

IN THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
DHARMAPURI.

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

Thursday, this the 20<sup>th</sup> day of November 2025

**I.A.No.10/2025**

**in**

**O.S.No.5/2012**

Govindaraj

... Petitioner/11th defendant

/versus/

1. Govindammal.

2.Nagavalli.

... Respondents/ plaintiffs

3.Kathiriyappan.

4.Lakshmiammal (died)

5.Sabitha Devi.

6.Vaijeyanthi mala.

7.Nageswari.

8.Mangammal (died)

9.Srinivasan.

10.Padmavathi.

11.Balaji.

12.Sridhar.

.... Respondents/ defendants.

This petition is coming on 19.11.2025 for final hearing before me in the presence of Thiru.A.Nandhakumar, Advocate for petitioner and Thiru.K.M.R.Venkatachalapathi, Advocate for second respondent and upon hearing arguments and on perusal of the entire case records and having stood over till this day, this court pronounced the following:

**ORDER**

This petition has been filed under Order-7, Rule-11 (a) and (b) of CPC.

**2. The case of the petitioners in brief is as follows:**

i) There was a partition deed dated 10.02.2005 bearing document no. 170/2005 executed between the brothers Viz. Kathiriyappan and legal heirs of Late. Narayanan, who are the respondents 5 to 7/defendants 3 to 5 are the legal heirs of the said Late. Narayanan herein and their mother Lakshmiammal, In the said partition deed dated 10.02.2005, the suit items 56, 57 and 58 included in the B-Schedule of the partition deed were allotted to the share of respondents 5 to 7/defendants 3 to 5. After the said partition, all of them were in separate possession and enjoyment of their respective shares. The petitioner purchased the suit property in item nos. 56, 57, and 58 from his vendors Duraisamy and Sakthivel, through a sale deed dated 25.10.2017 bearing document no. 1826/2017. His vendors, Duraisamy and Sakthivel had in turn purchased the said properties from the respondents 5 to 7/defendants 3 to 5 through a sale deed dated 01.08.2012 bearing document no. 1348/2012. The petitioner conveyed the same to Sri Vidhya Mandir Educational Trust, through a sale deed dated 13.11.2017 bearing document no. 1982/2017.

ii) The petitioner is running a college in the name and style of "Sri Moogambigai College of Arts & Science (Women)," since 2018. The suit for partition without seeking the relief of declaration of above said sale deeds are null and void is not at all maintainable in law. Moreover, the plaintiffs cannot seek partition in the property which had already been partitioned and respective shares given to the separate possession and enjoyment of their respective sharers and without paying the

court fees under section 37(1). The suit is not at all maintainable.

iii) Even if it is assumed for argument's sake, even if the plaintiffs succeed the suit, then she cannot get her share by dispossessing petitioner from the suit property illegally. A mere paper decree holds no good without proper reliefs and court fees.

iv) The plaintiffs had not disclose the fact, when did they come to know about the partition deed dated 10.02.2005, or by what event and how they came to know about it. Nowhere the plaintiffs plead their manner and date of knowledge of the said partition deed, which clearly reveals the fact that the plaintiffs were fully aware of the said partition deed at the date of its execution, but had come forth with this vexatious suit due to the rise in price of land. Hence their suit is barred by limitation as it was laid after 7 years of the execution of the partition deed.

v) The plaintiffs cunningly had filed a suit for partition to grab other's property without even adding necessary party to the suit and without even including proper reliefs and court fees. Hence the suit is devoid of merits as it is barred by limitation and does not disclose cause of action. The plaintiffs had undervalued the suit as if they were in joint possession and enjoyment of the suit properties. They ought to have paid proper court fees. Hence the court fees paid by the plaintiffs is also wrong and untenable.

vi) The suit has to be rejected as it lacks of the cause of action and is barred by limitation as it lacks and also the plaint is undervalued and court fees was not correctly paid and justice thus rendered.

**3. The counter filed by the second respondent in brief is as follows:**

i) The trial of the above case started and the 2nd plaintiff examined on 24.02.2025 as PW-1 and exhibits A1 to A7 marked and the case was posted for cross examination of PW-1. The respondents 3 to 10 deliberately failed to cross examine PW-1 and they instigated the petitioner to file the above application without filing his written statement, which clearly shows the defendants are all colluded together and protract the trial proceedings with an ulterior motive.

ii) The 1st defendant, Kathiriyappan, had earlier filed I.A. No. 1/2022 under Order VII Rule 11 of CPC seeking rejection of the plaint, which was dismissed on merits by this Court on 09.02.2023. The said order was challenged before the Hon'ble High Court of Madras in C.R.P.No.1103/2023 which is still pending. The present application is filed on the same grounds, at the instance of the 1st defendant, and hence is liable to be rejected as barred by res judicata and as an abuse of process,

iii) The 1st defendant had earlier filed I.A.No.96/2012 in the same suit to implead the subsequent purchasers as parties, which was dismissed on merits on 11.03.2015. The corresponding C.R.P.No.1594/2015 was also dismissed on 17.12.2020 by the Hon'ble High Court. Hence, the issues raised are already concluded, and the present petition is not maintainable.

iv) The petitioner has fabricated imaginary allegations without any legal or

factual basis. The averments in the affidavit do not attract the provisions of Order VII Rule 11 CPC. The petition has been filed only with a mala fide intention to defeat the rights of the plaintiffs and to delay the trial. The plea of limitation is a mixed question of law and fact, which can be decided only at the time of trial upon appreciation of evidence. Therefore, the present application is premature, misconceived, and not maintainable. The so-called the partition deed dated 10.02.2005, Doc. No. 170/2005, between Kathiriyappan and the legal heirs of late Narayanan, is void, collusive, and not binding on the plaintiffs.

v) The plaintiffs are in joint possession, and the suit is properly valued and maintainable under Section 37(2). The petitioner has no locus standi to question the same.

vi) The sale deeds dated 01.08.2012, 25.10.2017, and 13.11.2017 are all void, sham, and not binding upon the plaintiffs. The subsequent transactions are all tainted by collusion and are fraudulent, being executed during the pendency of the suit. Hence, the petitioner's claim of bona fide purchase cannot be accepted. The plaint discloses a valid cause of action and is perfectly maintainable both in law and on facts. None of the allegations raised by the petitioner would attract the grounds under Order VII Rule 11 CPC. Hence petition is liable to be rejected,

4. **The point for consideration:**

Whether the petition is liable to be allowed or not?

5. No oral or documentary evidence adduced on both side. Heard both side

arguments.

**6. Point:**

6.1) According to petitioner, he is a bonafide purchaser of value having purchased the item no.56, 57, 58 of the suit properties from his vendors Duraisamy and Sakthivel by way of Sale deed dated 5.10.2017. His vendors have purchased the suit property by way of Sale deed dated 1.8.2012. Item No.56, 57, 58 of the suit properties were allotted to the share of defendants 3 to 5 in partition deed dated 10.2.2005. The petitioner is in possession and enjoyment of the suit properties purchased by him, this suit filed by the plaintiffs is barred by limitation, there is no cause of action of the suit. The plaintiffs have under valued the suit and court fee paid is not correct. Hence the suit has to be rejected.

6.2) The respondents/plaintiffs resisted the petition by contending that this petition is barred by res judicata, as based on identical grounds earlier application has been filed by first defendant, this petition has been filed with mala fide intention to delay the trial and harass the plaintiffs, the grounds urged do not satisfy the requirements under order 7 rule 11 of CPC, their documents relied upon the petitioner are void and lespondens. Hence the petition is liable to be dismissed.

6.3) The contention of petitioner is that partition has been already effected by way of 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. The plaintiffs have challenged validity of partition deed dated:10.2.2005 in this suit. The plaintiffs have to be given an opportunity to prove that partition deed is not

valid by adducing evidence during trial and validity of partition deed cannot be decided at this stage.

6.4) The petitioner has purchased the properties in the year during 2017 during the pendency of trial and alleges that he is possession of properties. The learned petitioner counsel contended that plaintiffs are not in possession of suit properties, so court fees paid is not correct. The issue whether plaintiffs are in possession and enjoyment of suit properties cannot be decided in this petition as same requires elaborate trial.

6.5) 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.

6.6) 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.

6.7) 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 plaintiff.

6.8) The defendants have not filed written statement in this case. The issues in this matter has not yet been framed. Rejection of plaintiff 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 plaintiff cannot be rejected in the present facts and circumstances. The case is in the year 2012 and case is pending without any progress for 13 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 20<sup>th</sup> day of November 2025.

Additional District Judge,  
Dharmapuri.

**Petitioners Side witness, Exhibits: Nil**

**Respondent Side witness, Exhibits: Nil**

Additional District Judge,  
Dharmapuri.

**Fair Order**  
IA.No.10/2025 in  
OS.No.5/2012  
Dated:20.11.2025.