

C.R.P(MD)No.1651 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2026

CORAM

THE HON'BLE MR. JUSTICE S.SOUNTHAR

C.R.P.(MD)No.1651 of 2023

and

C.M.P(MD)No.8253 of 2023

V.Paramasivam

.. Petitioner

Vs.

1.Vetriselvam
2.Rajaguru
3.Suyambu

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 05.12.2022 passed by the learned Principal Subordinate Court, Thanjavur, in I.A. No. 486 of 2022 and strike off the plaint in O.S. No. 265 of 2021.

For Petitioner : Mr.K.R.kishore Ram

For Respondents : Mr.R.Sundar

ORDER

The Civil Revision Petition has been filed by the first defendant in the suit challenging the order dismissing the application filed by him under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint.

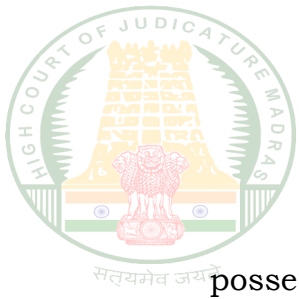


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2.The respondents/plaintiffs filed the suit seeking declaration of title and a consequential permanent injunction restraining the first defendant from interfering with their possession and enjoyment of the suit property. They also sought a declaration that the entry dated 31.01.1992 in the Encumbrance Register maintained by the fifth defendant is invalid. The plaintiffs further sought a direction to the defendants 2 to 4 to act in accordance with the order passed by this Court in W.P. No.8653 of 2021.

3.According to the plaintiffs, there was an earlier litigation between their father, Balakrishnan, and one Pichairathinammal, the wife of the first defendant, in O.S. No.304 of 1973. The said suit was decreed in favour of the plaintiff therein and the decree was subsequently put into execution. Delivery of possession was recorded in favour of the auction purchaser. However, it is the specific case of the plaintiffs that though delivery was recorded in the execution proceedings, it was only a paper delivery and their father, Balakrishnan, continued to remain in possession and enjoyment of the suit property. The plaintiffs have also pleaded the subsequent understanding between the parties and the continuous possession and enjoyment of the suit property by their father for more than the statutory period. According to them, the suit property has been in the



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possession and enjoyment of the plaintiffs' family for more than twenty-nine years and, therefore, they have perfected title by adverse possession. On the above pleadings, the plaintiffs sought the reliefs of declaration of title, permanent injunction and other consequential reliefs.

4.The petitioner/first defendant filed an application under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint. The application was filed mainly on the ground that the decree passed in the earlier litigation in O.S. No.304 of 1973 and the delivery recorded in E.A. No.107 of 1992 would bar the present suit and that the suit is hit by the doctrine of res judicata. The said application was dismissed by the trial Court. Aggrieved by the same, the present Civil Revision Petition has been filed.

5.The learned counsel appearing for the petitioner submitted that the trial Court, without properly taking into consideration the earlier litigation in O.S.No.304 of 1973, erroneously came to the conclusion that the suit filed by the respondents was maintainable and, therefore, the impugned order is liable to be set aside.

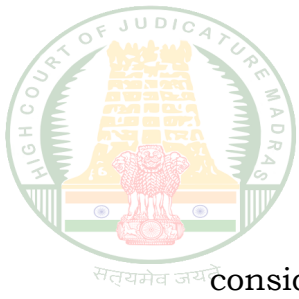


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6.It is well settled that while considering an application for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, the Court is concerned only with the averments contained in the plaint and the documents relied upon by the plaintiffs. In the present case, the plaintiffs have fairly referred to the earlier litigation in O.S.No.304 of 1973 and the recording of delivery in E.A. No.107 of 1992. However, they have specifically pleaded that the delivery effected in the execution proceedings was only a paper delivery and that their family continued to remain in possession and enjoyment of the suit property for more than the statutory period. It is also their specific case that they have perfected title by adverse possession and on that basis, they have sought the reliefs of declaration of title, permanent injunction and other consequential reliefs.

7.Whether the delivery effected in the earlier execution proceedings was only a paper delivery, whether the plaintiffs continued to remain in physical possession of the suit property even after the recording of delivery, and whether they have perfected title by adverse possession, are all questions of fact which can be decided only on the basis of the evidence to be adduced by the parties. These issues cannot be decided merely on the basis of the pleadings, while



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considering an application under Order VII Rule 11 of the Code of Civil Procedure.

8.The plaintiffs have not suppressed the earlier proceedings. On the contrary, they have disclosed the earlier litigation and founded the present suit on the subsequent cause of action, namely, their continuous possession and enjoyment of the suit property for more than the statutory period. Therefore, the contention of the learned counsel for the petitioner that the decree passed in the earlier suit would attract the doctrine of res judicata so as to bar the present suit, cannot be accepted at this stage. The trial Court has rightly appreciated the above legal position and dismissed the application seeking rejection of the plaint. I do not find any reason to interfere with the impugned order.

9.Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

15.07.2026

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
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To

- 1.The Principal Subordinate Court, Thanjavur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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