondent and Mandhirappagounder (father of the respondents 1 & 2) are not at all the nucleus or the heirs of the deceased Muthugounder and Argunachalgounder. Therefore, the counter claim petitioners are absolutely having no cause of action to file the instant counter claim petition.

1.4. The counter claim petitioners are having full knowledge of the pendency of the suit even in the year 2018, when they entered into appearance in the above suit in an I.A. and had filed a counter and no such averment as stated now is made in it. Therefore, the counter claim petitioners are having no right to file the counter claim petition after laps of 7 years of knowledge of the pendency of the suit. There, the instant counter claim petition is barred by limitation. In fact counter claim petitioners and the Plaintiffs are colluding together created an illegal sale deed dated 08.10.2001 by playing fraud and impersonation with evil intention to grab the properties enjoyed by our grandfather, father and us continuously, peacefully, openly from the year 1947 to till date to the knowledge of all including the Plaintiffs and counter claim petitioners.

1.5. There is no merit or substance in the counter claim petition and they had come forward with this application by suppression of several material facts and also misrepresented again before this court in order to gain unlawfully. They cannot plead clerical mistake of father name in the sale deed dated 08.10.2001 after a lapse of 23 years, while it was pointed by us in 2002 itself in our Written statement and they cannot escape the fraudulent act of misrepresentation and impersonation. Hence, the petition is to be allowed.

**2. The brief averments of Counter statement filed by the 1<sup>st</sup> Respondent and adopted by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent as follows:**

2.1. The petition is false, frivolous and unsustainable both in law and on facts. The petitioners are put to strict proof of the various allegations in the plaint that are admitted herein except those allegations that are specifically admitted herein. The Respondents 1 to 3 respectfully submit that they have sold an undivided portion of the suit properties to the respondents 4 and 5. However, taking advantage of discrepancies in the recording of the vendors "father" names, the petitioners are now attempting to deny the right, title, and possession of the respondents 4 to 9. As the matter is currently sub-judice, the respondents 1 to 3 are not in a position to execute any rectification deed in favour of the respondents 4 to 9. In any event, the petitioners are stopped from asserting any claim over the family property of the respondents 1 to 3. Furthermore, when the petitioners themselves deny the execution and validity of the sale deed in favour of the respondents 4 and 5, the logical consequence is that the ownership of the properties reverts back to the families of the respondents 1 to 3. The respondents 1 to 3 have never relinquished their share in the properties covered under the partition deed dated 22.01.1979, whether by deed, consideration, or any other lawful means, as falsely alleged in Para 8 of the plaint. Therefore, the respondents 1 to 3 are fully entitled to seek the return of the original partition deed dated 22.01.1979 from the petitioners, as they continue to hold an interest in the said properties.

2.2. As previously stated, a plaint or counterclaim can only be rejected based on the pleadings raised therein and the documents produced along with them. Therefore the petitioners cannot assert that the counterclaim filed by the respondents 1 to 3 liable to be dismissed on the ground of suppression of material facts. It was only after receiving notice IA.No.22/2024 that the respondents 1 to 3 became aware of the pendency of the suit and the discrepancies in the sale deed executed in favour of the respondents 4 and 5. Consequently, the counterclaim filed by the respondents 1 to 3 is not barred by limitation under any circumstances. Should this court conclude that the sale deed executed in favour of the respondent 4 and 5 is void. The respondent 1 to 3 would automatically be entitled to a two-thirds share in the suit properties. Accordingly, the petitioners cannot claim that no cause of action arose for filing the counterclaim, as alleged in Para 9 of the affidavit. It is pertinent to note that the petitioners themselves filed an impleading petition to include respondents 1 to 3 as parties to the suit, thereby unnecessarily involving them in the proceedings. Having done so, the petitioners are estopped from asserting that the counterclaim filed by the respondents 1 to 3 is barred by limitation or lacks of cause of action.

2.3. The petitioners have filed the petition with the sole intention of securing unlawful enrichment at the expense of the respondents 1 to 3. Their conduct is malafide and contrary to law. The petitioners have initiated these proceedings with the ulterior motive of pressuring and blackmailing the respondents 1 to 3 in an attempt to compel them to withdraw the suit. There has been no collusion between the respondents at any stage, contrary to the baseless allegations made by the petitioners. The respondents 1 to 3 reserve their right to file additional counter statement, if necessary. The petitioner have not approached this court with clean hands. The petitioners have no relief in the petition. Hence, this petition is to be dismissed.

3. No Witnesses were examined on either side. On Petitioners/ 1 and 2 Defendants side Ex.P.1 to Ex.P.3 has been marked and no documents were marked as exhibits on Respondents side.

**4. Points for Consideration:-**

Whether the petition under order 7 rule 11 Under section 151 of CPC to reject the counter claim petition filed by the Respondents 1 and 2/ Defendants 1 and 2 is to be allowed?

**5. Points :-**

5.1. The petition affidavit, counter and the enquiry of both parties were carefully considered. Heard the counsels for both the parties. The suit documents were carefully examined. The Original suit has been filed seeking the relief of Partition. On behalf of 3<sup>rd</sup> to 5<sup>th</sup> Defendants, a written statement along with a counter-claim has been filed. In the said Written Statement and Counter-Claim, it has been requested that the suit property be divided into three equal shares, and two of such shares be allotted to 3<sup>rd</sup> to 5<sup>th</sup> Defendants, and that possession of the said shares be handed over to them.

5.2. On the side of Petitioners, the present petition has been filed seeking to Reject the Counter-claim. In the said petition, it has been contended that the Counter-Claim is not maintainable as it does not arise from the same cause of action and that it is barred by Limitation. The Respondents have objected to this petition.

5.3. In this context, whether the Counter-Claim does not arise from the same cause of action and whether it is barred by Limitation are mixed questions of law and fact. Therefore, such issues can only be determined during the trial of the main suit based on evidence and arguments from both sides. Hence, in the interest of

justice, the present petition is dismissed. No order as to costs.

***In the result, this petition is dismissed. No cost.***

Dictated to the Typist and directly typed by his in computer, corrected and pronounced by me in open court this the 14<sup>th</sup> day of August 2025.

Sd/M.Santhosham  
District Munsif,  
Sulur.

**List of witnesses on Petitioners side :-** - Nil

**List of documents on petitioners side:-**

Exhibits	Date	Documents	Nature of Documents
Ex.P.1	22.10.1979	Partition deed	Original
Ex.P.2	16.03.2018	Petition of IA.No.364/2018 in O.S.No.334/2017	Original
Ex.P.3	18.07.2018	Counter Statement of IA.No.364/2018 in O.S.No.334/2017	Original

**List of witnesses and documents on Respondent side:-**

Nil

Sd/M.Santhosham  
District Munsif,  
Sulur.

Draft/ Fair Order  
I.A.No.26/2025 in  
O.S.No.334/2017  
Dated:14.08.2025  
DMC, Sulur