

**IN THE COURT OF THE I ADDITIONAL DISTRICT AND SESSIONS
JUDGE, VELLORE, VELLORE DISTRICT.**

**PRESENT: Tmt. G. Santhi,
I Additional District and Sessions Judge,
Vellore.**

Dated this the 21st day of April 2026, Tuesday

I.A.No.3 of 2025 IN O.S. No.14/2025

J.Natarajan

... Petitioner/2nd Defendant

-Vs-

1. V.Balakrishnan

2. B.Kalaivani

... Respondents/Defendants 1 & 3

3. K.B.Srinithi Krishnaa

4. Minor K.B.Archana Sree, represented by her
Next friend sister Srinithi Krishna

... Respondents/Plaintiffs

This petition is came up before me for final hearing on 08.04.2026 in the presence of Thiru. V.Rajendran, Counsel for the Petitioner and Thiru.A.Karl Marx, Counsel for the R1 and R2, and Thiru.A.Ramesh, Counsel for the R3 and R4 and upon hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration, till this date this court delivered the following:-

ORDER

This petition has filed by the petitioner under Order 7 Rule 11(a) & 11(b) of CPC to reject the plaint being filed in support of the O.S.No.14/2025 and the suit be dismissed with exemplary cost to the 2nd defendant and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

2. The brief petition averments of the petition :

The petitioner herein is the 2nd defendant in the suit and is well acquainted with the facts and circumstances of the case and is competent to swear to this affidavit. The petitioner has filed the present application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that the plaint does not disclose any cause of action for the suit for partition. It is submitted that the suit property was inherited by the 1st defendant from his mother and therefore the same is his absolute and individual property, and no one, including the plaintiffs, has any right to claim a share therein. Hence, the plaintiffs have no cause of action to file the present suit, and the plaint is liable to be rejected in limine.

The petitioner further submits that the 1st defendant has set out false and imaginary facts and has filed the present suit in the name of his daughters with ulterior motive and mala fide intention to defeat the decree of eviction

passed against him in the earlier suit. The averments in the plaint regarding cause of action and the right of the plaintiffs to seek partition are vague and lack material particulars. The allegations of undue influence and coercion made against the petitioner are reckless, baseless and without any specific particulars and therefore cannot form the basis of a valid suit.

The petitioner further submits that the present suit is a collusive one, filed by the 1st defendant in the name of his daughters, suppressing material facts relating to the nature and character of the suit property. It is submitted that the suit property is not a coparcenary property as alleged, and in fact, there was no joint family or joint family property as claimed by the plaintiffs. Since the plaint does not clearly disclose the right of the plaintiffs to seek partition, the suit is not maintainable and is liable to be rejected. The petitioner further submits that the suit is a benami and motivated litigation filed to defeat the earlier decree of eviction.

The petitioner further submits that the suit has not been properly valued. The plaintiffs have valued their alleged 2/3rd share at Rs.30,71,840/- and paid court fee under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, which is incorrect and not applicable to the present case.

The petitioner submits that the 1st defendant had already sold the suit property to the petitioner (2nd defendant) by way of a registered sale deed dated 12.12.2012. Considering the relationship between the parties, the 1st defendant and his family members were permitted to reside in the suit property as permissive occupants. However, taking advantage of such permission, they attempted to deny the petitioner's title, which led to the filing of an earlier suit in O.S.No.165 of 2018 on the file of the Principal District Munsif Court, Vellore. The said suit was decreed on 28.06.2024, wherein the Court upheld the validity of the sale deed and held that the 1st defendant and his father were only permissive occupiers. The appeal in A.S.No.21 of 2024 filed before the Principal Sub Court, Vellore was also dismissed on 24.04.2025.

The petitioner further submits that pursuant to the sale deed dated 12.12.2012, possession of the suit property was handed over to him, and the revenue records, house tax and electricity service connections were also mutated in the name of his wife, Thenmozhi. After purchase, additional construction was made in the property by raising funds. The petitioner permitted the 1st defendant and his father to occupy the premises only as permissive occupants. After the demise of the petitioner's wife on 27.10.2017,

the attitude of the 1st defendant and his father became hostile, and they attempted to deny the petitioner's title.

The petitioner further submits that the permission granted to the 1st defendant was revoked by issuing legal notice dated 28.02.2018, and eviction proceedings were initiated, which culminated in a decree in favour of the petitioner. Despite the same, the present suit has been filed by the 1st defendant in the name of his daughters suppressing all material facts, solely to defeat the eviction decree and continue in possession unlawfully.

The petitioner further submits that the plaint does not disclose the nature of the suit property, whether it is coparcenary property, or how the plaintiffs derive any right. It is submitted that the property originally belonged to the mother of the 1st defendant, namely Dhanalakshmi Ammal, and upon her death, it devolved upon her legal heirs under Section 15 of the Hindu Succession Act, 1956. The share inherited by the 1st defendant is his separate property and not coparcenary property, and therefore the plaintiffs have no right to seek partition during his lifetime.

The petitioner further submits that there was no Hindu Undivided Family or coparcenary property as alleged by the plaintiffs. Even assuming without admitting that the property is a joint family property, the 1st defendant, being the natural guardian, was entitled to deal with the property

for legal necessity. The sale was effected to discharge debts and meet family expenses, and therefore the same is valid and binding.

The petitioner submits that the present suit is a clear abuse of process of Court, filed with mala fide intention to defeat lawful decrees and to misuse the judicial process. The plaint does not disclose any real or valid cause of action and is based on illusory and vexatious claims. Hence, the plaint is liable to be rejected at the threshold.

3. The brief averments of the Counter filed by the 3rd respondent/plaintiff for self and as next friend of the minor 4th respondent/plaintiff is as follows :

The respondents/plaintiffs submit that the petition filed under Order VII Rule 11 CPC is not maintainable and is contrary to settled principles of law, as only the averments in the plaint and documents filed along with it can be considered for rejection, and not the allegations in the affidavit of the 2nd defendant. It is stated that the suit property was allotted to the 1st defendant in a registered partition dated 22.04.2009 and the respondents, being coparceners, have a legal right to challenge the alienation and seek partition.

The respondents deny that the suit property is the absolute property of the 1st defendant and contend that the issue regarding the nature of the property is a disputed question requiring trial. The right to seek partition is an inherent

right of a coparcener and cannot be rejected for want of cause of action. Allegations of fraud, undue influence, benami transaction and improper valuation are all disputed questions of fact and law, which cannot be decided at the stage of Order VII Rule 11 CPC.

It is further submitted that the earlier suit in O.S.No.165/2018 is not binding on the respondents as they were not parties to it. The allegations raised in the affidavit go beyond the scope of Order VII Rule 11 CPC, and none of the statutory grounds for rejection of plaint are satisfied. Hence, the petition is liable to be dismissed.

4. Now the Point is to be decided that,

Whether the plaint in O.S.No.14 of 2025 is liable to be rejected under Order VII Rule 11(a) and (b) of the Code of Civil Procedure?

5. Both side arguments heard. Records perused.

6. The counsel for 3rd respondent/1st plaintiff filed written arguments on behalf of R3, R4/plaintiff :

The learned counsel for plaintiff submitted that the property is the joint family property. When the sale deed for the suit property in favour of the 2nd defendant was executed the 2nd defendant for self and behalf of Guardian and then minors respondent/plaintiff along with his wife 3rd defendant not valid.

There was a complete partition in joint family on 22.04.2009 by a registered instrument in which the 'C' schedule of the property, which is subject matter of the suit was allotted to their father/D1 as his family's share. As a coparcenors with the 1st defendant, the respondent herein have a right to question the unjust alienation of their undivided shares in favour of the petitioner and claim partition in the said property. The right to sue for partition is an inherent right of a coparcenor and cannot be questioned as want of cause of action. Moreover, the exercise of fraud and undue influence by the petitioner, as the petition for rejection of plaint, the plaint must be read whole and nearly on the facts in one para or cause of action para it cannot be rejected. In support of his contentions, the learned counsel relied upon the decision of the Hon'ble High Court in *Balaji & Others Vs. Arumuam & Others* 203(1)MWN 769.

7. The Written Arguments filed on behalf of the 2nd defendant :

The learned counsel for petitioner argued that the plaint does not disclose any cause of action to the suit for partition. The plaintiff has no right to claim share over the suit property. The plaintiff has no coparcenary right, the suit is a bogus filed in the name of Binomy and the suit was not properly valued. Already the suit OS.No.165/2018 on the file of Principal District Munsif Court, Vellore filed by this petitioner and decreed on 28.06.2024. The

1st defendant sold the property to this 2nd defendant considering the relationship the D1 was permitted to residing the property, taking advantage of the same they attempted to deny the petitioner's title over the suit property resulted in OS.No.165/2018.

The 1st defendant is the permissive occupant and this permission was revoked as per the Notice. Hence the suit was filed the 1st defendant through his daughter. Hence he prays to reject the plant as no cause of action for this suit.

8. Both side arguments heard and Records perused.

POINT :

9. The suit is filed by the plaintiff for partition and cancelling 2/3rd share of the plaintiffs comprised in the sale deed executed by the 1st defendant and 3rd defendant in favour of the 2nd defendant on 12.12.2013. The plaintiff is the daughter of the 1st defendant. The 1st defendant sold the suit property to the 2nd defendant. The relationship of the parties is not denied.

10. As per the plaint averments, the joint family originally consisted of the paternal grandfather, P. Venkatachalam, as Kartha, along with the paternal uncle V. Balaji and their father V. Balakrishnan as coparceners. There was a complete partition in the said joint family on 22.04.2009 by a registered

instrument, under which the 'C' schedule property was allotted to their father's share, which is the suit 'C' schedule property in this case. He is a retired State Government employee.

11. The 2nd defendant purchased the property in the name of his wife Thenmozhi. The 2nd defendant, using his position as the brother-in-law of the 1st defendant, exercised undue influence and coerced him to sell the suit property, while the 1st defendant was facing certain debts. Due to this, the 2nd defendant fraudulently exploited the gullible nature of the 1st defendant by exercising undue influence, and instead of executing a mortgage deed, caused him to execute a registered sale deed. Initially, on 26.09.2013, there was a registered sale agreement for the suit property between the 1st defendant and their mother Kalaivani as vendors and the 2nd defendant's wife Thenmozhi as the purchaser.

12. The 2nd defendant before getting the sale deed from the 1st defendant as understood as the suit property belongs to the joint family in which the plaintiff are coparceners, the sale would be complete without plaintiff's share and unless they were made as co nominee parties to the sale it would not be binding on them. So the 2nd defendant to the contrary to the original agreement took the sale deed on 12.12.2013 in the name of his wife Thenmozhi from the 1st defendant as Kartha and as guardian of the then minor

1st plaintiff and minor 2nd plaintiff and 1st defendant's wife Kalaivani for a consideration of Rs.15,00,000/- . The alienation as unjustified and illegal, the reason stated in the sale deed itself reveal the glaring absurdities.

13. In the joint family property the plaintiff and the 1st defendant each have one third share and the 1st defendant has no right to sell the plaintiff's 2/3rd share for a throw away price under the guess of legal necessity. Suit OS.No.165/2018 had filed claiming the suit property was being used by the 1st defendant and his father P. Venkatachalam as licensee as he had revoked the licence they had to surrender the possession. The defendant resisted the suit denying the licensors, licensee relationship. Further the suit was decreed. The plaintiff is entitled to 2/3 share. Hence the suit.

14. This petition is filed by the 2nd defendant stating that the averments in the plaint do not disclose any cause of action for the suit for partition, since the 1st defendant inherited the suit property from his mother and it is the individual property of the 1st defendant, and no one has any right to claim any share over the property, much less the plaintiff herein. As such, the plaint is liable to be rejected for want of cause of action. Further, the plea of undue influence and coercion has been recklessly and mindlessly pleaded without any material particulars or clarity, which cannot form the basis of any suit.

This suit is of a collusive nature, filed by the 1st defendant in the name of his daughters.

15. The plaintiff filed the suit for the relief of partition and recovery of possession, the court fee paid u/s.37(2) of the TNCF and SV Act 1955.

16. The 1st defendant is a permissive occupier, as the suit property was purchased from the 1st defendant, acting as Kartha, for valid consideration, and in O.S.No.165/2018, the suit was decreed in favour of the defendant. The wife of the 2nd defendant, Thenmozhi, died, and the suit property devolved upon the petitioner/2nd defendant and his son Mugilan. The 1st defendant had borrowed money from various persons to manage his family needs, and thereby the 3rd defendant became indebted to many people. It became impossible for the 1st defendant to pay the EMI towards the loan obtained from Cholanmandalam Finance Company, and consequently proceedings were likely to be initiated for sale of the suit property. Therefore, the 1st defendant decided to sell the suit property and liquidate all the loans due to Cholanmandalam Finance Company and others. The 1st defendant and the petitioner's wife Thenmozhi persuaded the petitioner in all possible ways to purchase the suit property for a sum of Rs.15,00,000/-, and the 1st defendant handed over possession on the same day. The EB connection and other records were changed in the name of his wife, and the petitioner has been in

possession of the suit property from the date of purchase, exercising all his rights and ownership over the same.

17. After the purchase of the suit property, the petitioner constructed a first floor in the suit property by spending more than Rs.15,00,000/- by raising funds from various sources. The construction work was looked after by his father-in-law, P. Venkatachalam, as the petitioner was working as a teacher in a Government School, and he attended to all formalities relating to the construction of the first floor, such as preparing the plan and obtaining permission for construction. The petitioner also entrusted all original records relating to the suit property, including property tax receipts, EB connection and other documents standing in the name of Thenmozhi, as such documents were necessary for obtaining planning permission from the Corporation, Vellore.

18. The construction commenced in the year 2016 and was completed in the year 2017, and the petitioner did not occupy the newly constructed first floor due to certain astrological reasons. It was decided to occupy the portion from the year 2018, and in the meantime, the petitioner permitted the 1st defendant and his father to occupy the first floor and the ground floor as permissive occupants (leave and licence). On 27.10.2017, the petitioner's wife, Thenmozhi, suddenly died, and thereafter the 1st defendant totally

changed his attitude and adopted a hostile approach towards the petitioner with an ulterior motive to grab the property. Taking advantage of the custody of the documents, the 1st defendant denied the petitioner's title, and therefore the petitioner revoked the leave and licence by issuing a notice dated 28.02.2018. The petitioner filed the earlier suit in O.S.No.165 of 2018, and the appeal preferred by the 1st defendant in A.S.No.21 of 2024 on the file of the Principal Sub Court, Vellore, was also dismissed on 24.04.2025.

19. The present suit is a collusive suit filed to avoid injunction in respect of the suit property. Both the plaintiffs and defendants 1 and 3 are still residing under one roof.

20. The plaint does not reveal any clear right of the plaintiffs to file the suit for partition. In the sense, it does not disclose whether the suit property is a coparcenary property or the original owner of the property from whom it was inherited by the 3rd defendant. Nothing about the character of the suit property or how it became a coparcenary property has been disclosed in the plaint. Being a jurisdictional fact, it is mandatory on the part of the plaintiffs to expressly plead the said fact in the plaint.

21. In the partition deed dated 22.04.2009, it is clearly stated that the property belongs to the mother of the 1st defendant, namely Dhanalakshmi Ammal, and upon her death, it devolved upon her legal heirs as per Section 15

of the Hindu Succession Act, 1956. The share allotted to the 1st defendant through the said partition deed is his individual property and not a coparcenary property. The plaintiffs have no right over the suit property of their father during his lifetime. As such, the plaintiffs have no cause of action for the present suit.

22. Even if it is presumed that the suit property is a HUF property, then the 1st defendant, being the natural guardian of the minor children, has every right to deal with the share of the minors in the HUF property and can dispose of the same for legal necessity, and there is no need to obtain sanction from the Court as mandated under Section 8(2) of the Hindu Minority and Guardianship Act, 1956. It is only Section 12 of the Act which would apply, and the natural guardian has every right to deal with the minor's property. As such, the plaint has no merit and does not disclose any cause of action. The suit has been filed with mala fide intention to defeat the decree of eviction in O.S.No.165 of 2018 and to avoid eviction from the suit property. Hence, the plaint is liable to be rejected.

23. Based on the plaint averments and other documents, the following facts are prima facie made out: the property originally belonged to the mother of the 1st defendant and was included in the partition deed and allotted to the share of the 1st defendant. As alleged by the plaintiffs, the sale deed dated

12.12.2013 was executed fraudulently by exercising undue influence. As per the plaint averments, the property is a Hindu Undivided Family property and the plaintiffs are co-sharers, and they are entitled to 2/3rd share, while the 1st defendant is entitled to 1/3rd share. Hence, they have filed the suit seeking declaration of their 2/3rd share and for separate possession.

24. The petitioner/2nd defendant contends that the suit property is the self-acquired property of the mother of the 1st defendant, and that the 1st defendant acquired the property and was in possession in his individual capacity. It is further contended that the 1st defendant sold the property for valuable consideration to the 2nd defendant, and the sale deed was executed in the name of the 2nd defendant's wife. Considering the relationship between the parties, the 1st defendant and his father were in permissive possession, which was later revoked by the 2nd defendant, and in O.S.No.165/2018, the suit was decreed in favour of the 2nd defendant. It is further contended that, in order to avoid eviction, the present suit has been filed by the 1st defendant through his daughters/plaintiffs and that the suit is collusive in nature.

25. The learned counsel for the petitioner elaborately argued on the principles of Hindu Law governing coparcenary property, inheritance, and the rights of women. It is his specific contention that property inherited from a maternal grandfather cannot be treated as ancestral or coparcenary property.

26. The learned counsel for petitioner argued that the plaintiff has no right for filing suit for partition during his life time, he relied the following citations,

1. *2023 (2) CTC 81, Maheswari & Anr -Vs- N. Raman & 3 Ors*, in which it is held that, “.... As far as the suit properties are concerned, if the suit properties are coparcenary properties as contended by the learned Counsel for the Appellants, the First plaintiff being the daughter of the 1st defendant, would be entitled to a share by birth by virtue of the judgment of the Hon’ble Supreme Court of India in *Vineeta Sharma Vs. Rakesh Sharma*. Therefore, the point that has to be determined is whether the suit properties were coparcenary in nature in the hands of the 1st defendant or his separate properties. In this regard, all properties inherited by a male Hindu from his father, will not automatically be coparcenary properties. It is the plaintiffs assertion of the plaintiffs and that they ought to have proved the same.
2. *(2019 (2) MWN Civil 591), A. Raghu Vs. S. Arujuna Pillai*, in which it is held that, “When property stands in name of female it is presumed to be her property unless proved to have been purchased out of ancestral family nucleus-plea that sons contributed to generating business income by active participation highly improbable-during concerned period sons must have been school going children-no evidence to substantiate pleas-second appeal dismissed.”
3. In *SA*, the High Court confirmed the decree of the first appellate court hold that,
 - (i) The property inherited by a person from his mother cannot be treated as joint family property
 - (ii) The property in item i to iv were held to be individual property of D-1 and the plaintiff cannot claim any share during life of D-1.

4. The Law Weekly, Part 1, 10th July, 1937, Vol.XLVI, in which it is held that,

“... ancestral estate in which under the Hindu law a son acquired jointly with his father an interest by birth must be confined as shown by the original text of the mitak-shara to the property descending to the father from his male ancestor in the male line. The expression has sometimes been used in its ordinary sense and that use has been cause of misunderstanding...”

“ The estate which was inherited by Ganesh prasad from his maternal grandfather cannot in their lordships opinion be held to be ancestral property in which his son had an interest jointly with him. Ganesh Prasad consequently had full power of disposal over that estate and the demise made by him in favour of his daughter-in-law Giri Bala, could not be challenged by his son or any other person.....”

5. AIR 1979 Mad 1 FB:1978 (91) LW 529, in which it is held that, the properties inherited by K from his divided father constituted his separate and individual properties and not HUF property consisting of himself his wife, sons and daughters. Hence the income derived from the said property was not assessable in the hands of Hindu Undivided Family.

6. 1986 (3) Supreme Court Cases 567, in which it is held that, “ the property devolved upon the heirs mentioned in class-I under s.8 of the HS Act constituted his separate and individual property, not the properties of joint family consisting of himself, his wife, sons and daughters.

“ The answer to the questions would depend upon whether the amount standing to the credit of late Rangi Lal was inherited after his death by Chander Sen in his individual capacity or as a karta of the assessee-joint family consisting of himself and his sons.”

7. *2013(5) LW 787: 2014(1) CTC 73, in which it is held that, “.. The trial Court dismissed the suit relying upon karuppan Chettiar case (para 15). Trial court held that the plaintiff had no locus standi to file the suit.*

8. *2020 (1) MWN (Civil) 528 in which it is held as follows :
In second appeal, the trial court was restored holding that the plaintiff has no right to claim partition during the life of D-1.*

“...As a subsidiary plea it was claimed that the sale was in any event for family necessity and for the education of the minor children of the First Defendant and therefore the sales would bind the plaintiffs”.

9. *Uttam-Vs-Saubhag Singh:2016(4) SCC 68, in which it is held that, in which the apex court applied the law prior to the 2005 amendment and dismissed the suit in the suit filed by plaintiff against his own father.*

10. *N.R. Seethapathy Vs. M. Geethangali, S.A.No.594 of 214 dated 06.03.2019, in which it is held that, “... The plaintiff shall have subsisting right as on the date of the suit. Even the defendant dies without any legal heirs, the property shall revert back to the settlor Karuppanna Nadar. Since he was not alive, it shall devolve on his legal heirs namely Muruganathan and Sankara Narayanan.”*

“Since the plaintiff’s father N.R. Muruganantham is still alive, the plaintiff has no right to claim share in the suit property”

11. *2012) 8 Supreme Court Cases 706, in which it is held that, “ ...Order 7 Rule 14 CPC mandates that the plaintiff has to produce the documents on which the cause of action is based ”*

“ The above mentioned two documents were to be treated as part of the plaint as being the part of the cause of action....”

12. *2020(1) CTC 220, in which it is held that,*

“held that the plaint does not disclose any cause of action for the relief prayed that is, a direction to the Second Respondent to execute and register a sale deed in favour of the First Respondent and to put the First Respondent in possession. There does not exist any legal right which the plaintiff or the First Respondent is entitled to invoke and enforce. For a right to exist, there must be a correlative duty which can be enforced in a law suit”

13. ***(1977) Supreme Court Cases 467, in which it is held that, “.. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned”.***

14. ***2011 (1) MWN (Civil) 113, in which it is held as follows:-***

“ ...O7 R11 C.P.C. Provisions not exhaustive-plaint can be rejected when there is a clear abuse of process of law”.

Relying the above citation the learned counsel argued that Under 7 Rule 11 rejection of plaint provisions not exhaustive plaint can be rejected when there is a clear abuse of process of law.

26. The learned counsel for the petitioner argued that the plaintiff has no locus standi to institute the present suit since the relief asked by the plaintiff can not be granted.

27. The learned counsel for petitioner argued that the property of D1 acquired the property from his mother it is a separate property not a joint family property consisting of himself, his wife, sons and daughters. Further he relied on the following citations :

(1996) 8 Supreme Court Cases 54, in which it is held that, *Hindu law alienation karta or adult members of a joint Hindu family can sell/dispose of joint family property involving undivided interest of minor of the family therein, S.8 of HMGA, 1956 not attracted to such sale/disposal – S.8 has to be read conjointly with Ss.6 and 12 – Scheme of the provisions stated – Hindu Minority and Guardianship Act, 1956, Ss.8 and 6 & 12.*

(1992) 2 Supreme Court Cases 717, in which it is held **that**, *in the Hindu law joint family separate property can be acquired/held besides share in ancestral property and argued that this self acquired property held to D2.*

(1977) 4 Supreme Court Cases 184, in which it is held that, *“...Female member cannot ‘blend’ her separate property, limited or absolute, with joint family property...”*

“... Income tax, Female member declaring intention to blend her property with joint family property of Hindu undivided family, must be deemed a gift, Blending ineffective...”

Supreme Court Reports 779, in which it is held that, *“The rule of blending in Hindu Law as evolved by judicial decisions can have no application to a property held by a Hindu female as a limited*

owner.”

28. The learned counsel for the petitioner further contended that the suit property originally belonged to the mother of the 1st defendant and, therefore, constitutes her separate property. Upon its devolution, the property retains its character as separate property and does not automatically become joint family or coparcenary property in the hands of the 1st defendant.

29. The learned counsel therefore argued that the property, having originally belonged to a female and devolved upon the 1st defendant, cannot be treated as coparcenary property, and consequently, the plaintiffs have no right to seek partition during the lifetime of the 1st defendant.

30. This Court, upon considering the averments on both sides argued that the nature and character of the suit property, particularly whether it was acquired by the 1st defendant through a partition arrangement, when she gave as gift or not, blended Hindu undivided Joint family property or not are the fact in issue to be decided at the time of trial and the factum of possession being with the 1st defendant till the filing of the suit in O.S.No.165 of 2018, are matters which require adjudication on evidence. These issues constitute mixed questions of fact and law and cannot be decided at this stage. By affording an opportunity to the plaintiffs to establish their case during trial, no prejudice would be caused to the petitioner.

31. The plaintiffs have instituted the suit claiming that they are co-sharers along with the 1st defendant in respect of the suit property. In such circumstances, the payment of court fee under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is prima facie proper. Further, as already observed, the issues raised in the petition involve mixed questions of fact and law, which cannot be rejected at this stage under Order VII Rule 11 CPC.

As a result, this petition is dismissed. No costs.

Dictated to Steno-typist directly, typed by her through computer, corrected and pronounced by me in open court, this the 21st day of April 2026.

**I Additional District Judge,
Vellore.**

FAIR/DRAFT ORDER

IA.No.3/2025 IN OS.No.14/2025

D.O.D.21.04.2026

I Additional District court, Vellore.