

C.R.P.(MD)No.526 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2026

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)No.526 of 2025

and

C.M.P.(MD)No.2883 of 2025

1.Sam Sobitharaj
2.Maybel Starli

... Petitioners

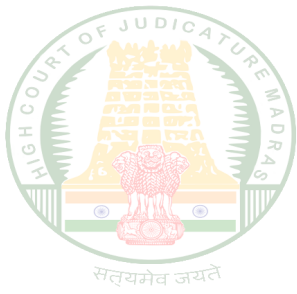
-VS.-

1.Subitha
2.Srobi
3.Vilasini
4.Angel Ponmalar @ Angel

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order, dated 03.01.2025 passed in I.A.No.6 of 2023 in O.S.No.165 of 2023 on the file of the Additional District Court, Kuzhithurai.

For Petitioners	:Mrs.J.Anandhavali
For R1	:Mr.K.N.Thambi
For R2	:Mr.B.Christopher



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ORDER

The present Civil Revision Petition has been filed challenging the order passed by the learned Additional District Judge, Kuzhithurai, in I.A.No.6 of 2023 in O.S.No.165 of 2023, dated 03.01.2025.

2.Heard Mrs.J.Anandhavali, learned Counsel for the Revision Petitioner and Mr.K.N.Thambi, learned Counsel for the first respondent and Mr.B.Christopher, learned Counsel for the second respondent.

3.The first respondent, as plaintiff, has filed a suit in O.S.No.165 of 2023 for partition and for other reliefs, before the Additional District Court, Kuzhithurai. The petitioners are the defendants 4 and 5 in the said suit. During the pendency of the suit, the petitioners herein have filed an application in I.A.No.6 of 2023 under Order VII Rule 11 and Section 151 of CPC to reject the plaint on the ground of limitation and the cause of action pleaded in the plaint is an illusory cause of action just to over come the limitation. The learned Additional District Judge, Kuzhithurai, vide impugned order, dated



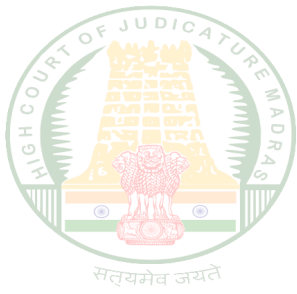
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03.01.2025, had dismissed the said application by holding that the contentions raised in the affidavit can only be considered after completion of trial. Challenging the same, the present Civil Revision Petition has been filed.

4.Mrs.J.Anandhavalli, learned Counsel for the revision petitioners submitted that the property devolves in Christianity and the plaintiff should describe about the law of succession. The learned Counsel read the entire plaintiff and pointed out that the plaintiff is silent with regard to the law of succession and the plaintiff is also silent with regard to how the title has been derived and further, the plaintiff does not speak about the encumbrance, if any that has been occurred in the property, which is the subject matter for partition.

5.The learned Counsel pointed out with regard to the cause of action by taking paragraph No.10 of the plaintiff. Paragraph No.10 of the plaintiff is extracted hereunder:

“10.Cause of action for this suit arose on 04.06.2023 (Fourth June Two Thousand Twenty-Three) being the date of last demand for partition and as well as the date of declining the demand and the same arose at Kuzhithurai Town Village, Vilavancode Taluk, wherein, the schedule properties are situate and the same is within the jurisdiction of this Honourable Court.”

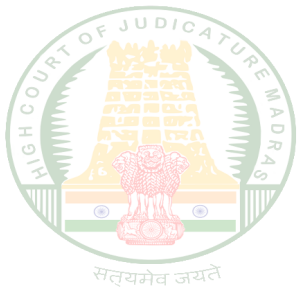


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6.She also pointed out that in the year 1989, a sale deed was executed by Chellappa Nadar in favour of third party and in the year 2005, a settlement deed was executed by the said Chellappa Nadar in favour of the revision petitioner herein. All these facts were not putforth in the plaint. It is her further contention that when the first respondent/plaintiff claims that the property should be subjected to partition, the plaintiff should make out a case that the property is free from encumbrance and there should be a specific cause of action and it should not be an illusory one. It is her further contention that no notice for partition was given by the plaintiff and without giving a notice creating an artificial or illusory cause of action, cannot be termed as a cause of action. Hence, she seeks interference of this Court.

7.*Per contra*, Mr.K.N.Thambi, learned Counsel for the first respondent submitted that the first respondent/plaintiff has instituted a suit and the second to fourth respondents are supporting the case of the revision petitioners. He also pointed out that father and mother, Chellappa Nadar and Kamala have died on 08.11.2007 and 12.12.2007 respectively. He pointed out the plaint



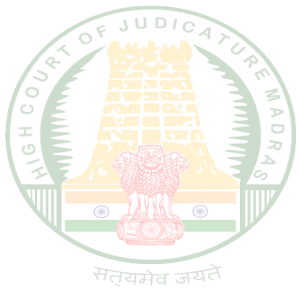
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averments, which deal with the property, which was purchased by Arulappa Nadar father of Chellappa Nadar in Old S.No.1661 to an extent of 21 cents and the father Valliammal had gifted the property in old S.No.1661A to an extent of 21 cents in the present Kuzhithurai Town. He further pleaded that after the death of Chellappa Nadar and his wife, Kamala, the plaintiff and the defendants 1 to 4 succeeded the property equally and became entitled to 1/5 share each in schedule property”. His primary contention is that at the stage of rejection of plaint, the Court should only examine and consider the plaint averments and not beyond that. If the plaint discloses the cause of action, then all other contentious issues are triable in nature.

8.To strengthen his case, the learned Counsel for the first respondent relied upon a judgment of the Hon'ble Supreme Court in the case of ***Prem Kishore and others vs Brahm Prakash and others***, reported in (2023) 19 SCC 244, wherein, the Hon'ble Supreme Court has held as follows:

29. The above view has been consistently followed in a line of decisions of this Court. In Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust [Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612] , P. Sathasivam, J. (as the learned Chief



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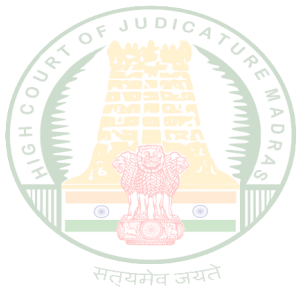
Justice then was), speaking for a two-Judge Bench, observed that :
(SCC pp. 713-14, paras 10-11)

“10. ... It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

11. This position was explained by this Court in Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] , in which, while considering Order 7 Rule 11 of the Code, it was held as under : (SCC p. 560, para 9)

‘9. A perusal of Order 7 Rule 11CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11CPC at any stage of the suit—before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.’

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the



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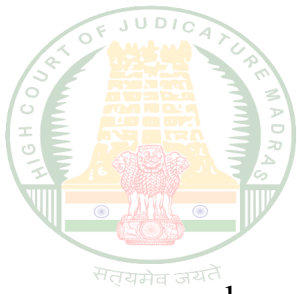
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defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100] .”

9.The learned Counsel for the first respondent also submitted that the trial Court has rightly dismissed the application filed by the petitioners, which needs no interference of this Court and seeks dismissal of this revision petition.

10.This Court considered the submissions made on either side and perused the materials available on record.

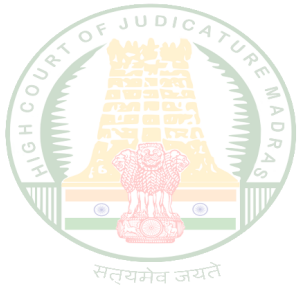
11.It is not in dispute that the first respondent is the plaintiff in the suit and the petitioners and the respondents 2 to 4 are the defendants in the suit. The petitioners have filed an application to reject the plaint on the ground the limitation and the cause of action pleaded in the plaint is an illusory cause of action. The primary contention of the petitioners is that there is no averment with regard to the law limitation and the law of succession, which has been



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vehemently submitted before this Court also by the learned Counsel for the petitioners. However, in the judgment referred to by the learned Counsel for the first respondent in *Prem Kishore's* case, the Hon'ble Supreme Court has held that at the time of deciding the application filed under Order VII Rule 7 CPC, the Court should look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the proceeding.” Therefore, right and the law of succession has to be decided only before the trial Court and the share of the plaintiff and the defendants can be determined only after a full fledged trial and it is inappropriate for this Court to dwell into the contentious issues and the rival claims with regard to the respective rights. Therefore, the issue of law and succession and the cause of action is a matter, which has to be decided before the trial Court. Hence, this Court does not find any infirmity or irregularity in the order passed by the trial Court, which needs interference of this Courts.

12.In the result, this the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.



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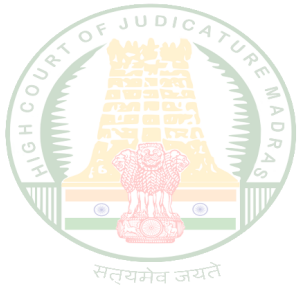
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NCC :Yes/No
Index :Yes/No

To

The Additional District Judge, Kuzhithurai.



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N.SENTHILKUMAR, J.

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