

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE  
AT CHENGALPATTU

Present: Thiru.A.Saravanakumar.,B.A.B.L.,  
Additional District Judge,  
Chengalpattu.

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Monday, the 27<sup>th</sup> day of April 2026

I.A.No.5/2022

in

O.S.No.70/2021

CNR.No:TNCG01-000803-2021

D.David @ David Rajan

...Petitioner/3rd defendant

-Vs.-

1.D.Mary

...1st Respondent /1st Plaintiff

2.D.Pushpa

...2nd Respondent /2nd

Plaintiff

3.D.Solomon Selvaraj

...3rd Respondent /1st Defendant

4.Pushpa Raj

...4<sup>th</sup> Respondent /2nd Defendant

This Petition coming before this court on 15.4.2026 for final hearing in the presence of M/s.B.Sasi Kumar and C.Jayabala, counsel for the Petitioner/ 3<sup>rd</sup> defendant and M/s.M.Jayasree and E.Suganatha Kumar, Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and 3<sup>rd</sup> respondent remained ex

parte in suit and Mrs.C.S.Pradeepthi, counsel for the 4<sup>th</sup> respondent and upon perusing the written argument filed on behalf of the respondents/plaintiffs and upon hearing the arguments of both sides and perusing the material records and having stood over for consideration till this day, this Court delivered the following:-

### **ORDER**

This petition is filed under Order 7 Rule 11 of CPC to Reject the plaint in OS.No.70/2021 which is barred by limitation and has no cause of action in the present suit.

#### **2. The Petition averments in brief as follows:-**

(i) The petitioner is the 3<sup>rd</sup> defendant and the respondents 1 & 2/plaintiffs have filed a suit for partition, permanent injunction, and declaratory relief to cancel the Partition Deed dated 29.04.2009 vide in Document No. 2884/2009), and to restrain the defendants from alienating or encumbering the suit property and also seek appointment of an Advocate Commissioner to allot a 3/6th share.

(ii) Respondents 1 & 2 are petitioner's elder sisters, while respondents 3 and 4 are petitioner's brothers. The suit filed by respondents 1 & 2 is barred by limitation and based on a false and illusory cause of action with no truth. Additionally, the suit schedule property is incorrectly described, neither mentioned precise extent nor proper boundaries, which is essential in a partition suit for proper identification.

(iii) Petitioner's father, A. Devadoss, originally obtained 0.28.50 cents of the suit property through a court partition with description as "C" Schedule Property, later sold 0.16 cents to Mrs. Amsaveni Ammal by way of registered Sale Deed vide Doc.No.1445/1966, SRO Tambaram, retained 0.12.50 cents, out of which 0.02 cents was acquired by the Tamil Nadu Government for Highways Department in the year 1990 leaving only 0.10.50 cents, but Respondents 1 & 2 have wrongly described it as 0.12.50 cents despite knowing this fact, and since our father died intestate on 11.03.1991 without executing any will or settlement, the property devolved upon all legal heirs including petitioner, Respondents 1 & 2, and their mother Estherammal.

(iv) The Respondents 1 & 2 were married in 1964 and 1970 respectively, and petitioner's father spent all their marriage expenses and provided stridhana articles and his father also sold 0.16 cents of the property vide Doc.No.1445/1966, SRO Tambaram to settle debts and meet the 2nd Respondent's marriage expenses. The said factum has been suppressed by respondents, and they are now well-settled and living without any poverty.

(v) After their father's demise on 11.03.1991, the petitioner have been in possession of the suit property along with Respondents 3 & 4 maintaining it, while Respondents 1 & 2 never interfered or sought

partition for several years and had accepted our father's oral understanding that, having received marriage expenses, they would not claim any share, but contrary to this, they have now filed the present vexatious suit.

(vi)The petitioner has been in peaceful possession and enjoyment of the suit property, maintaining it and holding an electricity connection in his name for several years, with the knowledge of the plaintiffs. A registered Partition Deed dated 29.04.2009 vide Doc.No.2884/2009, SRO Guduvanchery was executed among the petitioner and the respondents 3 and 4, under which the remaining extent was equally divided. Their mother relinquished her share due to old age and inability to maintain the property, for which she received ₹50,000 and was cared for by them throughout her lifetime.

(vii) The plaintiffs reside nearby, were fully aware of this partition at the time of execution. However, in the plaint they failed to mention any specific date of knowledge and vaguely claim they came to know only while applying for an Encumbrance Certificate. Hence, the suit is clearly barred by limitation.

(viii)The parties are closely related through marriages conducted in 1997 and 2000, and therefore the plaintiffs had full knowledge of the suit property and its affairs. Hence, their denial of knowledge about the Partition Deed dated 29.04.2009 is false. The present suit is vexatious, filed without cause of action, and with an intention to unlawfully grab the

property. The plaintiffs also rely on a Will dated 04.10.2013 (Doc. No. 74/2013, SRO Guduvanchery), which came to my knowledge only through a legal notice dated 21.01.2021. By the earlier Partition Deed, their mother had already relinquished her rights in the property, leaving her with no share to bequeath. Therefore, the alleged Will is forged and invalid. Further, my mother, aged 88 and suffering from ill health and lack of sound mind since 2011, was not in a condition to execute any Will.

(ix) The Will dated 04.10.2013 incorrectly describes the property as 1/6th share out of 0.09 cents, whereas the suit schedule property measures 0.12.50 cents. This mismatch, along with the earlier Partition Deed dated 29.04.2009, clearly shows that the Will is fabricated and contains no proper description of the property. The suit itself also suffers from incorrect property description, further proving fraud. The plaintiffs have never exercised any ownership rights and remained silent for years, while I have been in exclusive possession and enjoyment of the property to their knowledge. The present suit is therefore based on an illusory cause of action, filed only to claim the property.

(x) The Partition Deed dated 29.04.2009 proves that the partition was already effected. The plaintiffs ought to have sought partition immediately after the death of my father, A. Devadoss, but failed to do so for over 32 years. Their long inaction amounts to ouster, and their residence nearby further establishes their knowledge of the partition.

(xi) Further, a separate suit in O.S. No. 105/2012 is already pending before the Principal Sub Court, Chengalpattu, filed by R. Venkatesan, a subsequent purchaser, seeking declaration and recovery of 150 sq. ft. from the same property. Petitioners and Defendants 1 & 2 are parties to that suit, which is under trial with an Advocate Commissioner appointed. The plaintiffs were aware of this litigation but have suppressed it, despite the subject property being under adjudication.

(xii) The plaintiffs, despite having knowledge of the Partition Deed dated 29.04.2009 and the ongoing litigation since 2012, have now filed this false and vexatious suit. Hence, the present suit is devoid of cause of action, barred by limitation, and liable to be rejected under Order VII Rule 11 CPC. It is a sham proceeding filed only to harass and prolong litigation, and deserves to be struck off to prevent abuse of process of law. Hence the petition.

**3.The averments in the counter filed by 1<sup>st</sup> Respondent and adopted by 2<sup>nd</sup> respondent in brief as follows:-**

(i) The petition filed by the petitioner for rejection of plaint is not maintainable. The allegations in the affidavit are denied as false, incorrect, and invented, except those specifically admitted. The contention that the suit is barred by limitation or based on an illusory cause of action is baseless and denied.

(ii) The property originally belonged to Mr. Abraham, grandfather of

both plaintiffs and defendants who along with his sons, jointly purchased 0.92 cents under a registered sale deed vide Doc.No.232/1944, SRO Pallavaram and enjoyed it jointly. After his death, a partition suit in O.S. No.123/1961 was filed and the same was decreed, and the properties were partitioned as A, B, and C schedules. The C schedule property, measuring 28½ cents in S.No.151/1A1 was allotted to the plaintiffs' father, A. Devadoss.

(iii)The respondent's father got 28½ cents and he was in possession and enjoyment of the same and later sold 16 cents under a registered sale deed dated 16.05.1966 vide Doc.No.1445/1966, SRO Tambaram to Amsaveni Ammal, retaining 12½ cents, for which Patta No. 933 was issued.

(iv) He died intestate on 11.03.1991, and a legal heirship certificate was obtained on 03.06.1992. He did not execute any document regarding the remaining property. Subsequently, the plaintiffs' mother executed a Will dated 04.10.2013 in Doc. No. 74/2013 of SRO Guduvanchery bequeathing her 1/6th share, thereby entitling the plaintiffs to 3/6th (half) share in the property.

(v) After her death, the plaintiffs sought an amicable partition, but the defendants kept postponing and ultimately refused. Upon verification of the Encumbrance Certificate, the plaintiffs found a partition deed dated 2009, allegedly executed by their mother without authority. Hence, a legal notice

dated 29.01.2020 was issued to the defendants and the Sub-Registrar, Nandivaram Guduvancherry.

(vi) The document registered on 29.4.2009 without verifying the legal heir certificate is invalid and liable to be declared as null and void. The defendant with an evil intention created this document to get equal rights over the suit property. The plaintiffs have equal rights in the suit property and have filed this suit for partition. There is no limitation as the fraud came to light only upon obtaining the encumbrance certificate, the claim is therefore within time from the date of knowledge. Hence, the petition is liable to be dismissed in limini.

**4. The point for consideration:-**

Upon the perusal of the petition, counter and other materials this court has framed the following point for consideration:

“Whether the petition is to be allowed or not”

**5. Answer to the point:**

This is an application under Order 7 Rule 11 CPC to reject the plaint. The petitioner is the 3<sup>rd</sup> defendant in the original suit. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs therein. The 3<sup>rd</sup> and 4<sup>th</sup> respondents are the 1<sup>st</sup> and 2<sup>nd</sup> defendants therein. The original suit was filed for the relief of declaration and recovery of possession in respect of the suit properties and for mandatory injunction.

6. A careful analysis of the plaint averments would go to show that

the 1<sup>st</sup> respondent purchased the suit property from one Amsaveni ammal through a registered sale deed dated 12.7.1978. It is further stated that the government has acquired a portion of the Western side of the land for the extension of GST road 16.3.1989. After the same, the entire suit schedule properties were in possession and enjoyment of the 1<sup>st</sup> plaintiff and patta was also granted to him. It is further stated in the plaint that the 1<sup>st</sup> to 4<sup>th</sup> defendants encroached upon the plaintiff's property to the extent described in the plaint plan on 3.8.2012. The 1<sup>st</sup> respondent/1st plaintiff also issued legal notice to the petitioner and other defendants and also more particularly requested the 5<sup>th</sup> and 6<sup>th</sup> defendants to rectify mistake committed in the revenue records. In spite of the same, since nothing turned out the plaintiff has come forward with the present suit. Based on the above allegations the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs filed the above suit.

7. Now the petitioner/3rd defendant filed the present application to reject the plaint on the grounds that the description of property is not property stated in the plaint. It is his contention that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have no cause of action to file the suit and the declaratory relief of the partition deed dated 29.4.2004 is barred by limitation. Therefore, the petitioner submits that the plaint may be rejected.

8. In refutations, the 1<sup>st</sup> respondent has filed a detailed counter. The 2<sup>nd</sup> respondent has adopted the same. In the counter it is specifically denied that the relief of partition is well within the time and the plaint has clearly

disclosed cause of action to file the suit. The 1<sup>st</sup> respondent further stated that he has alleged all the causes of action to file the suit and the present application is filed with an intention to defeat the rights of the 1<sup>st</sup> and 2<sup>nd</sup> respondents. Therefore, the 1<sup>st</sup> respondent submits that the petition may be dismissed.

9. This court has bestowed its special attention in this regard. As the application is filed under Order 7 Rule 11 CPC on the grounds that the plaint does not disclose cause of action and the relief of declaratory of the partition deed is barred by limitation, it is the duty of the petitioner to prove both the grounds. It is well established principle of law that the word cause of action is not defined in Code of Civil Procedure. However in **Ganesh Trading Company ..Vs.. Moji Ram 1978 (2) SCC 91** it has been held that a cause of action is a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed. Therefore, it is clear that cause of action gives occasion for filing the suit. It is also well established principle of law that while deciding cause of action the plaint averments must alone be taken into consideration. The defense raised in the written statement or counter need not be countenanced. Once the court comes to the conclusion based on the averments stated in the plaint that there is a cause of action for filing the suit, it is sufficient. The truth or falsity of the averments stated in the plaint cannot be considered in an application under Order 7 Rule 11 CPC. The trial court cannot conduct a fishing and roving enquiry or conduct a mini trial in an application under Order 7 Rule 11 CPC. Keeping

the above fundamental principles of law, this court has to see whether the plaint can be rejected as prayed for.

10. The 1<sup>st</sup> contention of the petitioner is that the description of the property stated in the plaint are not correct and mistaken. This court has perused the schedule of property shown in the plaint. The 1<sup>st</sup> respondent has shown 3 items of properties. A perusal of the 'A' schedule property would go to show it is comprised in S.No.151/1B1 measuring 0.13.5 cents with specific boundaries. The 'B' and 'C' schedule properties are the part and parcel of the 'A' schedule property. The 'B' schedule property has been shown as "A B E F" in the plant plan and the 'C' schedule property has been shown as "C D G H" in plaint plan. For both the properties specific extent, boundaries and S.Nos have been given.

11. Order 7 Rule 3 CPC prescribes how the subject matter of the suit property is to be stated in the plaint. It says that the plaint shall contain description of the property sufficient to identify it, which can be identified by boundaries or numbers in a record of settlement or survey number. In the case on hand, a perusal of the plaint would go to show that it satisfies the requirements of Order 7 Rule 3 CPC. Therefore, this court does not find any misdiscription of property in the plaint.

12. The next submission of the petitioner is that the partition deed, the relief of declaration is sought for in respect of partition deed dated 29.4.2009. The suit is hit by law of limitation. This court has perused the averments stated in the plaint. Upon its perusal it is noticed that the plaintiff

has claimed the relief of declaration to set aside the partition deed dated 29.4.2009. As per the plaint averment, it has been executed between mother of the plaintiffs and the defendant. The 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs are not parties to the document. While so, the period of limitation starts from the date of knowledge of the document. A further perusal of the plaint averment and document number 10 attached with the plaint would to go show that the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs obtained encumbrance certificate on 3.12.2019. The present suit has been filed on 17.12.2020. It is clear that the suit has been filed within 3 years from the date of knowledge of the 1<sup>st</sup> and 2<sup>nd</sup> respondents. Therefore, it is concluded that the relief of declaration in respect of partition is not barred by limitation as per the averments stated in the plaint.

13. The next submission of the petitioner is that the father of the petitioner spent all marriage expenses apart from stridhana articles to 1<sup>st</sup> and 2<sup>nd</sup> respondents. The 1<sup>st</sup> respondent/1st plaintiff was married in the year 1964. The 2<sup>nd</sup> respondent/2nd plaintiff was married in the year 1970 and she residing at Sriperumbudur. It is further stated in the petition that the petitioners father sold 16 cents of lands to one Amsaveni ammal through a registered sale deed in document number 1445/1996 for the purpose of settling loan borrowed for the marriage of the 2<sup>nd</sup> respondent. The said fact has been suppressed by the 1<sup>st</sup> respondent in the plaint.

14. It is further stated in the petition that since the marriage expenses of the plaintiffs/ 1<sup>st</sup> and 2<sup>nd</sup> respondents were spent by father he orally

instructed that the 1<sup>st</sup> and 2<sup>nd</sup> respondents should not ask any share in respect of the plaint schedule property and they have also agreed for the same. Breaking their promise the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed the suit. The petitioner further states that the mother of the petitioner and 1<sup>st</sup> and 2<sup>nd</sup> respondents alleged to have executed a Will dated 4.10.2013 and it has been obtained by way of fraud. The petitioner further states that he has been enjoying the property absolutely without interference from the 1<sup>st</sup> and 2<sup>nd</sup> respondents and they are living away from the suit property and they kept quiet for all these years. While so, the petitioner submits that the suit is filed without any cause of action.

15. Considering the submissions of the petitioner, it is noticed that the petitioner disputes the cause of action on the ground that the 1<sup>st</sup> and 2<sup>nd</sup> respondents could not get any share in the suit property since father spent marriage expenses and instructed them not to claim any right in the suit property. It is nothing but a question of facts which can be proved only at the time of trial. Moreover, the petitioner further submits that the 1<sup>st</sup> and 2<sup>nd</sup> respondents also agreed to their father that they would not get any share. These facts can also be proved only at the time of trial. It is further noticed that the petitioner states that the alleged Will executed by mother of the petitioner and 1<sup>st</sup> and 2<sup>nd</sup> respondents was a forged one. The plea of the forgery is a serious plea which can be decided after let in evidence by both the parties and after the elaborate appreciation of the evidence by the court. It is well established principle of law, the truth or falsity of pleadings can

be decided only at the time of judgment, it cannot be decided in an enquiry under Order 7 Rule 11 CPC. Therefore, this court concludes that the disputes raised by the petitioner can be considered at the time of trial.

16. From the foregoing discussion, this court holds that on the strength of the averments stated in the petition, the plaint cannot be rejected. Since the averments stated in the plaint alone are germane to decide an application under Order 7 Rule 11 CPC, this court concludes the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs disclosed cause of action to file the suit and the relief of partition is not barred by limitation. Hence, this court is inclined to dismiss the application. Accordingly, the point is answered.

In the result, the petition is dismissed. No costs.

Dictated to the Shorthand writer and typed by her and corrected and pronounced by me in open Court, this the 27<sup>th</sup> day of April 2026.

Additional District & Sessions Judge  
Chengalpattu.

Both sides Exhibits and Witnesses: Nil

Additional District & Sessions Judge  
Chengalpattu.

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**Draft/Fair Order**  
**I.A.No.5/2022 in**  
**O.S.No.70/2021**  
**Dated:27.04.2026**  
**ADJ/CPT**  
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