

**In the Court of II Additional District and Sessions Judge,  
Thiruvallur @ Poonamallee.**

**Present : Thiru. C.Vijayakumar, B.A., B.L.,  
II Additional District and Sessions Judge, Poonamallee.**

**On this Thursday, the 17<sup>th</sup> day of October 2024**

**I.A. No.1/2019 in O.S. No.306/2018**

- |                                             |                                                           |
|---------------------------------------------|-----------------------------------------------------------|
| 1. Dr. Subramanian (died)                   | ... 1 <sup>st</sup> Petitioner/ 1 <sup>st</sup> Defendant |
| 2. Mrs.D.Subashini                          | ... 2 <sup>nd</sup> Petitioner/2 <sup>nd</sup> Defendant  |
| 3. Mr. D.S. Ajay Prakash, S/o. Subramanian  |                                                           |
| 4. Mr. D.S. Sanjay Prakash S/o. Subramanian |                                                           |
| 5. Mrs. Prasanna Lakshmi, D/o. Subramanian  |                                                           |

(Petitioner 3 to 5 are impleaded in I.A. No 1/2022 dated 10.06.2022 and amended as per order passed in I.A. No.5/2022 dated 12.12.2022)

All Petitioners are residing at Flat No.1302, Third Floor, Sri Mahalakshmi Mandira Apartments, Justice Rathnavel Pandian Road, Golden George Nagar, Mogappair, Chennai - 600 037.

-Vs-

1. Mrs. K. Tharakeswari, W/o. G.Gnanavardhanan,  
Residing at No. 10, S2, Vivekananda Nagar,  
Kolathur, Chennai-600 099.

... 1<sup>st</sup> Respondent/Plaintiff

2. Mrs. Bharathi

Wife of Jayachandra Naidu,

Seemapuram Village,

Cholapuram Post,

Ponneri Taluk, Thiruvallur District.

... 2<sup>nd</sup> Respondent/ 3<sup>rd</sup> Defendant

3. Mr.K. Suryaprakash S/o K. Ramakrishna Naidu,

Residing at No.1/98, G.N.T. Road,

Janappan Chathiram Village,

Ponneri Taluk. Chennai – 600 067.

... 3<sup>rd</sup> Respondent/ 4<sup>th</sup> Defendant

4. Mr. K. Harichandra Prasad,

S/o. K. Ramakrishna Naidu,

Residing at No.2/15, G.N.T.Road, Janappan Chathiram Village,

Azhinjivakkam, Ponneri Taluk.

Thiruvallur District.

... 4<sup>th</sup> Respondent/ 5<sup>th</sup> Defendant

5. The Sub Registrar,

Ponneri, Thiruvallur District.

... 5<sup>th</sup> Respondent/ 6<sup>th</sup> Defendant

6. The Tasildar, Ponneri, Ponneri

... 6<sup>th</sup> Respondent/ 7<sup>th</sup> Defendant

7. The District Collector,

Thiruvallur District.

... 7<sup>th</sup> Respondent/8<sup>th</sup> Defendant

This petition was coming up before me for final hearing on 18.09.2024 in the presence of Mr. P. Srinivasan and G. Subramanian, learned counsel for the Petitioners and M/s. K. Balaraman Naidu and S. Muthukumaravel, learned counsel for 1<sup>st</sup> Respondent, M/s. N. Radhika and V. Rajalakshmi, learned counsel for the Respondents 2, 3 & 4 and Respondents 5, 6 and 7 are absent and set exparte, on perusal of entire material records, upon hearing the arguments on both sides and also written arguments filed on behalf of Petitioners/Defendants 1, 3, 9 & 10 and having stood over for consideration till this date this Court pass the following :

### **ORDER**

This petition is filed by the Petitioners, under Order 7 Rule 11 of CPC prays to reject the plaint in O.S. No.306/2018.

### **2. The crux of affidavit filed along with the petition by the 1<sup>st</sup> Petitioner are as follows :**

The 1<sup>st</sup> Petitioner herein is the 1<sup>st</sup> Defendant in the suit, along with the 2<sup>nd</sup> Petitioner/Defendant, Mrs. D. Subashini (his wife), is filing this affidavit against the plaint in O.S. No. 306/2018. The Petitioners, in their affidavit, raised various

grounds to reject the plaint under Order 7 Rule 11 and Rule 94(e) of the CPC. One Devaraj Chettiar filed a suit in O.S. No. 104/1962 in the Subordinate Court of Chengalpattu. A decree was passed, and an appeal was preferred before the District Court of Chengalpattu in A.S. No. 474/1966. In the consequent proceedings in E.P. No. 505/1972, the issues were compromised. Accordingly, the late Ramakrishna Naidu purchased the suit property under a registered Sale Deed on 16.05.1975 and has since been in possession and enjoyment of the same. The late Ramakrishna Naidu, the father-in-law of the 1st Defendant, executed a registered Sale Deed for 75 cents of land, along with Defendants D.4 and D.5. Subsequently, D.4 and D.5 denied their signatures on the Sale Deed. As a result, D.1 filed Original Suit No. 77/1998 before the District Munsif, Ponneri, seeking a declaration and permanent injunction; this suit was dismissed. D.1 then preferred an appeal in A.S. No. 26/2007 before the Sub Court, Ponneri, which was allowed. Thereafter, D.4 and D.5 preferred a second appeal before the Hon'ble Madras High Court in S.A. No. 1580/2010, which was dismissed. Following the demise of Tr. Ramakrishna Naidu and Tmt. Unnatha Rathinammal, the Plaintiff and Defendants 2 to 5 came into possession and enjoyment of the remaining 38 cents. During her lifetime, Tmt. Unnatha Rathinammal fraudulently executed a settlement deed in favour of D.4 and D.5,

along with the Plaintiff and D.3, concerning the sale of 1.33 acres of land. D.1 took action against this fraudulent document. The property purchased by D.1 was demarcated by the National Highways, and a clear FMB sketch for the boundaries was provided after the acquisition of 15 cents from the original 75 cents, for which compensation was received towards road extension. The Patta was granted in favour of D.1. During her lifetime, Tmt. Unnatha Rathinammal executed a registered settlement deed dated 10.08.2015 in favor of D.4 and D.5, along with her daughters, the Plaintiff and D.3. Both daughters relinquished their rights in the entire suit property, despite not having any rights over it. They actually have rights only concerning 38 cents, following the acquisition of 20 cents from 58 cents by the National Highways. The Plaintiff's claim is barred by the rule of Resjudicata and Limitation. Therefore the 1<sup>st</sup> Petitioner prays to reject the plaint in O.S. No.306/2018.

**3) The crux of the Counter Affidavit filed by the 1<sup>st</sup> Respondent are as follows :**

The Respondent denies all allegations except those specifically admitted. The suit is claimed to be frivolous, vexatious, and not maintainable under law, particularly under Order 7 Rule 11 of the Civil Procedure Code (CPC). The petition

lacks proper form and that the allegations in several paragraphs of the petition are denied as legally unsound or irrelevant. The Respondent contends that the suit for partition is timely and within the statutory period of limitation, which can only be determined at trial. The addition of certain parties (6<sup>th</sup> and 7<sup>th</sup> Defendants) to the case is justified to resolve relevant issues and prevent multiple proceedings. The Respondent asserts that the disputed settlement deed was not acted upon and denies the Plaintiff lacks standing (*locus standi*) to file the suit, stating that such a determination requires a trial. It is further stated that the Plaintiff has not been involved in previous related cases, and thus the principle of *resjudicata* does not apply. The Plaintiff seeks a rightful share in the family property, with allegations of misrepresentation and fraud being denied. The Respondent asserts that the suit property is a family property and has not been divided, rejecting the validity of previous transactions or Sale Deeds presented by the petitioner. The Respondent concludes that issues regarding the partition, possession, and enjoyment of the suit property can only be resolved after a full trial, and rejects claims that the suit is time-barred or jurisdictionally flawed. The property remains undivided, and the Respondent seeks a 1/5th share. Therefore, the 1<sup>st</sup> Respondent prays to dismiss the petition with costs.

**4) The crux of the Counter Affidavit filed by the 4<sup>th</sup> Respondent as adopted by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are as follows :**

The Respondent denies all allegations except those explicitly admitted and asserts that the suit is legally and factually unsustainable, calling it frivolous and vexatious. While acknowledging a settlement deed from 10.08.2015, they claim it was never acted upon. The 2<sup>nd</sup> Respondent has not relinquished her rights to the entire property of 1 acre and 33 cents, which is ancestral. After Ramakrishna Naidu's death, the Patta was issued in Unnatha Rathinammal's name. The Respondents 3 and 4 deny signing the Sale Deed dated 14.03.1986, calling it inauthentic. And asserted that the entire property is joint family property, and all the respondents are entitled to shares, particularly in respect of 38 cents. Therefore, the Respondents prays to dismiss the petition with costs.

**5)** On the side of Petitioners, Ex.P.1 to P.9 were marked. No documents were marked on the side of Respondents. No witnesses were examined on both sides.

**6)** The point for consideration is whether this petition is allowed or not ?

**7) Point:**

Heard both sides. Perused the documents.

**8)** The Petitioners herein are the Defendants 2 and 9 to 11 in the main suit filed by the 1<sup>st</sup> Respondent/Plaintiff for the prayers of

**a)** Passing a preliminary decree for partition of Plaintiff's 1/5<sup>th</sup> share and appoint an advocate commissioner to divide the suit property by metes and bound and to pass a final decree in term of the preliminary decree and for separate possession.

**b)** Declaring the decree in O.S. No.77 of 1998 on the file of the District Munsif, Ponneri is null and void.

**c)** Declaring the decree later passed in A.S No.26 of 2007 on the file of the Sub-Court, Ponneri is null and void.

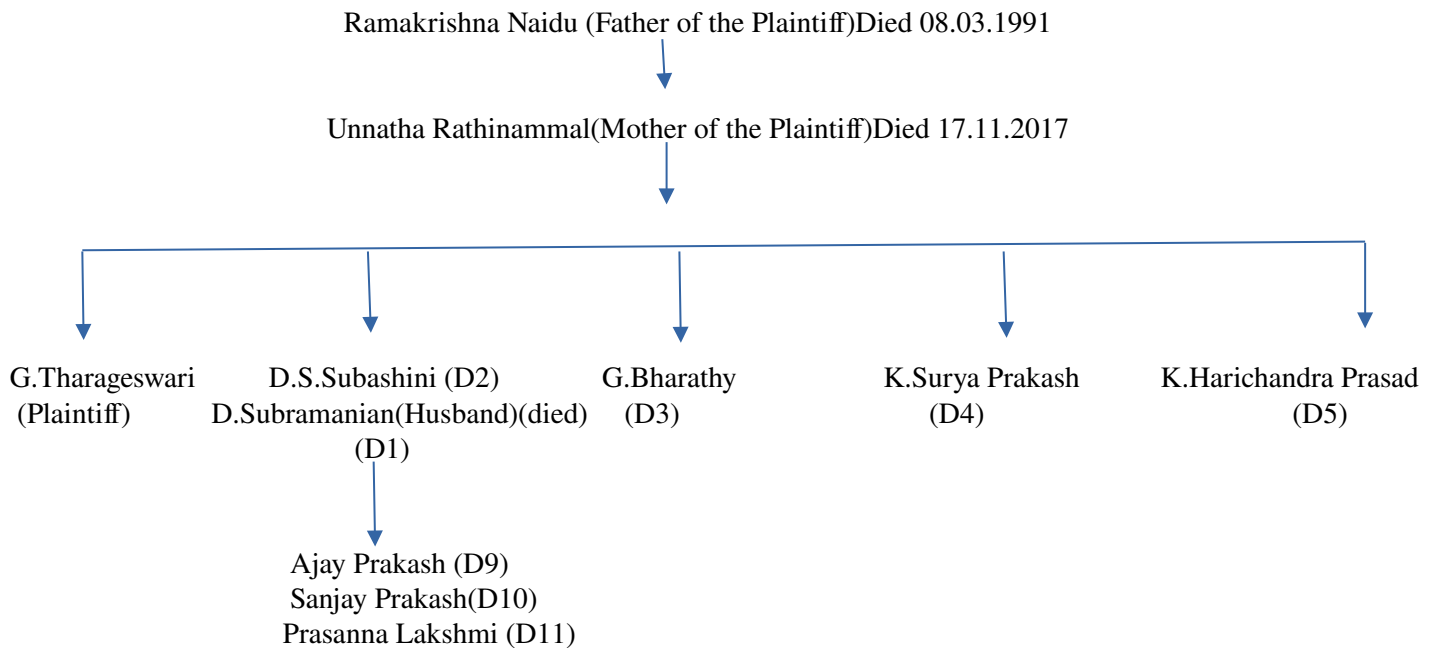
**d)** Permanent injunction restraining the Defendants from granting Patta in favour of the suit property to the 1<sup>st</sup> Defendant.

**e)** Permanent injunction restraining the Defendants from registering any document in respect of any part of the suit property by the Defendants 1 and 2, their men, agents or servants.

**f)** Directing the Defendants 1 to 5 to pay the costs of the suit and

**g)** For such other relief or reliefs as the this Court may deem fit in the circumstances of the case.

9) The main prayer of the Plaintiff is for a 1/5th share of partition in the suit schedule property, along with a declaration that the decree passed in O.S. No. 77/1998 by the District Munsif, Ponneri, and in A.S. No. 26/2007 by the Sub Court, Ponneri, is null and void. The following genealogy tree draw for the easy understanding of the relationship between the parties.



The suit property is for the extent of 43174.59 sq. ft. (99.124 cents) of Residential area comprising in S.No 81/1, their New No 81/1B now the present S.No. 81/1B1A, 81/1B2A in Alinjivakkam Village, Ponneri Taluk.

**10)** The Petitioners in their affidavit raised various grounds to reject the plaint under Order 7 Rule 11 & 94(e) of CPC. The brief facts of the petition accompanying affidavit is that one Devaraj Chettiar has filed a suit in O.S.No.104/1962 on the file of the Subordinate Court Chengalpattu the decree was passed and appeal preferred before the District Court Chengalpattu in A.S.No. 474/1966, in the consequent proceedings in E.P.No.505/1972 the issues were compromised. Accordingly, the late Ramakrishna Naidu had purchased the suit property under a Registered Sale Deed on 16.05.1975. After that he is in possession and enjoyment of the same. The said late Ramakrishna Naidu father-in-law of the 1<sup>st</sup> Defendant had executed a registered Sale Deed , sold to an extent of 75 cents of land along with the Defendants D.4 and D.5. Subsequently D4 & D5 denied their signatures in the Sale Deed. Therefor the D1 filed an Original suit 77/1998 before the District Munsif, Ponneri for the prayer of declaration and Permanent Injunction and the same was dismissed. Then the D.1 preferred an appeal in A.S No 26/2007 before the Sub Court, Ponneri and the same was allowed. Thereafter the D.4 and D.5 preferred a second appeal before the Hon'ble Madras High Court in S.A.No.1580/2010 and the same was dismissed. Subsequently after the demise of Tr. Ramakrishna Naidu and Tmt. Unnatha Rathinammal the Plaintiff and the Defendants 2 to 5 are came in to the possession

and enjoyment of the remaining extent of 38 cents only. During the life time of Tmt. Unnatha Rathinammal, she had fraudlently executed a settlement deed in favour of D.4 & D.5 along with the Plaintiff and the D.3 with regard to the 1.33 acres of land. And the D.1 took action against the fraudulent document. The property purchased by the D.1 was demarcated by the National High ways and given clear FMB sketch for the boundaries of the property after acquisition of 15 cents out of the original 75 cents through the compensation received towards the extension of the road. The Patta was given in favour of D.1. The main grounds set out by the Petitioners in the petition short out as follows:

**a)** The Defendants 6&7 are not a necessary parties to the suit.

**b)** During the lifetime of TmtUnnatha Rathinammal,she had executed a Registered settlement deed dated 10.08.2015 in favour of D4 & D5 along with her daughters the Plaintiff & D3. Both the daughters were relinquished their rights in the entire suit property. Though they do not have any right over the entire property. But, in fact they have their rights only in respect of 38 cents only after acquisition of 20 cents out of 58 cents by National High ways.

**c)** The Plaintiff has no locus standi to dispute the orders of the Hon'ble Madras High Court in S.A.No.1580/2020 in A.S.No.6/2007 confirming the rights title and interest of the D.1 .

**d)** This present suit is Barred by the Rule of Resjudicata since her brothers D.4 and D.5 are the parties in the Previous Original Suit in O.S.No. 77/1998 and the A.S. No.

26/2007 and in S.A.No. 1580/2010.

e) The suit claim is barred by limitation under section 3 of the Limitation Act that when the Court dismiss any suit instituted or appeal preferred, application made, after the prescribed period of Limitation.

f) The suit filed before this Court is not having any Jurisdiction at all. The suit might have been filed only before the Court where the property is situated, i.e. either before the Ponneri Court or Thiruvallur District Court and this Court has no Jurisdiction to try this suit.

**11)** The counter and the plaint averments discloses that the land measuring 1.33 acres in S.No 81/1 was purchased by Late Ramakrishna Naidu, in the proceedings of the suit in O.S No 104/1962 on the file of the Sub Court ,Chengalpattu from one Deenadayalu Chettiar. And the said land is the family property of the Late Ramakrishna Naidu. After the death of Late Ramakrishna Naidu on 08.03.1991 his wife Tmt.Unnatha Rathinammal and his 5 children become entitled to the said land. In pursuance of the necessary letter given by the children, Patta was given in the name of their mother Tmt. Unnatha Rathinammal . She was died on 17.11.2017. The Plaintiffs and the Defendants 2 to 5 are the legal heirs of the said Tmt. Unnatha Rathinammal. Out of the total area of 1.33 acres of land 33.5 cents of land have been acquired by the Highways Department. Hence the suit is filed in respect of the balance land of 99.25 cents only. The Plaintiff demanded partition from the 2 to 5 Defendants and they postponing the partition. The First Defendant is the husband of

the Second Defendant, claims to have purchased 75 cents of land out of 1.33 acres from 1) Late Ramakrishna Naidu 2) Suriya Prakash (D.4) & 3) Harichandra Prasad (D5). The D.1 filed a suit in O.S.No. 77/98 on the file of the District Munsif Ponneri against the Defendants 4 & 5 for the prayer of declaration of his title and for injunction with regard to the land of 75 cents comprised in 1.33 acres. This suit was dismissed and the 1<sup>st</sup> Defendant preferred an appeal in A.S.No. 26/2007 and the same was allowed. Then the Defendants filed S.A.No.1580/2010 on the file of the Hon'ble High Court of Madras, and the same was dismissed. The Defendants 4 & 5 had preferred SLP before the Hon'ble Supreme Court and the same was dismissed. The Sale Deed in favour of D.1 dated 14.03.1986 is invalid document. The Plaintiff, Defendants 2 and 3 are not parties in the suit. The Patta was stand in the name of Tmt. Unnatha Rathinammal. The property in the Sale Deed in favour of the 1<sup>st</sup> defendant is not specifically demarcated. The suit is not barred by the rule of Resjudicata and Limitation.

**12)** Before considering the merits of this petition, this Court must initially consider the plea of the Petitioners set out in paragraph 17 of the affidavit, which states that this Court has no jurisdiction to try this suit since the suit properties are located in Ponneri. The Ponneri Court or the District Court of Thiruvallur has jurisdiction over

this matter. On considering this plea this Court is the II Additional District and sessions Court of Thiruvallur, located at Poonamallee, and functions under the immediate administrative control of the Hon'ble Principal District Judge of Thiruvallur. This suit, having both pecuniary and territorial jurisdiction, was originally instituted before the Hon'ble Principal District Judge of Thiruvallur and was subsequently made over to this Court for disposal pursuant to Section 3A of the Tamil Nadu Civil Courts Act, 1873 . This suit is made over to this Court under the Administrative control of the Hon'ble Principal District Judge. The II Additional District and sessions Court of Thiruvallur, located at Poonamallee, has not yet taken this suit on file, it has been made over to this Court for disposal in accordance with law. This suit was filed in the year of 2016, and the Petitioners appeared through their counsels on 27.08.2019 , but to date, no steps have been taken by the Petitioners under Section 16 of the CPC. Furthermore, when this suit was filed before the Hon'ble Principal District Court and subsequently made over to this Court, there was no instance warranting the application of Order 7, Rule 10 of the CPC since the place of institution of this suit was not disputed. The Petitioners have not been filed any separate petition or request before this Court or obtain orders from the Hon'ble Higher Courts with regard to the Jurisdiction of this Court. Therefore, this Court has

ample power to decide this petition on its merits.

**13)** It is well settled principle of law that a petition under Order 7 Rule 11 of the Code of Civil Procedure (CPC) must be decided solely based on the averments made in the plaint itself, meaning the Court cannot consider any external evidence or arguments beyond what is stated within the plaint when deciding whether to reject the suit at the initial stage. The Hon'ble Supreme Court in the case of **ELDECO HOUSING AND INDUSTRIES LIMITED v. ASHOK VIDYARTHI AND OTHERS.**, Special Leave Petition (C) No 19465 OF 2021, reported in 2023 LiveLaw (SC) 1033 observed that

Code of Civil Procedure, 1908; Order VII Rule 11  
- Rejection of Plaint - No amount of evidence or merits of the controversy can be examined at the stage of decision of the application under Order VII Rule 11 C.P.C. (**Para 26**)

Hence, this Court has to be only examined the plaint averments in light of the above observations.

**14)** The Petitioners in their petition prominently raised two grounds for rejection of plaint that are

- a)** The present suit is barred by the Rule of Resjudicata under section 11 CPC.
- b)** Under section 3 of Limitation Act the present suit is barred by limitation.

**15)** As far as the ground of resjudicata is concerned, the Petitioners relied on Order7, Rule 11(d) of the CPC, stating that D.1 has filed a previous suit against the brothers of the Plaintiff, D.4 and D.5, in O.S. No. 77/1998 before the District Munsif, Ponneri. The suit was filed with regard to the suit property for the prayer of declaration and permanent injunction on the basis of the Sale Deed executed by Late Ramakrishna Naidu and his sons the Defendants D.4 &D.5 in favour of the D1. And the same was disposed. Therafter the appeal was preferred by the D.1 before the Sub Court, Ponneri in A.S. No. 26/2007 and the same was allowed. When the dispute was decided by the competent court the present suit is barred by the Rule of Resjudicata. When this Court examine the plaint averments with regard to this plea , it shows that the previous suit in O.S. No. 77/1998 on the file of the District Munsif, Ponneri was filed by the D.1 against the Defendants D.4 and D.5 for the prayer of declaration and permanent injunction. The plaint averments further shows that the Plaintiff is not the party in the suit in O.S. No. 77/1998. The Plaintiff also admitted the fact that against the decree and Judgment of the O.S. No. 77/1998 the D1 preferred an appeal before the Sub Court, Ponneri and the same was allowed. Against this Judgment the D.4 & D.5 preferred a second appeal before the Hon'ble Madras High Court. The Plaintiff was not a party in any of the proceedings. The Petitioners herein stated that the D.4

and D.5 are the representative of the Plaintiff. This is the fact of mixed question of fact and law. This question does not decided on the petition under Order 7 Rule 11(d) CPC. This question has to be decided on the basis of the whole documents in connected with the previous suit and appeal before the Sub Court. The Plaintiff in her plaint filed the decree of the O.S. No. 77/1998 and A.S. No. 26/2007 and not filed any pleadings of the previous proceedings, hence the plea of the Petitioners that the present suit is barred by the rule of Resjudicata will consider after the full trial. This is not the appropriate stage to decide this question. The Judgment of the Ponneri Sub Court and the Hon'ble High Court of Madras are cited as document No.11 & 12 along with this petition. When this Court deciding the point of Resjudicata the documents produced by the Petitioners are relevant but this Court is barred to consider this documents to decide this petition. The Hon'ble Supreme Court in the case of **Keshav Sood v. Kirti Pradeep Sood reported in 2023 LiveLaw (SC) 799** observed that

**Para 5.** As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.

**Para 6.** Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits.

**16)** When this Court applies the above observations of the Hon'ble Supreme Court to the present petition, the plea of the Petitioners are supported with the pleadings and Judgments of the previous proceedings. The Plaintiff only filed the decree of the District Munsif and the Sub Court only, the Judgments as produced by the Petitioners in this regard have not been considered. Therefore, the Petitioners' claim that the present suit is barred by the rule of res judicata is not accepted.

**17)** The Petitioners take another plea that the suit claim is time barred under article 3 of the Limitation Act. The Hon'ble Supreme Court in the case of **S. SHIVRAJ REDDY(DIED) THRO HIS LRS. AND ANOTHER VS S. RAGHURAJ REDDY AND OTHERS** reported in **2024 LiveLaw (SC) 411** observed that

Para16. Thus, it is a settled law that even if the plea of limitation is not set up as a defence, the Court has to dismiss the suit if it is barred by limitation.

Hence as per the above observation this Court has to consider the present petition.

The Petitioners in their affidavit stated that the present suit is barred by limitation.

The present suit is filed for **“a to g”** prayers against the Defendants. The main prayer of the Plaintiff is seeking partition and for declaration of earlier Judgments of the District Munsif and the Sub Court is null and void against the Plaintiff. The Plaintiff in her plaint para 29 & 32 averred that **on 19.03.2018** she demand partition to the Defendants 1 to 5 and the Defendants 1,2,4 & 5 not listening her demands and she filed the suit for partition. In this circumstances the Hon’ble High Court of Madras in the case of Puniyavathi 2. Poorani Vs Pachaiaammal and others published in <https://www.mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/637363> followed the Judgment of **Hon’ble Supreme Court** reported in **Vidya Devi @ Vidya Vati (Dead) vs Prem Prakash & Others reported in (1995 AIR 1789)**, and observed in the following that

**Para 24.** Applying the above principles to the instant case, this Court finds that the conduct of the Plaintiffs approaching the Court 31 years after opening of succession and 18 years after the division of properties among the brothers naturally leads to an inference that they have been ousted and with their knowledge the Defendants were in enjoyment of the property

exclusively adverse to the Plaintiffs for more than the period prescribed under Article 65 of the Limitation Act which prescribes 12 years period as limitation for possession of immovable property or any interest therein based on title. The time from which the period begins to run, is when the possession of the defendant becomes adverse to the Plaintiff. Therefore, their right gets extinguished under Section 27 of the Limitation Act, 1963, which reads as below.....

**18)** When this Court applying the above principle in the present case the Plaintiff demanded partition on **19.03.2018** from the Defendants and they did not accept her demand, she filed the present suit on the same year, hence her claim as far as the claim of partition is not barred by limitation.

**19)** The Petitioners set out the plea of limitation on the another angle that already the previous suit was decided by the Sub Court, Ponneri on 26.06.2009. After that the Plaintiff has to file the declaration of nullity of the Judgments of the previous suits within a period as delienated under Limitation Act. The present suit is beyond the period of Limitation. The Petitioners stated that on 26.06.2009 the Sub Court passed the decree and the limitation for the declaration of the above decree is null and void is within a period of 3 years. The Article 58 of Limitation Act prescribes 3 years time for any declaration suit. The present plaint does not specifically stated in which date the Plaintiff came to know the existence of the decree od the Sub Court and the

District Munsif Court, Ponneri. Hence, in this circumstance, the question of limitation shows the mixed question of fact and Law. This question does not decide in the present stage. And also the main relief of partition seeking by the Plaintiff is not barred by Limitation this question with regard to the prayer of declaration will decide after full trial. A plaint cannot be rejected in part if some of the relief sought is within time and some is barred by limitation. This is a well-settled proposition of law. **The Hon'ble High Court of Madras in the case of Chandra Vs. Reddappa Reddy reported in 2011(3) LW. 936 (Mad)** observed that

**Para 17** When a part of the relief sought for in the plaint is within time and even if another part of the relief sought for in the plaint is barred by limitation, a plaint cannot be rejection in part. A plaint cannot be rejected in part is a well settled proposition of law. Therefore, the trial Court is right in rejecting the application. Further, it has to be pointed out that it is also well settled that the question of limitation is a mixed question of law and fact and therefore that has to be decided only on the basis of the evidence adduced in the trial and therefore the trial Court is right in rejecting the application.

**20)** When this Court applies the above observations to the present petition, noting that the Plaintiff has not stated the date of knowledge of the decisions of the previous legal proceedings and that the prayer for partition is within the period of limitation, it

becomes clear that this question involves a mix of fact and law. In this context, the plea of the petitioners is not acceptable. Thus, this point is answered accordingly.

**21)** As far as the other grounds raised by the Petitioners such as

**a)** The Defendants 6&7 are not a necessary parties to the suit.

**b)** During the lifetime of TmtUnnatha Rathinammal, she had executed a Registered settlement deed dated 10.08.2015 in favour of D4 & D5 along with her daughters the Plaintiff & D3. Both the daughters were relinquished their rights in the entire suit property. Though they do not have any right over the entire property. But, in fact they have their rights only in respect of 38 cents only after acquisition of 20 cents out of 58 cents by National High ways.

**c)** The suit filed before this Court is not having any Jurisdiction at all. The suit might have been filed only before the Court where the property is situated, i.e. either before the Ponneri Court or Thiruvallur District Court and this Court has no Jurisdiction to try this suit.

are not comes under the ambit of Order 7 Rule 11 C.P.C.

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

Dictated to Steno-Typist directly, typed by him in computer, corrected and pronounced by me in the Open Court on this the 17<sup>th</sup> day of October 2024.

**II Additional District and Sessions Judge,  
Thiruvallur @ Poonamallee.**

**Exhibits on the side of Petitioners :-**

|        |   |                                                                                                                         |
|--------|---|-------------------------------------------------------------------------------------------------------------------------|
| Ex.P.1 | : | Certified copy of Sale Deed in Doc.1325/1975 dated 15.05.1975.                                                          |
| Ex.P.2 | : | Certified copy of Equitable Mortgage Doc. No.1712/1981 dated 14.4.1981.                                                 |
| Ex.P.3 | : | Certified copy of Sale Deed in Doc.No.626/1986 dated 04.03.1986.                                                        |
| Ex.P.4 | : | Certified photo copy of Decree and Judgment in A.S.26/2007 on the file of Subordinate Court, Ponneri dated 26.06.2009.  |
| Ex.P.5 | : | Certified copy of Judgment of the Hon'ble High Court of Madras in S.A. No.1580 of 2010 dated 05.12.2014.                |
| Ex.P.6 | : | Certified copy of Settlement Deed in Doc. No.73284/2015 dated 10.08.2015.                                               |
| Ex.P.7 | : | Photo copy of Notice issued by the Land Acquisition Officer, Thiruvallur in D.No.15/2001 dated 23.01.2023.              |
| Ex.P.8 | : | Photo copy of Order of the Hon'ble High Court of Madras in WP No.6379 of 2019 and WMP.No.7207 of 2019 dated 17.03.2019. |
| Ex.P.9 | : | Photo copy of Kist receipt for fasli 1428 in the name of Subramaniam and copy of A Register.                            |

**Exhibits on the side of Respondent : Nil.**

**Witnesses on both sides : Nil.**

**II Additional District and Sessions Judge,  
Thiruvallur @ Poonamallee.**

DRAFT/FAIR ORDER  
I.A. No.1/2019 in  
O.S. No.306/2018  
Date : 17.10.2024  
II A.D.C. Poonamallee.