

IN THE COURT OF THE SUBORDINATE JUDGE, MELUR.

Present: Tmt. M. SAMUNDEESWARI PRABHA, M.A., M.L.,

Friday, the 13th day of June 2025

I.A.No.4/2024

in

O.S.No.44/2024

Jegadeesh

.....

Petitioner/ 12th defendant

// Vs //

1. Palanikumar

2. Meena

.....

1& 2 Respondents/Plaintiffs

3. Andi

4. Arumugam

5. Nallachi

6. Rajendran

7. Thenmozhi

8. M.P.Palanisamy

9. R.Periyasamy

10. R.Maruthupandian

11. Pirul Nooriya Banu

12. Malaichamy

13. Hariharasuthan

14. Malathi

.....

3rd to 14th Respondents/1st to 11th
and 13th Defendants

This petition coming for final hearing before me on 03.06.2025 in the presence of Advocate.Thiru.M.Kumar, Advocate for the Petitioner and Advocate.Thiru.K.Boominathan, Advocate for the 1st and 2nd respondents and Advocate.Thiru.H.Arumugam, Advocate for the 12th to 14th respondents and 3rd to 9th respondent called absent set exparte in main suit and upon hearing the arguments on both sides, on perusal of the records and having stood over for consideration till this day, this court delivers the following:-

Orders

This petition has been filed Under Order 7 Rule 11 and Section 151 of CPC pass an order to reject the plaint of this petition.

1. Brief averments of the petition :-

(i) The petitioner herein is the 12th Defendant in the original suit. The respondents 1 & 2 have filed the suit against the petitioner and the other respondents herein for partition of their alleged 2/5th share in the suit properties and to declare the sale deed in Doc.No.413/1985 dated 27-03-1985 executed by the Respondents 3 & 4/Defendants 1 & 2 and one deceased Manivannan in favour of the 8th Respondent/6th defendant as null and void and not binding their right. They have also prayed for declaration that the consequential sale deeds in Doc. No. 1414/2008 dated 27-03-2008, Doc.No.5713/2011 dated 14-12-2011, Doc. No.644/2021 dated 11-02-2021 and Doc.No.645/2021 dated 11-02-2021 and Doc.No 1591/2021 dated 31.03.2021 and all other documents as null and void and for permanent injunction stating that the suit property is the ancestral property, originally owned by one Chinnu, the maternal

grandfather of the 1st respondent and father of the 2nd respondent herein and out of the income from the said property, a lesser extent of property was purchased. As such the suit property is the ancestral property.

(ii) The said Chinnu died on 30-01-1977 leaving behind the defendants 1 to 3, the mother of the 1st respondent namely Soni and the 2nd respondent herein and thereafter his wife Chittupillai also died in the year 2000. The plaintiffs allege that they have share over the property however the defendants 1 to 3 have sold the property through registered sale deed dated 27-03-1985 and that they came to know the same only on 23-01-2024 when the defendants 11 to 13 came to the suit property stating that they have purchased it and that, still the plaintiffs are enjoying the property jointly and also getting their share from the defendants 1 and 2.

(iii) In Para 6 of the plaint categorically says that the suit properties are ancestral properties. The claim made by the 1st plaintiff is through his mother, who is no more and the claim of the 2nd plaintiff is based upon succession from her father. The property was sold by the defendants 1 and 2 and the said Manivannan on 27-03-1985 itself. The petitioner advised to state that the daughter was not co-parcener in the family to claim any share as ancestral property. By the advent of Section 29A of the Hindu Succession Act, 1989 the daughter was also made as a co-parcener through the State Legislation. Thereafter by virtue of amendment of Section 6 by the Central Act all the daughters become co-parcener. In this case the property was sold in the year 1985 itself even

before the State amendment. On the date of sale, neither the mother of the 1st plaintiff nor the 2nd plaintiff were co-parceners. Therefore, they have no right to challenge the alienation made by the co-parceners themselves. The fact remains the property was sold in the year 1985 itself and as such the alienation is not affected even by the amendment. The said alienation was made by the defendants 1 to 3 pursuant to the partition made in their family and in fact, the petitioner predecessor said that even during lifetime of Chinnu, the property was partitioned and given to his 3 sons.

(iv) The property was alienated in the year 1985 itself and therefore the alienation made through registered document cannot be questioned taking advantage of the amendment made in the "Section 6" by the Central Act also. Therefore, the right to sue for partition is no longer available. That the sale took place in the year 1985 itself and the same was not challenged and it cannot be also challenged by anyone as it is barred by limitation but by way of clever drafting "as if there is a cause of action on 23-01-2024 by interference", has been pleaded. One can easily find that when a property was sold in 1985 no one can believe that the daughters that too the grandsons enjoy the property and get the share from their family members after sale of the property 40 years back. Hence, the very averment and cause of action is an illusory one created for the purpose of filing the suit. Hence this petition has to be allowed.

2. The 1st and 2nd Respondent/plaintiff filed Counter refuting the averments of the petition and affidavit:-

The 1st respondent herein is the 1st plaintiff in the original suit. The 2nd respondent is a relative of the 1st respondent. The 1st respondent files a counter affidavit on his own behalf and on behalf of the 2nd respondent. The respondent admitted averments hereunder, all the other averments are denied and the petitioners are put to strict proof of the same. The original suit has been filed for partition and for permanent injunction. In fact, the claim property belongs to the father of the mother of the 1st respondent, the 2nd respondent Meena's father Chinnu was given birth to according to the original and purchase documents and the 1st respondent's mother Soni was given birth to their parents, the 2nd respondent, Meena, had been enjoying the benefits with the 1st to 3rd respondents and she too died in 2017, leaving only the 1st respondent as her heir. If the husband and daughter of the said Soni die before that, the 1st respondent will inherit the undivided 1/5th share allotted to his mother, the 2nd respondent, without sufficient education, had acquired the 1/5th share and 2/5th share without division, and 6th to 13th defendants, in a conspiracy, produced several fraudulent purchase documents, the defendants have filed the lawsuit because the above fraudulent purchase documents came to their attention on 24.01.2024 and they have not made any division with their siblings till date. While this petitioner/12th respondent claims that he has wrongfully transferred the property to the 10th and 11th respondents, they have filed a writ petition in the Madurai Bench of Madras High Court seeking to quash the original suit vide C.R.P.(MD) No.1762/2024, which is also pending. Hence this petition has to be dismissed with costs.

3. The point for consideration aroused is that:-

Whether the petition has to be allowed or not ?

4. Point :-

Both sides heard. Records perused. This petition has been filed by the 12th defendant in the main suit for rejection of plaint. The grounds stipulated in this petition is that, the suit is barred by Law of Limitation since the suit property has already been sold out in the year 1985. Hence the daughters' legal heirs who have moved this suit has no right to question the sale deed of the year 1985.

In fact, all the above factors and whether the plaintiffs are the legal heirs of the daughters' who are also coparcenary right after the advent of Central Act amendment of Section 6 of Hindu Succession Act and the State Act amendment in the year 1989 to be decided only after the completion of trial. Since the law of Limitation is a mixed question of law and fact. It cannot be determined before trial. Moreover the suit whether it has cause of action or not also to be decided only after the completion of trial. At this stage, this petition is not maintainable. Hence it is dismissed.

5. Result:-

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

Dictated to the Steno Typist by me, and typed by her directly, corrected and pronounced by me in open court, this the 13th day of June 2025.

**Sub Judge,
Melur.**

Both sides of witness and documents : Nil

**Sub Judge,
Melur.**

Draft/Fair Order
in
IA.No.4/2024
in
O.S.No.44/2024
Dt :13.06.2025
Sub Court, Melur