

In the Court of the Principal District Judge, Tiruvannamalai

Present: **Mr. P.Mathusuthanan**, B.A., B.L.,
Principal District Judge,
Tiruvannamalai.

Tuesday, the 24th day of June - 2025

I.A.No.3/2024 in O.S.No.111/2021

1. Poongodi 2. Chinnammal 3. Amulu 4. Selvi 5. Ramesh 6. Chinnapaiyan		... Petitioners/ Defendants
	Vs	
Rukmani @ Maniyammal		...Respondent/plaintiff

This Interlocutory Application has come up before me for final hearing on 05.06.2025 in the presence of **Tr.V.Janakiraman**, Learned Advocate appearing for the Petitioners and of **Tr. V.C.Dinakaran** Learned Advocate appearing for the Respondent and upon hearing the argument on the both sides and upon perusing the available records and having stood over for consideration till this day, this court passed the following...

ORDER

The petitioners filed this petition under Order 7 Rule 11 of CPC to reject the plaint.

2) Brief facts of the petition :

The petitioners are the defendants in the main suit. The suit property is originally an ancestral in nature and out of partition held among the Annamalai gounder with his other family members, the present property as well as some other properties were allotted to Annamalai gounder. The said Annamalai gounder during his life time had executed a registered Will infavour of his wife Muniyammal on 05.09.1990. After that, the said Annamalai gounder died on 31.03.2002. Out of the property derived from the above said Will, Muniyammal had executed a registered partition deed infavour of her all legal heirs i.e. Plaintiff and 1 to 3 defendants herein on 23.08.2005. Out of the property allotted to the 3rd defendant (Amulu) and Muniyammal was sold of by them to one Balaraman. Thereafter, on 29.02.2012 Muniyammal executed sale deed infavour of 6th defendant Chinnapaiyan pertaining to 1/4 share and also the said Muniyammal executed a sale deed infavour of 4 defendant pertaining to 1/4 share of 5 defendant. On 12.03.2012 and she executed a sale deed infavour of plaintiff's son Rajendran pertaining to plaintiff's 1/4 share. The sale deeds have been executed in the name of legal heirs of Muniyammal and Annamalai gounder's by dividing her property equally with 1/4th due share and they are enjoying the same

separately without any interference. Thereafter, the said Muniyammal died on 03.08.2015. In such a circumstance, the respondent/plaintiff has come forward with this suit seeking the relief of partition over the share of the property which were already allotted to the 1st and 2nd petitioner through registered partition. Hence, the petitioners have requested to reject the plaint. Hence the petition.

3) Brief averments of the counter filed respondent are as follows:

The petitioners' petitioner is not sustainable in law and on facts and liable to be dismissed in limini. This respondent denied the entire allegations made in the plaint except those that are specifically admitted herein and the petitioners are strict to proof each and every one of them.

It is true that the suit properties are ancestral in nature. Apart from the sale of ancestral properties, the plaintiff has right to claim share over the suit properties. The petitioners have not given a clear reason for rejecting this case anywhere in the petition. It is incorrect to state that the suit properties have been divided into 4 equal shares. If there was a partition deed in respect of any such suit properties, they would have filed said partition deed in the petition. The petitioners claim that the properties has been divided into four equal shares, but on contra, they have stated that

they have registered various sale deeds. For this reason alone, this petition has to be dismissed as per law. Taking advantage of the fact that the respondent is an illiterate and poor person, living alone without the support of her husband, all the petitioners have defrauded the respondent by creating false documents over the suit properties and registering in their name and mutated revenue records and harassed the respondent. There is no any real cause of action for filling this the petition. With intent to harass the respondent, the petitioners have come forward to file this petition. Hence, the respondent requested to dismiss the petition with cost.

4) **Point that arises for consideration in this Petition is that**

Whether this petition is to be allowed as sought for?

5) **Point:-** The learned counsel appearing for the petitioners would submit that the respondent /plaintiff has filed a suit seeking the relief of partition. He would further submit that the suit property is originally an ancestral in nature and out of partition held among the Annamalai gounder along with his other family members, the present property as well as some other properties were allotted to Annamalai gounder. The said Annamalai gounder during his life time had executed a Will in favour of his wife Muniyammal. The petitioner 1 to 3 and respondent herein are the legal heir of said Muniyammal, 4 and 5 petitioners are children of 1st petitioner,

6th petitioner is the son of 2nd petitioner. He would further submit that out of the property derived from the Will, Muniyammal had executed a partition deed infavour of her all legal heirs on 23.08.2005. And he would further submit that out of the property allotted to the partition to 3rd petitioner and respondent herein was sold of to the son of one Rajendran. In such a circumstance, the respondent herein has come forward with this suit seeking the relief of partition over the share of the property which were already allotted to the 1st and 2nd petitioner through registered partition held on 23.08.2005, hence, he would content that there is no cause of action arose to file this suit as against the petitioner, hence, he argued for allowing the petition.

6) **Per contra**, the learned counsel appearing for the respondent would contend that no partition as alleged by the petitioners had happened on 23.08.2005 , if indeed such partition had held, the petitioners would have produced the said partition deed to substantiate their claim but they did not file any such registered partition deed to substantiate their claim. Hence the claim of the petitioners on the ground that the property in question had already been divided into partition among the petitioners 1 to 3 and respondent herein is not acceptable and he would further contend that none of the grounds contemplated under Order 7 Rule 11 of CPC is made

out in the petition filed by the petitioner. And he would further submit that though the petitioners are claimed that on 23.08.2005 there was partition held among 1 to 3rd petitioners/ defendants and respondent/plaintiff through registered partition deed dated 23.08.2005, there is no document produced by petitioners/defendants to substantiate the same. When the petitioners/defendants herein could file all other documents what prevented them to produce the alleged registered partition deed dated 23.08.2005. So long as the alleged registered partition deed dated 23.08.2005 is being produced on the side of the petitioners/defendants, it cannot be said that the existency of such registered document and which is based by the petitioners as root of their whole defence. He would further submit that admittedly, the property in question is ancestral in nature, though the petitioners claimed by virtue of partition deed in 1983, grand-father of them executed a partition deed in respect of the suit property infavour of Annamalai/ father of 1 to 3rd petitioners and respondent. Since the petitioners herein categorically admitted the property is ancestral property in nature, the above said partition itself liable to be questioned as being a co-sharer of the ancestral property in view of the amended Central Act 2005, the respondent also get entitle as a co-sharer of the ancestral property. Similarly, right of

executing Will by Annamalai gounder infavour of his wife in respect of the ancestral property is also to be tested by applying the relevant provision of law through the trial, hence he argued for dismissing the petition.

7) Heard. Perused the records.

8) As per the case of the petitioners herein, the respondent/plaintiff and 1 to 3rd petitioners are all brothers and sisters and they were born to Annamalai gounder and Muniyammal. It is an admitted fact that the property in question is ancestral in nature and there was partition held on that property, out of said partition, their father Annamalai gounder was allotted the suit property alongwith some other properties as his due share. It is further noted from the submission of the learned counsel appearing for the petitioners that during the life of time of said Annamalai gounder, he had executed a Will infavour of his wife Muniyammal on 05.09.1990., the said Muniyammal on the basis of the said Will subsequently on 23.08.2005 has created one registered partition among 1 to 3rd petitioners and respondent herein and thereafter the property allotted to 3rd petitioner and respondent herein were sold of to the son of one Rajendran. In such a circumstance, the specific contention of the petitioner that the said respondent/plaintiff herein has come forward with the main suit seeking the claim share over the portion which were already allotted to the 1st and 2nd

petitioners herein through partition deed dated 23.08.2005. On contra, it is the specific contention of the respondent that no such registered partition had held among 1 to 3rd petitioners and respondent as alleged by the petitioners herein.

9) Ofcourse, if there is a registered partition already held among 1 to 3rd petitioners and respondent herein, the petitioners could have filed the same to substantiate his claim but they did not produce the alleged registered partition deed sofar.

10) **Against this backdrop**, the contention of the petitioners that there was a registered partition already held on 23.08.2005 itself could not be believed. If the petitioners wants to prove the alleged registered partition deed dated 23.08.2005 happened among 1 to 3rd petitioners and respondent herein, it is primary duty and the legal obligation on their side to produce the same, but no steps taken on the side of the petitioners to that effect. In such a circumstance, on the basis of mere oral version of the petitioner with regard to alleged earlier partition of the suit property held among 1 to 3rd petitioners and respondent herein could not be accepted for want of any proof to that effect. If indeed the registered partition held in respect of the suit property as alleged by the petitioners herein was true, even the relief sought for in the present petition is declined, they would be

deprived of their right to establish the same because, the petitioner can establish their defence theory in the main suit, hence the chance for the petitioners to prove their case is not deterred, in the event of dismissing the petition.

11) As rightly pointed out by the learned counsel appearing for the respondent that the petitioners cannot be permitted to challenge the right of the respondent/plaintiff in filing the suit for partition over the ancestral property on the ground of alleged partition as well as Will without proving the said partition legality of the alleged Will and subsequent alienation of the property in question by the respondent herein. Hence, even assuming for a while that the registered partition held in the year 1983 between Annamalai gounder and his father Mottaiya gounder and subsequent Will and alienation over the suit property under challenge is true, the validity and legal sustainability of those documents can be accepted only on the examination of evidence to be produced on either side at the time of trial. It is therefore, the petition filed by the petitioners at this stage cannot be allowed to reject the claim of the respondent/plaintiff.

12) It is therefore, I do not find any substance over the contention of the petitioners to reject the plaint on the ground of no cause of action arose

to file the suit. Hence, this court is not inclined to allow this petition and thus the point is answered accordingly.

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

This Order is dictated by me to the Steno-Typist Grade-I of this Court, transcribed by her in Computer, corrected and pronounced by me in open court, this the 24th day of June - 2025.

**Principal District Judge,
Tiruvannamalai.**

ORDER

I.A.No.03/2024 in

O.S.No.111/2021

Dated : 24.06.2025