

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE,
THOOTHUKUDI.

Present : Tmt. M.Breetha, M.L.,
II Additional District Judge,
Thoothukudi.

Monday, this the 6th day of April 2026

I.A. No. 2/2021

in

O.S. No. 44/2021

N.Sayed Ahamed Ali .. Petitioner/1st defendant
/Vs/

1.Vellathai

2.Jayakumari

3.Sumathi

4.Radha

5.Radhika .. Respondents/Plaintiffs

This petition came on 13.03.2026 for final hearing before this court in the presence of Advocate Thiru.M.Stephen Antony Raj, for the petitioner and of Advocate Thiru.A.Jeyaraj, for the respondent and upon hearing the arguments on the side of the petitioner and respondents and having stood over for consideration till this day, this court delivered the following:

ORDER

1) This Petition has been filed Under Order VII Rule 11 of Code of Civil procedure to reject the plaint.

2) Brief averments of the petition:-

The petitioner is the 1st defendant in the main suit and has averred that the respondents/plaintiffs have filed the main suit seeking relief of preliminary decree for

partition and that in the 4th paragraph of plaint, the respondents/plaintiffs have stated that the cause of action arose when the suit property and other properties were sold by defendants 3 - 17 to defendant nos.1 and 2 vide document nos.35/2011, 896/2011, 897/2011, 1810/2011, 1811/2011. 3229/2020, on the file of Sub-Registrar, Murappanadu, suppressing and concealing the material fact that the plaintiffs were the legal heirs of Mr.Subbiah S/o.Paradesi, wherein they were entitled to 1/10th share each in the suit property and hence, the fraudulent act of sale and registration without the knowledge of the plaintiff(s) gives rise to the said cause of action as soon as sale execution was carried out by the defendants and that the entire plaint averments do not reveal that the plaintiffs demanded partition with the co sharers and they refused for partition and that the legal notice sent to the defendants, Sub-Registrar, Murappanadu and District Registrar, Thoothukudi do not reveal any averments that the plaintiffs demanded partition with other co-sharers and that the plaintiffs have not stated in the plaint that they are in joint possession with the other co-sharers and any other supporting documents to prove the same and the document nos.34 to 40 filed by the plaintiffs along with the suit reveals that the plaintiffs are out of possession and that the plaintiffs have to pay court fees under section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act and the court fees paid under section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act is not sustainable in the eye of law and that in O.S.No.179/2011, the plaintiffs and the defendants in the present suit are the parties and the plaint schedule property mentioned in this present suit was also a part of the previous suit and hence, the question of adjudication and final decision does not arise and they are barred from instituting this suit by res judicata and that the plaint is liable to be rejected on the grounds that there is no cause of action to file the suit, non-payment of required court fee and resjudicata and hence, constrained to file this petition seeking rejection of plaint and prays to allow the same.

3) Brief contentions of the counter filed by the 1st respondent and adopted by respondents 2 to 5:

The respondents have denied all the averments made in the petition and have contended that the plaintiffs have averred about their right and possession over the plaint scheduled properties in the plaint and that the plaintiffs have clearly stated that the date of execution of fraudulent sale deeds by defendants 3 to 17 in favour of defendants 1 and 2 as cause of action to file this suit and that the plaintiffs have paid the required court fee as per the instructions of the Court and that as O.S.No.179/2011, on the file of District Munsif Court was dismissed for default, the question of resjudicata doesn't arise and the principle of resjudicata is not applicable to partition suits and that the plaintiffs have the right to file reply statement in respect of the missed facts and prays for dismissal of the suit with costs.

4) Point for consideration:-

Whether this petition is to be allowed or not?

5) Both sides are heard. Records have been perused. The respondents are the plaintiffs and the petitioner is the 1st defendant in the main suit. The main suit has been filed by the respondents/plaintiffs seeking for preliminary decree for partition and for the costs of the suit. In the main suit, written statement has been filed by the 1st defendant and the case stood posted for framing of Issues. At this stage, the petitioner/1st defendant has filed this petition to reject the plaint on the ground that the suit does not disclose cause of action, non-payment of required court fee and the suit is barred by res judicata. Now, it is necessary to find out whether the plaint is liable to be rejected on the grounds stated by the petitioner/1st defendant.

6) The Code of Civil Procedure under Order VII Rule 11 deals about the rejection of plaint and it reads as follows:-

1. Rejection of plaint - The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

7) It is a settled rule of law that the plea of rejection of plaint is founded on the "PLEA OF DEMURRER". A person raising such plea in law has to take the facts as stated by the opponent as correct. Despite tentative admission of such correctness, the plaint does not disclose a complete or even partial cause of action or the relief claimed is barred by law and thus, the plaint is liable to be rejected within the

provisions of Order VII, Rule 11 of the Code of Civil Procedure. Plain language of this rule shows that for determination of an application under this provision, the Court has to look into the plaint. This concept has been extended by judicial pronouncement of various Courts so as to take within its ambit even the documents filed by the plaintiff along with plaint or subsequent thereto but prior to the hearing of such application. It would be more so where the documents have been referred to in the plaint itself. But the defense raised by the defendants in his written statement or the documents filed along therewith certainly falls beyond the zone of consideration, where an application for rejection of a plaint is being considered by the Court. The language of the rule does not admit any scope for doubt that the written statement filed by the defendant cannot be referred or relied upon by the applicants for decision of such application.

8) The test for exercising the power under Order 7 Rule 11 of CPC is that if the averments pleaded in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. Thus, the true test is, first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses cause of action, within limitation and with proper reliefs, then the application under Order 7, Rule 11 of Code of Civil Procedure must fail. Where it doesnot disclose cause of action or if it is barred by limitation or the reliefs are not properly sought for, then the plaint shall be rejected.

9) The 1st ground raised by the petitioner is that the suit does not disclose cause of action. It is worthwhile to find out the meaning of the words ‘**cause of action**’. The meaning of cause of action has been explained by the Hon'ble Apex court in the case **A.B.C. Laminart Pvt. Ltd & Anr. /Vs/ A.P. Agencies, Salem reported in (1989) 2 SCC 163 and Bloom Dekor Ltde., /Vs/ Subhash Himatlal Desai & Ors. Reported in (1994) 6 SCC 322** as follows: “A cause of

action means every fact, which if transverse, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court”.

10) Therefore, it is clear that the ‘**cause of action**’ is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. Moreover, it is a trite law that the cause of action is a bundle of facts and whether the plaint discloses cause of action is a question of fact which has to be gathered based on the averments made in the plaint in its entirety by taking those averments to be correct.

11) On the basis of the above said principles, it is necessary to analyse the plaint to find out whether it discloses the cause of action. For appreciation of the facts in issue in the instant case, the cause of action averred in the plaint are narrated as follows:

“The plaintiff has averred in para 4 of the plaint that the cause of action arose when the suit property and other properties were sold by defendants 3 - 17 to defendant nos.1 and 2 vide document nos.35/2011, 896/2011, 897/2011, 1810/2011, 1811/2011. 3229/2020, on the file of Sub-Registrar, Murappanadu, suppressing and concealing the material fact that the plaintiffs were the legal heirs of Mr.Subbiah S/o.Paradesi, wherein they were entitled to 1/10th share each in the suit property and in para 7 of the plaint, it has been averred that the fraudulent act of sale and registration without the knowledge of the plaintiff(s) gives rise to the said cause of action as soon as sale execution was carried out by the defendants”.

12) The plaintiff has stated bundle of facts which include the facts relating to their 1/10 right over the plaint scheduled properties by way of inheritance as legal heirs of Subbaiah and; the date of execution of sale deeds in favour of defendants 1 and 2 excluding the plaintiffs as the cause of action for filing the suit.

13) The above said facts clearly shows that the plaint discloses some cause of action. It is the contention of the petitioner that the plaintiffs have not made any demand for partition and there is no averment in the plaint regarding the above said demand for partition. Regarding the above said contention, this court is of the view that a formal, pre-suit demand for partition is not a mandatory legal requirement to initiate a partition suit. The right to partition is considered a recurring or continuing right and a co-owner can file a suit whenever they choose, provided they have a valid, subsisting interest in the joint property. So long as the plaint discloses some cause of action which requires determination by the court, the mere opinion that the plaintiff may not succeed cannot be a ground for rejection of the plaint. Therefore, this court is of the opinion that the plaint filed by the plaintiff discloses some cause of action on which the plaintiff's right to sue accrues and hence the contention of the petitioner cannot be accepted.

14) The next ground raised by the petitioner is that the suit is barred by principle of resjudicata, At this juncture, it would be relevant to refer to the decision of the Hon'ble Supreme Court of India in 2023 LiveLaw (SC) 799 in Civil Appeal No.5841/2023 between Keshav Sood vs Kirti Pradeep Sood and others. The relevant portion is extracted here under:

“4. After having heard the learned counsel appearing for the parties, we find that the plea of res judicata could not have been gone into on an application made by the appellant under Rule 11 of Order VII of CPC. Apart

from pleadings in the earlier suit, several other documents which were relied upon by the appellant in his application under Rule 11 of Order VII of CPC were required to be gone into for deciding the issue of res judicata.

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.

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”.

15) From the principle reiterated in the above decision, it is clear that with respect to the plea of resjudicata, it requires a party taking that plea to mark the plaint, written statement, issues and the judgment in the previous suit as exhibits to the subsequent suit. This is because under Section 11 of the Code of Civil Procedure, 1908, a Court is barred from trying the same issue, which has already been tried by the Court of competent jurisdiction, on an earlier occasion. The very terms of Section 11 and its application shows that it requires a written statement to be pleaded in the subsequent suit pleading resjudicata and evidence to be let in in order to substantiate the said plea. When there are triable issues, the issue of rejection of the plaint on the

ground of resjudicata will not arise. Moreover, it is pertinent to note down that the earlier suit in O.S.No.179/2011, on the file of District Munsif Court was dismissed for default.

16) The next ground raised by the petitioner is that the payment of Court fee by the plaintiffs is correct. The plaintiffs have filed this suit seeking relief of partition averring that they are in joint possession over the plaint scheduled property and has claimed 1/2 share over the same and have paid Court fee under section 37(2) of Tamil Nadu Court Fee and Suit Valuation Act. In partition suits, it is settled law that the question of Court fee must be considered in the light of the averments made in the plaint and the decision cannot be influenced by the pleas in the written statement. The plaintiffs have averred that they are in joint possession over the plaint scheduled property and has paid Court fee under section 37(2) of Tamil Nadu Court Fee and Suit Valuation Act. The, contention raised by the petitioner/1st defendant that the plaintiffs are not in joint possession of the plaint scheduled properties could be decided in the main suit after adducing evidence and it cannot be decided in this petition at this stage and it cannot be a ground to reject the plaint.

17) In the light of the findings that the plaint filed by the plaintiff discloses some cause of action on which the plaintiff's right to sue accrues and the issue of rejection of the plaint on the ground of resjudicata will not arise and the question of joint possession of the plaintiffs couldn't be decided at this stage, this Court is of the view that the reasons assigned by the petitioner herein does not come within the ambit of Order 7 Rule 11 of CPC. Therefore, for the above said reasons, this Court is of the view that the petition is devoid of merits and is liable to be dismissed.

18) In the result, this petition stands dismissed. No costs.

This order is dictated by me to the steno-typist, and typed by her, corrected and pronounced by me in open court this the 6th day of April 2026.

II Additional District Judge,
Thoothukudi.

**Witness and Documents on the
side of the petitioner: NIL**

**Witness and Documents on the
side of the Respondent: NIL**

II Additional District Judge,
Thoothukudi.

