



C.R.P.Nos.538 & 788 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2026

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THE HONOURABLE Mr. JUSTICE K. RAJASEKAR

Civil Revision Petition Nos.538 & 788 of 2023

and

Civil Miscellaneous Petition Nos.4395 & 6035 of 2023

C.R.P.No.538/2023:

1.Smt.Parvathi ammal

2.K.Anbalagan

... Petitioners / Defendants 1 & 2

Vs.

1.Smt.Rathinam ammal (died)

2.Smt.Valarmathi

3.Smt.Manjula

4.Palani

... Respondents / Plaintiffs

5.Elumalai

... Respondent / 3rd defendant

*[R1 died. RR2 to 5, LRs of the deceased R1
vide Court order dated 01.04.2026]*

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the fair and decreetal order dated 07.12.2022 made in I.A.No.82 of 2022 in O.S.No.273 of 2020 on the file of the Subordinate Judge, Chengam by allowing this Civil Revision Petition.



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C.R.P.Nos.538 & 788 of 2023

For Petitioners : Mr.C.Munuswamy
For R1 to R4 : M/s.A.Jagadeeswari
For R5 : Not ready in notice

C.R.P.No.538/2023:

1.Rathinam (died)

2.Valarmathi

3.Manjula

4.Palani

... Petitioners / Plaintiffs

*[P1 died. P2 to P4 and R3 Lrs of the deceased P1 viz., Rathinam
vide Court order dated 01.04.2026]*

Vs.

1.Parvathi ammal

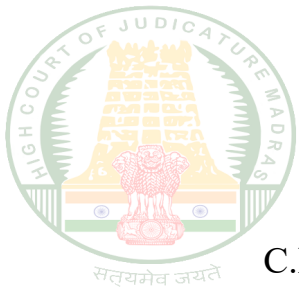
2.Anbalagan

3.Elumalai

... Respondents / Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the fair and decreetal order dated 07.12.2022 made in I.A.No.2 of 2022 in O.S.No.273 of 2020 on the file of the Subordinate Judge, Chengam by allowing this Civil Revision Petition.

For Petitioners : M/s.A.Jagadeeswari
For R1 & R2 : Mr.C.Munusamy
For R3 : No appearance



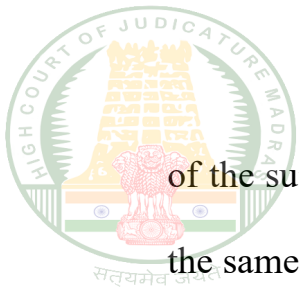
COMMON ORDER

C.R.P.No.788 of 2023 has been filed by the plaintiffs in O.S.No.273/2020, on the file of the Sub Judge, Chengam, against the dismissal of their petition in I.A.No.2 of 2022, vide order dated 07.12.2022 for withdrawal of suit with liberty to file a fresh suit for the same cause of action.

2. C.R.P.No.538 of 2023 has been filed by the defendant Nos.1 and 2 against the dismissal of the petition filed by them for rejection of plaint in I.A.No.82 of 2020 vide order dated 07.12.2022 on the very same suit.

3. The facts leading to the filing of the present petitions are as follows.

The petitioners in C.R.P.No.788/2023, as plaintiffs, have filed a suit for declaration of title and permanent injunction against the defendants. According to them, the suit properties originally belonged to one Perumal, as per the sale deed dated 02.07.1972. The plaintiffs have purchased the property from the descendants of the said Perumal. They have been able to collect only a few documents and, subsequently after the filing of the written statement by the defendants, they came to know various facts. If the suit proceeds on the same set of facts, they will not succeed. Hence, to avoid the technical defects in the filing

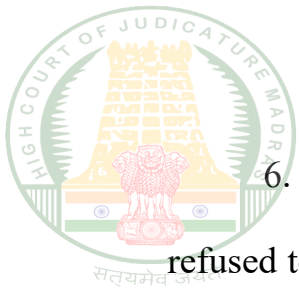


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of the suit, they seek to withdraw the suit with liberty to file a fresh suit based on the same cause of action. It is also stated that permitting the plaintiffs to withdraw the suit will not cause any prejudice to the defendants.

4. The defendants have also filed a separate application in I.A.No.82 of 2022 for the relief of rejection of the plaint. According to them, the son of Perumal namely Balakrishnan @ Pichaikkaran, had already filed a suit for declaration and injunction against the predecessor-in-title of the suit properties, which were purchased by the defendants herein. According to them, they purchased the property in the year 1984 and have been in possession of the same. The plaintiffs herein are the wife and children of the said Balakrishnan @ Pichaikkaran. Since the earlier suit in O.S.No.411 of 1987 with respect to the very same suit property, was decreed against the said Balakrishnan @ Pichaikkaran, the plaintiffs herein, who claim title through him, are not entitled to once again initiate a fresh suit claiming title over the suit property. Hence, the suit is barred by *res judicata*. Therefore, they prayed for rejection of the plaint.

5. The Trial Court independently considered both the applications and, after conducting a joint enquiry, passed two separate orders on the same day.



6. The Trial Court dismissed both the applications, i.e., the Trial Court refused to permit the plaintiffs to withdraw the suit with liberty to file a fresh suit and also dismissed the application for rejection of the plaint filed by the defendants.

7. The learned counsel for the plaintiffs submitted that, though there is a decree against the son of Perumal in the earlier suit in O.S.No.411 of 1987 on the file of the District Munsif at Tiruvannamalai, the earlier suit was confined only to 1.27 acres situated in Survey No.129/2A of Perumbakkam Village, Chengam Sub Registration District.

8. After full trial, the relief of declaration claimed by the plaintiffs in respect of ancestral property was dismissed, and the same was also confirmed in appeal in A.S.No.33 of 2004 on the file of the Principal Sub Court, Tiruvannamalai, and reached the stage of second appeal before this Court, which was also confirmed in S.A.No.907 of 2006 dated 19.09.2006.

9. These facts reveal that Balakrishnan @ Pichaikkaran had already initiated steps to obtain declaration and injunction. Now, the plaintiffs, claiming

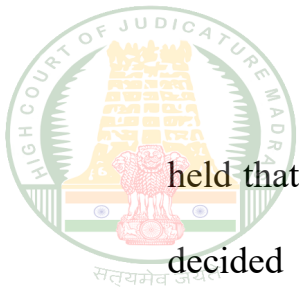


through the said Perumal, father of Balakrishnan @ Pichaikkaran seek declaration and injunction for 2.55 acres in the very same survey number. The plaintiffs have

now stated that they were not aware about various facts and were only able to collect proper information from third parties and they admit that if they proceed with the suit in its present form, they will not succeed. Hence, they have prayed for liberty to file a fresh suit on the same cause of action. According to them, they have been in possession of the above lands for several years.

10. On careful perusal of these facts, it is revealed that the second appeal was disposed of on 19.09.2006, and now the plaintiffs have claimed that they have shares in the property based on the very same sale deed dated 02.07.1972 standing in the name of Perumal. The Trial Court has not permitted the plaintiffs to withdraw the suit and, at the same time, has refused to reject the plaint, on the ground that the plea of *res judicata* requires recording of evidence with regard to the description of the property, and the same would be decided as a preliminary issue.

11. The Hon'ble Apex Court in ***The Jamia Masjid vs. Sri.K.V.Rudrappa (D) Through LRs*** reported in **2022 (9) SCC 225 : 2021 INSC 588** in Para 23,



held that, issue that the suit is based on the principal of *Res-judicata*, is very well decided as preliminary issue, and the same is permissible in certain circumstances. The relevant paragraph 23, is given below:

“23. In *Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy*¹⁹, the application of the plaintiff in the Court of the Civil Judge for the determination of Standard Rent under Section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947 was dismissed on the ground that the statute did not apply to a case of open land let for the construction of buildings. This decision was affirmed in appeal. However, in view of another decision of the Bombay High Court which held that the statute would be applicable to leased land, the plaintiff filed a fresh proceeding in the Court of Small Causes. The Trial Court and the High Court held that the subsequent suit was barred by *res judicata*. However, Justice J C Shah writing for a 3-judge bench held that the subsequent suit was not barred by *res judicata*:

“5. But the doctrine of *res judicata* belongs to the domain of procedure: it cannot be exalted to the status of a legislative (1970) 1 SCC 613 PART E direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent Court on a matter in issue may be *res judicata* in another proceeding between the same parties: the “matter in issue” may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent Court is finally determined between the parties and cannot be re-opened between them in another proceeding. The previous decision on a matter in issue alone is *res judicata*: the reasons for the decision are not *res judicata*.

[...]

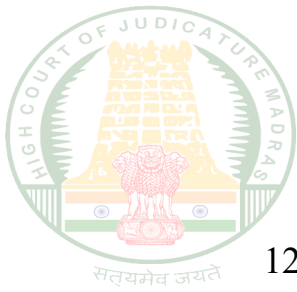
11. The matter in issue, if it is one purely of fact, decided in the



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earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression “the matter in issue” in [Section 11](#) of the Code of Civil Procedure means the right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.

(emphasis supplied) The court while undertaking an analysis of the applicability of the plea of res judicata determines first, if the requirements of [section 11](#) CPC are fulfilled; and if PART E this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of res judicata would be inapplicable. We are unable to accept the submission of the appellants that res judicata can never be decided as a preliminary issue. In certain cases, particularly when a mixed question of law or fact is raised, the issue should await a full-fledged trial after evidence is adduced. In the present case, a determination of the components of res judicata turns on the pleadings and judgments in the earlier suits which have been brought on the record. The issue has been argued on that basis before the Trial court and the first appellate court; followed by two rounds of proceedings before the High Court (the second following upon an order of remand by this court on the ground that all parties were not heard). All the documentary material necessary to decide the issue is before the court and arguments have been addressed by the contesting sides fully on that basis.”

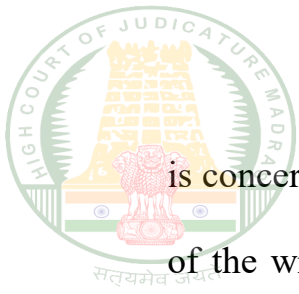


12. In this case, I am of the view that, the claim of the plaintiffs is based on the 1972 title deed of Perumal and already declaration suit decides the title of Perumal, there is no bar to try the *Res-judicata* as preliminary issue.

13. I am of the view that the view taken by the Trial Court with regard to refusing to reject the plaint and decided to consider the very same point as a preliminary issue is not proper.

14. Though it is true that suits which are filed on frivolous grounds or vexatious litigation are bound to be thrown out, the plaintiffs herein have come forward to withdraw the suit with permission to file a fresh suit on the very same cause of action.

15. The Trial Court has also observed that the plaintiffs have sought to claim adverse possession with regard to the properties in their possession. In such view of the matter, I am of the view that, dismissal of the application for rejection of the plaint, on the ground that the issue of *res judicata* raised by the defendants shall be decided as a preliminary issue, is proper. As far as withdrawal of the suit



is concerned, the plaintiffs herein claim that they filed the suit and, after the filing of the written statement, they came to know about certain facts and have stated that they cannot succeed in the suit in its present form if they proceeded with it.

16. A careful perusal of the plaint reveals that the plaintiffs claimed that, by virtue of a sale deed in favour of Perumal (Sale deed dated 02.07.1992) he became the absolute owner. The property was subsequently subdivided, and Survey No.129/2A to the extent of 2.55 acres was in possession of the said Perumal, who died intestate forty years ago, leaving behind his son Balakrishnan @ Pichaikkaran. Thereafter, Balakrishnan @ Pichaikkaran also died on 05.12.2009 leaving behind the plaintiffs and the third defendant as his legal heirs to succeed his estate. Thereafter, the plaintiffs have been in possession and enjoyment of the suit property to the knowledge of all others for more than the statutory period, and they continue to be in possession of the same. In the year 2019, the defendants tried to purchase the property from them, and since the plaintiffs refused to sell their land, the defendants are attempting to dispossess them and take possession of the property. Hence, they have come forward with the suit for declaration and injunction. The above facts from the plaint clearly reveal that the plaintiffs herein are claiming title through Perumal as per the sale



deed executed on 02.07.1972.

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17. The provision deals with withdrawal of the suit or abandonment of part of claim is Order XXIII and its rules.

“ORDER XXIII – WITHDRAWAL AND ADJUSTMENT OF SUITS

1. Withdrawal of suit or abandonment of part of claim.

*(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim: **Provided** that where the plaintiff is a minor or other person to whom the provisions contained in [rules 1 to 14 of Order XXXII](#) extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.*

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other persons.

(3) Where the Court is satisfied,-
(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the



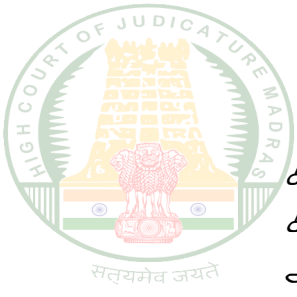
claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.”

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18. Order XXIII Rule 1(3) of the Code of Civil Procedure empowers the Court to grant permission to withdraw a suit with liberty to the plaintiff to institute a fresh suit in respect of the subject matter of such suit or in respect of a part of the claim. The provision further states that the Court can pass such an order only under two circumstances. The first circumstance is where the Court is satisfied that the suit must fail by reason of some **formal defect**. The second circumstance is where there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of the suit or part of a claim.

19. In this case, the plaintiffs have stated in their petition in I.A.No.2 of 2022 in O.S.No.273 of 2020 is para Nos.2, 3 & 4 are as follows:

“2) மேற்படி உரிமை விளம்புகை வழக்கு தாக்கல் செய்யும்பொழுது, வழக்கிற்கு சம்மந்தமான சில முக்கியமான சங்கதிகளை எங்களது வழக்கறிஞரிடம் சொல்லாமல் விட்டு விட்டோம். மேலும் கடந்த 02.07.1972ல் தாவா சொத்தை என் மாமனாரான வீரன் குமாரர் பெருமாளுக்கு கிரையம் கொடுத்த ஊமையன் குமாரர்களான சாமான், சுப்பிரமணி இருவரும் தற்போது உயிருடன் இல்லாத நிலையில், அவர்களின் வாரிசுகளிடமிருந்து சில முக்கியமான வழக்கு சொத்து குறித்த ஆவணங்கள் பெறவேண்டியுள்ளது. மேற்படி சாமான், சுப்பிரமணி ஆகியோரின் வாரிசுகள் தற்போது



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கர்நாடகா மாநிலத்தில், பெங்களூரிலும் மற்றும் சிமோகாவில் ஆங்காங்கே வசித்து வருகிறார்கள். அவர்களின் சரியான முகவரி தெரியவில்லை. அதனால் உடனடியாக எனக்கு ஆதரவான அவர்கள் வசமுள்ள ஆவண்களை பெறமுடியவில்லை.

3) மேற்படி எனது உரிமை விளம்புகை வழக்கிற்கு மேற்படி 1, 2 எதிர்மனுதாரர்களும் நாளது வரையில் எந்தவொரு பதில் வழக்குரையும் (Written Statement) தாக்கல் செய்யாத நிலையில்தான் மேற்படி வழக்கு உள்ளது.

4) மேற்படி வழக்கை தற்போதுள்ள நிலையிலேயே தொடர்ந்து நடத்தினால் எங்களுக்கு அனுகூலமற்ற நிலைமைதான் ஏற்படும். இந்நிலையில், மேற்படி வழக்கை மனுதாரர்கள்/வாதிகளாகிய நாங்கள் தொடர்ந்து நடத்தாமல், பின்னாளில் வழக்கு சொத்து குறித்து மூல மற்றும் முழு ஆவணங்களுடன் இந்த வழக்கின் வியாஜ்ஜிய மூலத்துடன், வேறு வழக்கை தாக்கல் செய்யும் உரிமையை நிலைநிறுத்தும் வகையில், மேற்படி வழக்கை கனம் நீதிமன்றத்தின் முன் அனுமதியுடன் வாபஸ் பெற்றுக்கொள்ள மனுதாரர்கள்/வாதிகளாகிய நாங்கள் இந்த மனுவை தாக்கல் செய்கிறோம். மேற்படி வழக்கை தற்பொழுது நாங்கள் வாபஸ் பெற்றுக்கொள்வதால், எதிர்மனுதாரர்கள், பிரதிவாதிளுக்கு எவ்வித பாதிப்பும் ஏற்படாது. ஆகையால், மேற்படி வழக்கை மனுதாரர்கள்/வாதிகளாகிய நாங்கள் வாபஸ் பெற்றுக்கொள்ள அனுமதிக்கும்படி கனம் கோர்ட்டார் அவர்களை பணிவுடன் வேண்டுகிறோம்.”

20. The reasons stated by the plaintiffs in the above paragraphs reveal that

they need to obtain more documents to substantiate their rights over the suit



property. They further stated that if they proceed with the suit, they would not succeed, and they would proceed with the suit only after obtaining the parent document and other documents. These averments show that the plaintiffs have indicated that they do not have sufficient documents to proceed with the suit. Hence, they want to withdraw the same and file a fresh suit after collecting all the documents.

21. I am of the view that by filing the parent document and other documents, they can proceed with the present suit. There is no bar to filing additional documents in the suit itself if they have rights over the suit property. The conduct of the plaintiffs clearly reveals that, after the defendants filed the petition for rejection of the plaint indicating that there was already a suit and other proceedings which decided the rights of the parties, the plaintiffs have come forward to withdraw the suit and file a fresh suit to overcome the same.

22. The grounds stated by them, that they would file a fresh suit after collecting all documents, is not a valid ground, and they can very well collect all those documents and prove their title in the suit itself. Since the valid grounds as contemplated under Order XXIII Rule 1(3) have not been made out by the



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plaintiffs for seeking withdrawal with liberty to file a fresh suit for the very same cause of action, I am of the view that the order passed by the Trial Court is proper, and accordingly, the present petitions are liable to be dismissed. Since the Trial Court has already held that the issue of *res judicata* has to be decided as a preliminary issue, the Trial Court is directed to decide the same at the earliest.

23. With these observations, both the Civil Revision Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions stand closed.

25.06.2026

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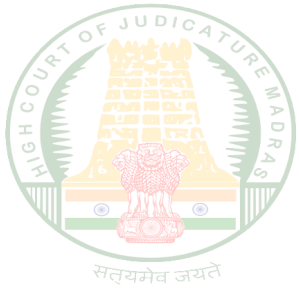
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Neutral Citation Case: Yes/No

To

1.The Subordinate Judge, Chengam.



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