

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DHARMAPURI

Present: Tmt.U.Monica,M.L.,  
Additional District Judge,  
Dharmapuri.

Thursday, this the 9<sup>th</sup> day of February 2023

**I.A.No.1/2022**  
**in**  
**O.S.No.5/2012**  
**(CNR No.TNDP010000172012)**

Kathiriyappan ... Petitioner/1st defendant  
/ versus /

1. Govindammal  
2. Nagavalli ... Respondents 1, 2/plaintiffs  
3. Lakshmiammal (died)  
4. Sabitha Devi  
5. Vaijeyanthi mala  
6. Nageswari  
7. Mangammal ... Respondents 3 to 7/defendants 2 to 6.

This petition is coming on 1.2.2023 for final hearing before me in the presence of Thiru.G.V.Prakhasham, Advocate for the Petitioner and Thiru.V.V.Venkatesan, Advocate for the Respondents/Plaintiffs and upon hearing the arguments of petitioner side, respondent side not coming forward to argue the case in spite of sufficient opportunities given, on perusal of the written arguments of petitioner side and on perusal of the case records and having stood over for consideration till this day, this court pronounced the following:

**ORDER**

This petition has been filed under Order-7, Rule-11(a) and (d) and Sec.151 of CPC to reject the suit.

**2. The averments in the petition in brief is as follows:**

According to petitioner, the suit properties originally belonged to his father Chinnanage Gowdu by way of Partition deed dated:14.9.1964. The said Chinnanage Gowdu died on 20.3.1977 leaving behind his three sons namely Narayanan, Rajikhan (husband of first petitioner and father of second petitioner), daughter Mangammal and his wife Lakshmiammal. The 7<sup>th</sup> respondent/Mangammal after marriage went separately with her husband and settled in Dharmapuri. As the petitioner's brother Rajikhan (husband of first plaintiff/first respondent and father of second plaintiff/second respondent) sought partition, an oral partition was entered into in the month of September-1977 and he was allotted 2.22 acres in S.No.256/3. After the oral partition, the said Rajikhan went along with his family and have been residing separately. The petitioner and his late brother Narayanan earned money doing coconut business and acquired properties in their name. After the death of Narayanan on 27.12.2004, his legal heirs demanded partition. Hence a registered Partition deed dated:10.2.2005 was entered into between the petitioner, his mother (D2), and between the legal heirs of late.Narayanan (D3 to D6). The plaintiff approached the petitioner to purchase property allotted to him under the partition deed in which defendants 2 to 6 were having common right and interest in the well and pumpset. Hence the petitioner and defendants 2 to 5 have sold properties in S.No.257/2 and S.No.257/12. Having accepted and admitted the oral partition and Partition deed dated:10.2.2005 alone, the second plaintiff has purchased the property from the petitioner and defendants 2 to 5. As per the request of the plaintiffs, the petitioner

and defendants 3 to 5 have also executed nominal sale deed dated:31.3.2005 infavour of the first plaintiff in respect of S.No.256/3 which was allotted to Rajikhan in the oral partition without receiving any sale consideration. The plaintiffs have no locus standi to file the suit, as the death of Rajikhan has not been declared by way of decree of civil court declaring his civil death. The plaintiffs who have knowledge about the partition deed dated:10.2.2005 in the year 2005 itself have filed this suit after seven years and the relief in respect of Partition deed dated:10.2.2005 is barred by limitation. The defendants 1 to 5 executed sale deed in favour of plaintiff in respect of properties which were allotted to Rajikhan in the oral partition and all properties included in the partition deed dated:14.9.1964 were not included in this suit and plaintiffs included the self acquired properties of late.Narayanan and the petitioner. When already partition was made and share of the plaintiffs were already separated, the present suit for partition is not at all maintainable and the claim of the plaintiffs is barred by limitation, there is no cause of action for the suit and the suit is liable to be rejected.

**3. The averments in the counter in brief is as follows:**

i) The respondents resisted the petition by contending that all the allegations in the petition are not correct. Though the petitioner/1st defendant entered his appearance in the above suit even in the year 2012, he has not chosen to file his written statement in the above suit in spite of sufficient opportunities given to him to file his statement. The limitation point is mixed question of law and it can be decided only in the full pledged trial. The petitioner has concocted several pages of the

allegations in his affidavit without any valid points or grounds and the grounds raised by the petitioner in his affidavit do not attract the provision of Order-7, Rule 11 of CPC. The petitioner made a plan of causing delay of the suit proceedings and to cheat the respondents/plaintiffs for which he has filed the above vexatious application and it is liable to be rejected. There is no merit in the petition. Hence the petition has to be dismissed.

4. **The point for consideration:**

i) Whether the petition is to be allowed or not?

5. Heard petitioner side. No oral or documentary evidence have been adduced on either side.

5. **Point:**

a) It is the case of the petitioner/1st defendant in this suit that oral partition has been effected in the year 1977, wherein properties were allotted to Rajikhan (husband of first plaintiff and father of second plaintiff) and the parties were in separate possession and enjoyment of their shares. On 10.2.2005, an oral partition was entered between defendants 1 to 5 and the plaintiffs have purchased properties in S.No.257/2 and 257/12 from the petitioner and defendants 2 to 5 by way of Sale deed dated:31.3.2005. Having admitted the title of the petitioner and other respondents by way of Sale deed dated:31.3.2005, the plaintiffs are not entitled to seek partition of the suit properties. The claim of the plaintiffs is also barred by limitation.

b) The respondents resisted the petition by contending that the petitioner has not filed written statement till date. The limitation point is mixed question of law and

fact, it can be decided only after full fledged trial. None of the grounds raised by the petitioner would attract the provision under Order 7, Rule 11 of C.P.C. Only to delay the proceedings, he has come forward with this petition.

c) Admitted facts in the case are that the suit properties originally belonged to Chinnanage Gowdu by way of Partition deed dated:14.9.1964. It is also admitted that the Chinnanage Gowdu died in the year 1977 leaving behind his sons Narayanan, Kathiriappan/petitioner , Rajikhan, and his wife Lakshmiammal (second defendant) and his daughter Mangammal (6th defendant). It is also admitted that the whereabouts of Rajikhan, who is husband of first plaintiff and father of second plaintiff is not known for more than 7 years. The deceased Lakshmiammal (second defendant) is the wife of Chinnanage Gowdu, 3 to 5 defendants are legal heirs of deceased Narayanan.

d) The petitioner relied upon following documents;

- 1) Certified copy of Partition deed dated:16.9.1964;
- 2) Certified copy of Partition deed dated:10.2.2005;
- 3) Certified copy of Sale deed dated:31.3.2005 infavour of second plaintiff;
- 4) Certified copy of Sale deed dated:31.3.2005 infavour of second plaintiff;
- 5) Computerised Patta No.1163 for S.No.257/12.
- 6) Computerised Patta No.254 for S.No.256/3.
- 7) Computerised Patta No.365 for S.No.257/2.
- 8) Circular issued by Commercial Tax officer to Narayanan.

9) Bill issued in the name of Narayanan for coconut business.

10) Cash receipt dated:20.3.1999 issued by Dharmapuri Market committee in the name of Narayanan.

11) Acknowledgement for receipt of coconut from Narayanan.

e) The petitioner has filed this petition to reject the suit on following grounds and this court shall decide grounds raised by petitioner separately.

**1) Oral partition has been already effected in the year 1977:**

The first and foremost contention of petitioner is that oral partition was already effected and Rajikhan was allotted 2.22 acres in S.No.256/3 and patta for said property stands in name of second plaintiff. The respondents/plaintiffs denied the alleged oral partition. This court is of view when the plaintiffs deny oral partition, its validity can be decided only at the time of trial and not at this stage mainly based upon documents relied by petitioner.

**2) On 10.2.2005, a registered Partition deed was entered among the defendants 1 to 5 and the first plaintiff has purchased properties from the petitioner/first defendant and defendants 2 to 5 by way of registered Sale deed dated:31.3.2005.**

The second contention of petitioner is that plaintiffs admitted registered partition deed dated:10.2.2005 entered among defendants 1 to 5 in this suit and they are in possession and enjoyment of their properties allotted to them and the second plaintiff has purchased properties from the petitioner/first defendant and defendants 2 to 5 by way of registered Sale deed dated:31.3.2005. The plaintiffs have challenged

validity of partition deed dated:10.2.2005 in this suit. The petitioner rely upon registered Sale deed dated:31.3.2005 and contended that only admitting partition deed and defendants 1 to 5 title, plaintiffs have purchased properties, hence plaintiffs are estopped from challenging validity of partition deed dated:10.2.2005. This court is of view when plaintiffs deny validity and genuineness of partition deed dated:10.2.2005, by mere production of Sale deed dated:31.3.2005, it cannot be held that plaintiffs have admitted partition deed and title of defendants 1 to 5. The plaintiffs have to be given an opportunity to explain how sale deed came in to existence, by adducing evidence during trial and validity of sale deed cannot be decided at this stage.

**3)The suit is bad for non joinder and misjoinder of properties:**

Admittedly there are 63 properties in this suit . The petitioner alleges that he and his brother Narayanan have also purchased properties and same have also been included in the suit. The question whether properties are separate properties of the petitioner and Narayanan or joint family properties cannot be decided at this preliminary stage and it can be only decided after full fledged trial where the parties will lead evidence. The contention of petitioner that suit is bad for partial partition as plaintiffs have not included properties allotted to Rajikhan is concerned, this court is of view that same cannot be a ground to reject the plaint at this stage before commencement of trial and same can be decided after trial.

**4) The suit is barred by limitation:**

The next contention of petitioner is that suit is barred by limitation as plaintiffs who had knowledge about Partition deed dated 10.2.2005 in the year 2005, ought to have filed this suit within three years and this suit filed after 7 years is barred by limitation. This court is of view that the question of limitation is mixed question of fact and law and the same cannot be decided at this stage and suit cannot be rejected on this score alone , when there are other triable issues in this suit.

**5) The death of Rajikhan has not been declared by civil court:**

As far as contention of petitioner that plaintiffs are not entitled to file this suit , without getting declaration from civil court as to death of Rajikhan is concerned, the same can be decided only at the time of trial alone and not at this stage as same requires evidence.

f) In view of foregoing deliberations, this court is of view that all contentions raised by petitioner are not sufficient to reject this suit and these defences can be considered only at the time of trial.

g) The learned petitioner counsel relied upon the following judgments;

**1) T.Bai Ammal and others Vs. T.Sampath, honourable Madras High court, (<http://indiankanoon.org/doc/81821782/>);**

wherein the honourable Madras High court has dealt with limitation in partition suit in detail is not applicable to present petition which is filed for rejection and same can be considered only after trial.

**2) S.Heerachand Jain Vs. T.Namasivayam, honourable Madras High court, (<http://indiankanoon.org/doc/172504801/>);**

wherein the honourable Madras High court has dealt with rejection of plaint is not helpful to petitioner, as he has not made out any grounds for rejection of plaint.

h) It is well established law that that the Court does not to have to see whether the claim made by the plaintiff is likely to succeed but it has merely to satisfy itself that the allegations made in the plaint, if accepted as true, would entitle the plaintiff to the relief he claims. In ascertaining whether the plaint shows a cause of action, the court does not enter upon a trial of the issues affecting the merits of the claim made by the plaintiff. The Court should not and cannot take into consideration the defenses which the defendant may raise upon the merits; nor is the court competent to make an elaborate inquiry into doubtful or complicated questions of law or fact for rejection of the plaint.

i) The defendants have not filed written statement in this case. The issues in this matter has not yet been framed. Rejection of plaint takes away the very basis of the suit rendering as if there was no suit at all or that no suit was instituted. Order of dismissal of suit while recognizing the existence of a suit indicates its termination. Consequently on the grounds as raised by the petitioner/defendant, the plaint cannot be rejected in the present facts and circumstances. The case is in the year 2012 and case is pending without any progress for 11 years. The defendants are directed to file written statement immediately and both parties are directed to cooperate with trial of case, which shall be conducted on day to day basis. Hence point for consideration is answered against petitioner.

**In the result, the petition is dismissed. Considering the facts and circumstances of the case, no cost is awarded.**

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 9th day of February 2023.

Additional Sessions Judge,  
Dharmapuri.

**Both Side Evidence, Exhibits: Nil.**

Additional Sessions Judge,  
Dharmapuri.

**Fair Order**

I.A.No.1/2022 in

O.S.No.5/2012

Dated:9.2.2023.

