

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on : 13.03.2019

Delivered on : 09.07.2019

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**C.R.P.(PD)Nos.1245 & 2741 of 2017 &  
**C.R.P.(PD)Nos.3447, 3452, 3827 & 4159 of 2018 &  
**C.R.P.(PD).No.85 of 2019**  
**&**  
**C.M.P.Nos.12721, 12989 & 5870 of 2017 &  
**C.M.P.No.740 of 2019********

**C.R.P.(PD)No.1245 of 2017:**

- 1.Mr.Basheer Alias Abdul Basheer
- 2.Shayeedha Alias Shaidunnissa
- 3.Abida Begum Alias Abiduninsa
- 4.R.A.Rasheeda Alias Raseedunnisa
- 5.Nasirabegam
- 6.Mr.Mohamed Zaheer
- 7.K.Mohamed Ariff
- 8.Nafeesa Begum Alias Nafeesuninsa
- 9.Mrs.Anitha

...Petitioners

Vs

1.N.Kandasamy

2.N.Mohan

3.Mr.G.Saravanan

4.The District Revenue Officer  
Kanchipuram District.

5.The Revenue Divisional Officer  
Chengalpattu Taluk  
Kanchipuram District.

6.The The Tahsildar,  
Tirupporur Taluk,  
kanchipuram District.

...Respondents

**C.R.P.(PD)No.2741 of 2017:**

1.Mrs.Muktarunnisa

2.Mohammed Jalal

3.Mohamed Bilal

4.Mrs.Fathima Banu

सत्यमेव जयते

...Petitioners

Vs

1.N.Kandasamy

2.N.Mohan

3.Basheer @ Abdul basheer

4.Ms.Shayeedha @ Shaidunnissa

WEB COPY

5.Ms.Abidabegum @ Abiduninsa

6.Ms.Rasheeda @ mRassedunnisa

7.Ms.Nasirabegam

8.Mohamed Zaheer

9.Ms.Mohamed Ariff,

10.Ms.Nafeesa Begam @ Nafeesuninsa

11.Mrs.Anitha

12.Ms.Antharunissa

13.Ms.Saraunissa

14.Ahmed Basha

15.Farook Basha

16.Siddique Basha

17.Ms.Taslimunisa

18.Naseemunisa

19.Ms.Adilaunisa

20.Ms.Afsarunisa

21.Ms.Hilalunisa

22.Ms.Habibunisa

23.Ms.Mehrunnisa bee

24.Gulam Khader

...Respondents

25.Gulam Hussain

26.Gulam Mohideen

27.Gulam Rasool

28.Ms.Asmath Bee

29.Ms.Aysa Bee

30.Mohamed Sathakuthulla

31.The Sub Registrar,  
Thirupporur,  
Kanchipuram District.

32.The Tahsildar,  
Chengalpattu Taluk,  
Kancheepuram District.

...Respondents

**C.R.P.(PD)No.3447 of 2018:**

1.Gulam Khader

2.Gulam Hussain

3.Gulam Mohideen

4.Gulam Rasool

5.Asmath Bee

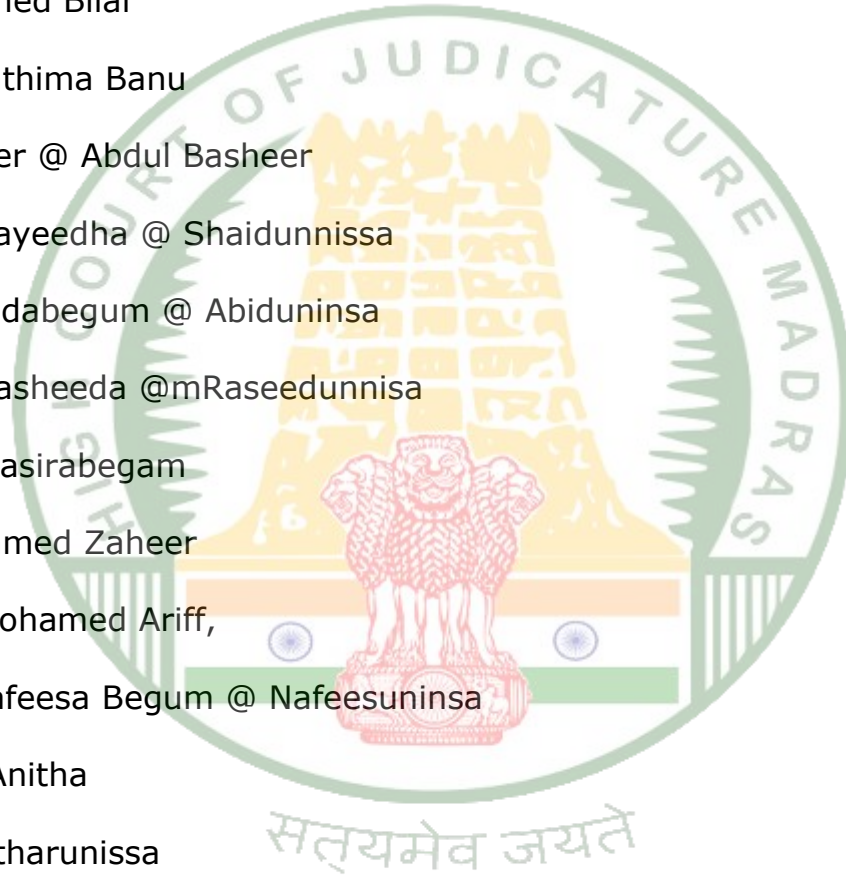
6.Ms.Aysa bee

...Petitioners

Vs

1.N.Kandasamy

- 2.N.Mohan
- 3.Mrs.Muktarunnisa
- 4.Mohammed Jalal
- 5.Mohamed Bilal
- 6.Mrs.Fathima Banu
- 7.Basheer @ Abdul Basheer
- 8.Ms.Shayeedha @ Shaidunnissa
- 9.Ms.Abidabegum @ Abiduninsa
- 10.Ms.Rasheeda @mRaseedunnisa
- 11.ms.Nasirabegam
- 12.Mohamed Zaheer
- 13.Ms.Mohamed Ariff,
- 14.Ms.Jafeesa Begum @ Nafeesuninsa
- 15.Mrs.Anitha
- 16.Ms.Atharunnisa
- 17.Ms.Saraunnisa
- 18.Ahmed Basha
- 19.Farook basha
- 20.Siddique basha
- 21.Ms.Taslimunisa



22.Naseemunisa

23.Ms.Adilaunisa

24.Ms.Afsarunisa

25.Ms.Hilalunisa

26.Ms.Habibunisa

27.Ms.Mehrunnisa Bee

28.Mohamed Sathakathullah

29.The Sub Registrar  
Thirupporur,  
Kanchipuram District.

30.The Tahsildar,  
Chengalpattu Taluk,  
Kancheepuram District.

...Respondents

**C.R.P.(PD)No.3452 of 2018:**

1.Ms.Mehrunnisa Bee

...Petitioners

Vs

1.N.Kandasamy

2.N.Mohan

3.Mrs.Muktarunnisa

4.Mohammed Jalal

5.Mohamed Bilal

WEB COPY

- 6.Mrs.Fathima Banu
- 7.Basheer @ Abdul basheer
- 8.Ms.Shayeedha @ Shaidunnissa
- 9.Ms.Abidabegum @ Abiduninsa
- 10.Ms.Rasheeda @ mRassedunnisa
- 11.Ms.Nasirabegam
- 12.Mohamed Zaheer
- 13.Ms.Mohamed Ariff
- 14.Ms.Nafeesa Begum @ Nafeesuninsa
- 15.Mrs.Anitha
- 16.Ms.Atharunissa
- 17.Ms.Saraunissa
- 18.Ahmed Basha
- 19.Farook Basha
- 20.Siddique basha
- 21.Ms.Taslimunisa
- 22.Naseemunisa
- 23.Ms.Adilaunisa
- 24.Ms.Afsarunisa
- 25.Ms.Hilalunisa



WEB COPY

26.Ms.Habibunisa

27.Gulam Khader

28.Gulam Hussain

29.Gulam Mohideen

30.Gulam Rasool

31.Ms.Asmath Bee

32.Ms.Aysa Bee

33.Mohamed Sathakathullah

34.The Sub Registrar  
Thirupporur,  
Kanchipuram District

35.The Tahsildar,  
Chengalpattu Taluk,  
Kancheepuram District.

...Respondents

**C.R.P.(PD)No.3827 of 2018:**

1.Saraunissa

2.Farook basha

3.Siddique Basha

4.Taslimunisa

5.Naseemunisa

6.Adilaunisa

7.Afsarunisa

8.Hilalunisa

... petitioners

Vs

1.N.Kandasamy

2.N.Mohan

3.Muktarunnisa

4.Mohamed Jalal

5.Mohamed Bilal

6.Fathima Banu

7.Basheer @ Abdul Basheer

8.Shayeedha @ Shaidunnissa

9.Abidabegum @ Abiduninsa

10.Rasheeda @ Raseedunnisa

11.Nasirabegam

12.Mohamed Zaheer

13.K.Mohamed Ariff

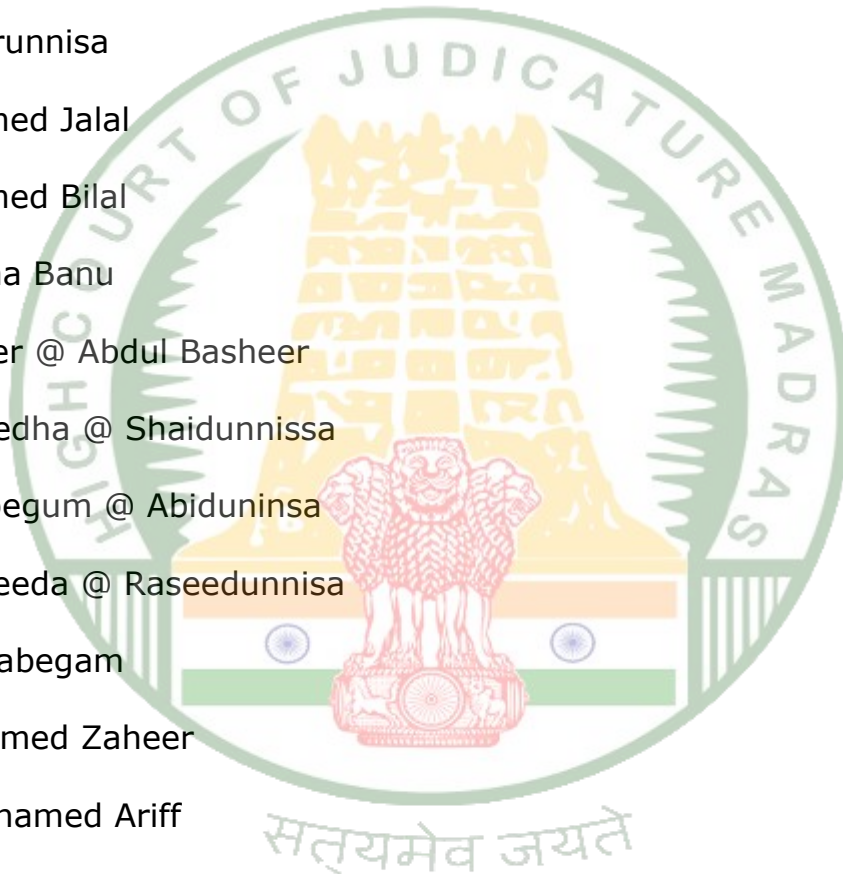
14.Nafeesa Begam @ Nafeesuninsa

15.Anitha

16.Atharunnissa

17.Ahmed Basha

18.Habibunisa



WEB COPY

19.Mehrunnisa Bee

20.Gulam Khader

21.Gulam Hussain

22.Gulam Mohideen

23.Gulam Rasool

24.Asmath Bee

25.Aysa Bee

26.Mohamed Sathakathullah

27.The Sub Registrar  
Thirupporur,  
Kanchipuram District.

28.The Tahsildar,  
Chengalpattu Taluk,  
Kanchipuram District.

...Respondents

**C.R.P.(PD)No.4159 of 2018:**

1.Bashre @ Abdul basheer

2.Ms.Shayeedha @ Shaidunnissa

3.Ms.Abidabegum @ Abiduninsa

4.Ms.Rasheeda @ mRassedunnisa

5.Ms.Nasirabegam

6.Mohamed Zaheer

7.Ms.Mohamed Ariff

8.Ms.Nafeesa Begum @ Nafeesuninsa

9.Mr.Anitha

...Petitioners

Vs

1.N.Kandasamy

2.N.Mohan

3.Mrs.Muktarunnisa

4.Mohammed Jalal

5.Mohamed Bilal

6.Mrs.Fathima Banu

7.Ms.Atharunnisa

8.Ms.Saraunnisa

9.Ahmed Basha

10.Farook Basha

11.Siddique Basha

12.Tasilmunisa

13.Naseemunisa

14.Ms.Adilaunisa

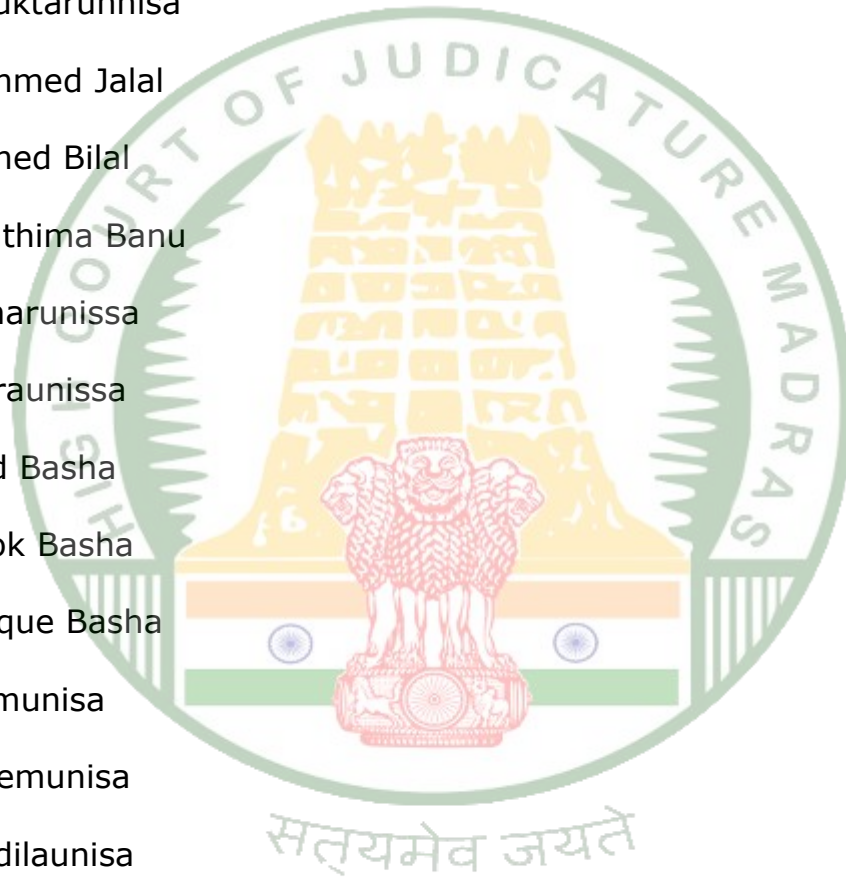
15.Ms.Afsarunisa

16.Ms.Hilalunisa

17.Ms.habibunisa

18.Ms.Mehrunnisa Bee

19.Gulam Khader



WEB COPY

20.Gulam Hussain

21.Gulam Mohideen

22.Gulam Rasool

23.Ms.Asmath Bee

24.Ms.Aysa Bee

25.Mohamed Sathakatullah

26.The Sub Registrar  
Thirupporur,  
Kanchipuram District.

27.The Tahsildar,  
Chengalpattu Taluk,  
Kanchipuram District.

...Respondents

**C.R.P.(PD)No.85 of 2019:**

1.Mr.G.Saravanan

...Petitioner

1.N.Kandasamy

2.N.Mohan

3.basheer @ Abdul Basheer

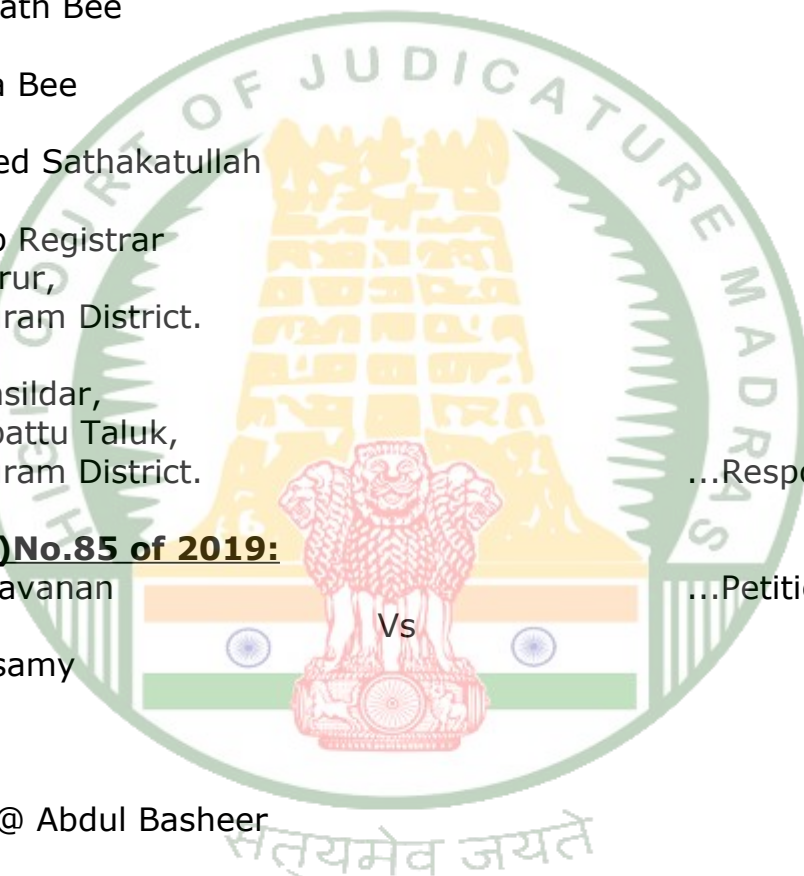
4.Ms.Shayeedha @ Shaidunnissa

5.Abidabegum @ Abiduninsa

6.Ms.Rasheeda @ mRassedunnisa

7.Ms.Nasirabegam

8.Mohamed Zaheer



WEB COPY

9.Ms.Mohamed Ariff

10.Ms.Nafeesa Begum @ Nafeesuninsa

11.Mrs.Zaidunnisa

12.Mrs.Anitha

13.The District Revenue Officer  
Kancheepuram District.

14.The Revenue Divisional Officer  
Chengalpatu Taluk  
Kancheepuram District

15.The Tahsildar,  
Thiruporur Taluk,  
Kancheepuram

16.The District Collector  
Kancheepuram District.

...Respondents

**Prayer in C.R.P.(PD)No.1245 of 2017:** Civil Revision Petition is filed under Article 227 of the Constitution of India to strike-off the plaint in O.S.No.39 of 2017 on the file of the District Munsif, Chengalpattu.

**Prayer in C.R.P.(PD)No.2741 of 2017:** Civil Revision Petition is filed under Article 227 of the Constitution of India to strike-off the plaint in O.S.No.1740 of 2017 on the file of the XVIII Assistant City Civil Court, Chennai.

**Prayer in C.R.P.(PD)No.3447 of 2018:** Civil Revision Petition is filed under Article 227 of the Constitution of India to strike-off the plaint in O.S.No.1740 of 2017 on the file of the XVIII Assistant City Civil Court, Chennai.

**Prayer in C.R.P.(PD)No.3452 of 2018:** Civil Revision Petition is filed under Article 227 of the Constitution of India to strike-off the plaint in O.S.No.1740 of 2017 on the file of the XVIII Assistant City Civil Court, Chennai.

**Prayer in C.R.P.(PD)No.3827 of 2018:** Civil Revision Petition is filed under Article 227 of the Constitution of India to strike-off the plaint in O.S.No.1740 of 2017 on the file of the XVIII Assistant City Civil Court, Chennai.

**Prayer in C.R.P.(PD)No.4159 of 2018:** Civil Revision Petition is filed under Article 227 of the Constitution of India to strike-off the plaint in O.S.No.1740 of 2017 on the file of the XVIII Assistant City Civil Court, Chennai.

**Prayer in C.R.P.(PD)No.85 of 2019:** Civil Revision Petition is filed under Article 227 of the Constitution of India to strike-off the plaint in O.S.No.39 of 2017 on the file of the District Munsif, Chengalpattu.

**C.R.P.(PD)No.1245 of 2017:**

For Petitioners : Mr.A.E.Ravichandran  
 For Respondents 1 & 2 : Mr.K.Mahalingam  
 For Respondents 3 to 6 : Given Up

**C.R.P.(PD)No.2741 of 2017:**

For Petitioners : Mr.S.P.Arthi  
 For Respondents 1 & 2 : Mr.K.Mahalingam  
 For Respondents 3 to 11: Mr.A.E.Ravichandran  
 For Respondents 12 & 22: Not Ready in Notice  
 For Respondents 13, 15  
                                          to 21 : Mr.N.Manokaran  
 For Respondents 14, 24,  
                                          26 & 30 : Given Up  
 For Respondents 23 to  
                                          25, 27 & 29: Mr.S.R.Sundar  
                                                                                  for Mr.N.Sudharsan  
 For Respondents 31 & 32: Mr.Sricharan Rangarajan

**C.R.P.(PD)No.3447 of 2018:**

For Petitioners : Mr.S.R.Sundar

For Respondents 1 & 2 : Mr.K.Mahalingam

For Respondents 3 to 6 : Ms.S.P.Arthi

For Respondents 7 to 15: Mr.A.E.Ravichandran

For Respondents 16, 18,  
27 & 28 : Not Ready in Notice

For Respondents 17, 19  
& 26 : No Appearance

For Respondent 25 : Mr.V.Ayyadurai  
Senior Counsel

For Respondents 29 & 30: Mr.Sricharan Rangarajan  
Special Government Pleader

**C.R.P.(PD)No.3452 of 2018:**

For Petitioners : Mr.S.R.Sundar

For Respondents 1 & 2 : Mr.K.Mahalingam

For Respondents 3 to 6 : Ms.S.P.Arthi

For Respondents 7 to 15: Mr.A.E.Ravichandran

For Respondents 16, 18,  
27 to 33 : Not Ready in Notice

For Respondents 17, 19  
to 26 : No Appearance

For Respondents 34 & 35: Mr.Sricharan Rangarajan  
Special Government Pleader

**C.R.P.(PD)No.3827 of 2018:**

For Petitioners : Mr.N.Manokaran  
 For Respondents 1 & 2 : Mr.K.Mahalingam

**C.R.P.(PD)No.4159 of 2018:**

For Petitioners : Mr.A.E.Ravichandran  
 For Respondents 1 & 2 : Mr.K.Mahalingam  
 For Respondents 3 to 27: Given Up

**C.R.P.(PD)No.85 of 2019:**

For Petitioners : Mr.S.Rajasekar  
 For Respondents 1 & 2 : Mr.K.Mahalingam  
 For Respondents 3 to 16: Given Up

**COMMON ORDER**

Civil Revision Petitions Nos.2741 of 2017, 3447 of 2018, 3452 of 2018, 3827 of 2018 and 4159 of 2018 have been filed by the various defendants to the suit O.S.No.1740 of 2017 to strike of the plaint. C.R.P.Nos.1247 of 2017 and 85 of 2019 are once

again filed by some of the defendants in O.S.No.39 of 2017 and O.S.No.1740 of 2017 to reject the plaint in O.S.No.195 of 2011. The three suits have been instituted by the very same plaintiffs. The details of the defendants and the respective Civil Revision Petitions are given in the table below:

| <b>S.No</b> | <b>C.R.P.No.</b>      | <b>Petitioners in Revision<br/>Petition and their<br/>Rankings in O.S.No.1740<br/>of 2017</b> |
|-------------|-----------------------|-----------------------------------------------------------------------------------------------|
| 1.          | C.R.P.No.1245 of 2017 | Abdul Basheer and 8 others (defendants 1 to 8 & 10)                                           |
| 2.          | C.R.P.No.2741 of 2017 | Muktarunissa and 3 others (defendants 1 to 4)                                                 |
| 3.          | C.R.P.No.3447 of 2018 | Gulam Khader and 5 others (defendants 26 to 31)                                               |
| 4.          | C.R.P.No.3452 of 2018 | Mehrunisa Bee (25th defendant)                                                                |
| 5.          | C.R.P.No.3827 of 2018 | Sarunisa and 7 others (defendants 15, 17 to 23)                                               |
| 6.          | C.R.P.No.4159 of 2018 | Basheer @ Abdul Basheer & 8 others (defendants 5 to 13)                                       |
| 7.          | C.R.P.No.85 of 2019   | G.Saravanan (11 <sup>th</sup> defendant)                                                      |

The subject matter of all the three suits are the same.

2. Though extensive arguments have been put forward spread over a few hours, however, the sum and substance of all the arguments put together by the various revision petitioners is that the suit in O.S.No.1740 of 2017 and O.S.No.39 of 2017 deserves to be struck off from the file on the ground that:

- a) Abuse of process of the Court
- b) Re-litigation
- c) Barred by the provisions of Order II Rule 2 of the Code of Civil Procedure.

3. Before proceeding to consider the arguments, it is necessary to place the factual matrix in perspective. The plaintiffs in the suit O.S.No.1740 of 2017 had in the year 2011 filed a suit O.S.No.195 of 2011 on the file of the District Munsif, Chengalpattu against the 13<sup>th</sup> defendant in the suit O.S.No.1740 of 2017, who is the 10<sup>th</sup> defendant in the suit O.S.No.39 of 2017 and the District Collector, Kancheepuram and the Tahsildar,

Chengalpattu. The said suit was filed for seeking a decree for permanent injunction in respect of -

*"a)Restraining the defendants 1 to 3 from in any way acting on the basis of the order dated 26.07.2011 passed by the 3<sup>rd</sup> respondent.*

*b)Restraining the 1<sup>st</sup> defendant her principal, their men, agents, servants and representatives from any way interfering with the peaceful possession and enjoyment of the suit property.*

*c)Restraining the 1<sup>st</sup> defendant her principal from any way alienating or encumbering the suit property on the basis of the order dated 26.07.2011."*

**The facts of this suit in brief are as follows:**

4. The plaintiffs would contend that they had purchased the schedule property under a sale deed dated 25.11.1986 from one Mehrunnisa and her son Sadiq Basha. According to the plaintiffs their vendors were in hostile possession continuously to the

knowledge of the entire village. The plaintiffs who were in enjoyment of the said property from the date of purchase by cultivating the lands received a letter dated 08.07.2011 from the 3<sup>rd</sup> defendant, namely, the Tahsildar, Chengalpattu to appear before him with all the documents. The plaintiffs have appeared before the 3<sup>rd</sup> defendant and informed him that their documents were pledged with a money lender and that they would produce the same within a period of three months.

5. Despite, such a representation the 3<sup>rd</sup> defendant after giving one chance proceeded to pass orders to cancel Patta that was issued in the name of the plaintiffs and issued Patta in favour of the 1<sup>st</sup> defendant. In the course of the pleadings the plaintiffs have submitted that from the order of the Tahsildar they came to know that the vendor of the 1<sup>st</sup> defendant one C.A.Khabeer had filed some suit on the file of the City Civil Court, Chennai and obtained a decree.

6. The plaintiffs would submit that the suit was not maintainable on the file of the City Civil Court, Chennai, since the properties were all situate in Chengalpattu. The plaintiffs further go on to state that the order or decree or Judgement passed in the suit would not bind them and that they were taking separate steps to challenge the order passed by the 3<sup>rd</sup> defendant. Since, the 1<sup>st</sup> defendant was trying to disturb the possession of the plaintiffs on the strength of the order of the 3<sup>rd</sup> defendant, the plaintiffs have come forward with the suit supra. None of the plaintiffs or the defendants in the suit O.S.No.8667 of 1985 are parties to this suit.

**O.S.No.39 of 2017 & 1740 of 2017:**

7. It is seen that after filing of the suit in O.S.No.195 of 2011 the plaintiffs have filed another suit in O.S.No.39 of 2017 against the legal representatives of C.A.Khabeer, the 1<sup>st</sup> defendant in the suit O.S.No.1740 of 2017, one G.Saravanan as

well as the District Revenue Officer, Kancheepuram and Revenue Divisional Officer, Kancheepuram, the Tahsildar, Thirupporur Taluk, Kancheepuram and the District Collector, Kancheepuram. This suit is filed for the following reliefs:

*"(i)for declaration, declaring that the orders passed by the 12<sup>th</sup> defendant in Na.Ka.No.21395 of 2012/N4 dated 24.01.2014 is null and void and not bind the plaintiffs, since the same was passed by him on the fraud played by the 10<sup>th</sup> defendant, driving the pendency of Civil Suit in O.S.No.159 of 1986 and A.S.No.35 of 2002.*

*(ii)for declaration declaring that the impugned orders passed by the defendants 12 to 13 Na.Ka.No.1533/11 dated 26.07.2011, Na.Ka.No.2825/2011 dated 10.11.2011 with respect to the suit property in their respective patta transfer proceedings are null and void and not bind the plaintiffs and the same is against the G.O.Ms.409*

*dated 02.07.2008, since the impugned orders were passed during the pendency of the suits in O.S.No.159 of 1986, Appeal Suit A.S.No.35 of 2002 and O.S.No.191 of 2011.*

*(iii)for declaration declaring that the make belief Mortgage Deed dated 25.11.2011 executed by the 10<sup>th</sup> defendant in favour of 11<sup>th</sup> defendant registered as Document No.12002 of 2011 on the files of the SRO Thiruporur is null and void and not binding with respect to the suit schedule properties.*

*(iv)for Mandatory injunction directing the defendants 12 to 14 to cancel the Patta bearing Nos.2267 and 2268, issued in favour of the 10<sup>th</sup> defendant herein and the said Mr.C.A.Khabeer (Deceased) and to restore the Patta No.346 which was originally stands in the name of the plaintiffs herein before initiation of the patta proceedings by the 10<sup>th</sup> defendant;*

*(v)for a consequential permanent injunction restraining the defendants 1 to 11 their men, servants, agents, representatives or any one claiming under them from dealing with the schedule mentioned property in any manner.”*

8. Extensive pleadings have been made in the said suit wherein the plaintiffs have reiterated the purchase of the property by them from Mehrunnisa and her son Sadiq Basha in the year 1986 and reference has been made to the suit O.S.No.8667 of 1985, which the plaintiffs would contend is a non-est decree on the basis of which the 10<sup>th</sup> defendant, K.Anitha and her vendor C.A.Khabeer would claim title to the suit property.

9. The plaint contains elaborate details with reference to the suit O.S.No.8667 of 1985 and the subsequent proceedings initiated pursuant to the ex parte decree in O.S.No.8667 of 1985.

The plaintiffs have questioned the right of the C.A.Khabeer. The pleadings has also elaborately dealt with the alleged fraud that has been committed by the said C.A.Khabeer and the husband of the said K.Anitha, one Mohan Ranganathan, as also the various proceedings initiated by them against the plaintiffs. The plaintiffs have ultimately stated that the said C.A.Khabeer had no right or interest in the property and could not convey the same to the 10<sup>th</sup> defendant and on the contrary they would submit that they have valid title from Mehrunnisa and her son Sadiq Basha and that they have been in possession and enjoyment of the same since the date of the purchase. The cause of action that has been pleaded in the above suit is as follows:

*"40.The cause of action for the filing the present suit arose within the jurisdiction of this Hon'ble Court where the suit properties are situates; on 28.11.1986 the plaintiffs bonafidely purchased the suit properties; on 21.01.2014 the 12<sup>th</sup> defendant confirmed the order passed by 14<sup>th</sup> defendant in his proceeding in*

*Na.Ka.No.21395/2012/N4; on 10.02.2014, the plaintiffs have received the order passed by the 12<sup>th</sup> defendant; on 25.03.2014 the plaintiff applied for certified copy of the exparte decree and judgement in O.S.No.8665 of 1985; during May 2015 when the plaintiffs verify the suit Registers before this Hon'ble Court and came to know that the suit in O.S.No.159 of 1986 is pending on the files of this Hon'ble Court, on 15.06.2015 the plaintiffs files impleading petition to implead them in A.S.No.35 of 2002; On 19.06.2015 the plaintiffs caused legal notice to the defendants 10 to 14; on 08.09.2015 the plaintiffs filed impleading petition to implead them in O.S.No.159 of 1986 and on subsequent dates all within the jurisdiction of this Hon'ble Court."*

WEB COPY

This suit is the subject matter of C.R.P.No.1245 of 2017 and C.R.P.No.85 of 2019.

10. On 13.03.2017, within a month of filing the suit O.S.No.39 of 2017, the plaintiffs have filed the suit in O.S.No.1740 of 2017, which is the subject matter of five of the present revisions. The pleadings are identical to the pleadings that have been set out in the plaint O.S.No.39 of 2017 except for some additional sentences and rephrasing of some sentences. The plaint does not contain any reference to the suit O.S.No.39 of 2017. Interestingly, the cause of action that is pleaded in this suit is more or less similar to the cause of action pleaded in the O.S.No.39 of 2017, barring some additions. The relief that is claimed in the instant suit is to declare the ex parte Decree dated 11.11.1989 in O.S.No.8667 of 1985 passed by the VI Assistant City Civil Judge, Chennai, with regard to the suit property as null and void and not binding on the plaintiffs.

WEB COPY

11. The filing of these suits have resulted in the defendants invoking the supervisory Jurisdiction of this Court under Article

227 of the Constitution of India to strike off the plaint in O.S.No.39 of 2017 and O.S.No.1740 of 2017 on the ground that the same is nothing but an abuse of process of law and a clear case of re-litigation. They would contend that the filing of the suit O.S.No.1740 of 2017 for the relief of declaring the ex parte decree in O.S.No.8667 of 1985 as null and void, after the filing of the suit O.S.No.39 of 2017 is nothing but re-litigation. They would argue that the cause of action for seeking the above relief was available even when the suit O.S.No.195 of 2011 and O.S.No.39 of 2017 was filed. Therefore, according to the revision petitioners, the suit is clearly barred by the provisions of Order II Rule 2 of the code of Civil Procedure.

12. The counsels appearing for the various parties in each of the revisions had argued extensively by referring to the various documents that have been filed along with the suit O.S.No.1740 of 2017, as well as the earlier suit in O.S.No.39 of 2017 and O.S.No.195 of 2011. Considering the fact that this

Court is only called upon to consider as to whether the suits in O.S.No.39 of 2017 and O.S.No.1740 of 2017, requires to be rejected, this Court is not delving in detail with each of the submissions made by the counsels for the petitioners but is zeroing on the substances/points of argument. Infact arguments were advanced primarily on the overlap in the pleadings in O.S.No.39 of 2017 and O.S.No.1740 of 2017.

13. Likewise, the learned counsel for the plaintiffs who is now defending the striking off of the suit O.S.No.1740 of 2017 and O.S.No.39 of 2017 has taken this Court in great detail to the suit O.S.No.8667 of 1985, which is the subject matter of the suit O.S.No.1740 of 2017, the other suits preferred consequently and also narrating the various incidents of fraud.

**Discussion:**

14. This Court is called upon to consider the plaints in O.S.No.39 of 2017 and O.S.No.1740 of 2017 and on perusal of

the same and the documents filed along with it to arrive at a conclusion as to whether the defendants have made out the case for striking of the plaints. As already submitted the suits O.S.No.39 of 2017 and O.S.No.1740 of 2017 are attacked on the following grounds:

- a) Abuse of Process of law
- b) Re-litigation
- c) Barred by the provisions of Order II Rule 2.

The challenge to the suit O.S.No.39 of 2017 has been made by parties who are not parties to the earlier suit O.S.No.195 of 2011. The defendants in the suit O.S.No.195 of 2011 who are also a parties to the suit O.S.No.39 of 2017 and O.S.No.1740 of 2017 has not chosen to file a petition to strike of the pleadings in O.S.No.39 of 2017. The revision is filed by 3rd parties to the suit O.S.No.195 of 2011. The 1st suit is for a bare injunction against Anitha, the 10th defendant in O.S.No.39 of 2017 and the 13th defendant in O.S.No.1740 of 2017. The cause of action for that suit is the cancellation of the patta issued in favour of the

plaintiffs by the Tahsildar, Chengalpattu. The revision petitioners in C.R.P.No.1245 of 2017 and C.R.P.No.85 of 2019 are not parties to the earlier suit. The Honourable Supreme Court in the decision reported in **2014 (6) SCC 424 - Coffee Board Vs. Ramesh Export Pvt. Ltd.**, has held that the bar under the provisions of Order II Rule 2 of the Code of Civil Procedure would occur if the cause of action in the two suits are identical and the parties involved in the two suits are the same. Such is not the case of the suit O.S.NO.195 of 2011 and O.S.No.39 of 2017. The cause of action is different. Therefore the revisions filed to strike off the plaint in O.S.No.39 of 2017 is liable to be dismissed.

Now coming to the suit O.S.No.1740 of 2019, the challenge to the same are on the following grounds:

**Barred by the Provisions of Order II Rule 2:**

15. Order II Rule 2 of the Code of Civil Procedure reads as follows:

*"2.Suit to include the whole claim*

*(1)Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*

*(2)Relinquishment of part of claim – Where a plaintiff omits to sue in respect of, or internationally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

*(3)Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.*

*Explanation- For the purposes of this rule an*

*obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."*

A reading of the said order clearly indicates that if on the date of the filing of a suit the plaintiff is entitled to sue for various reliefs since the cause of action for those reliefs had arisen and the plaintiff chooses not to seek 1 or 2 reliefs, then he is bound to seek the leave of the Court to sue for that relief at a later point in time. If such a leave is not obtained then the later suit is barred.

16. When we consider the suit in O.S.No.1740 of 2017, along with the pleadings in the suit O.S.No.39 of 2017, it is clearly evident that even on the date of filing of the suit O.S.No.39 of 2017, the cause of action for setting aside the decree in O.S.No.8667 of 1985 existed. However, it is seen that the plaintiffs have not chosen to sue for the relief in their suit

O.S.No.39 of 2017. It is also evident from a reading of the plaint in O.S.No.39 of 2017, that the plaintiffs have not sought the leave of the Court to sue in respect of those reliefs omitted to be sued at a latter point in time. Therefore the suit O.S.No.1740 of 2017 is clearly barred by the provisions of Order II Rule 2 of the Code of Civil Procedure.

17. Once again useful reference can be made to the Judgement of the Honourable Supreme Court in the Judgement reported in **(2014) 6 SCC 424 - Coffee Board Vs. Ramesh Exports Private Limited** had held as follows:

*"12.The Courts in order to determine whether a suit is barred by Order 2 Rule 2 must examine the cause of action pleaded by the plaintiff in his plaints filed in the relevant suits (see S.Nazeer Ahmed V. State Bank of Mysore). Considering the technicality of the plea of Order 2 Rule 2, both the plaints must be*

*read as a whole to identify the cause of action, which is necessary to establish a claim or necessary for the plaintiff to prove if traversed. Therefore, after identifying the cause of action if it is found that the cause of action pleaded in both the suits is identical and the relief claimed in the subsequent suit could have been pleaded in the earlier suit, then the subsequent suit is barred by Order 2 Rule 2."*

18. In another Judgement reported in **2014 (3) SCC 595 - State Bank of India Vs. Gracure Pharmaceuticals Limited**, the Honourable Supreme Court held as follows:

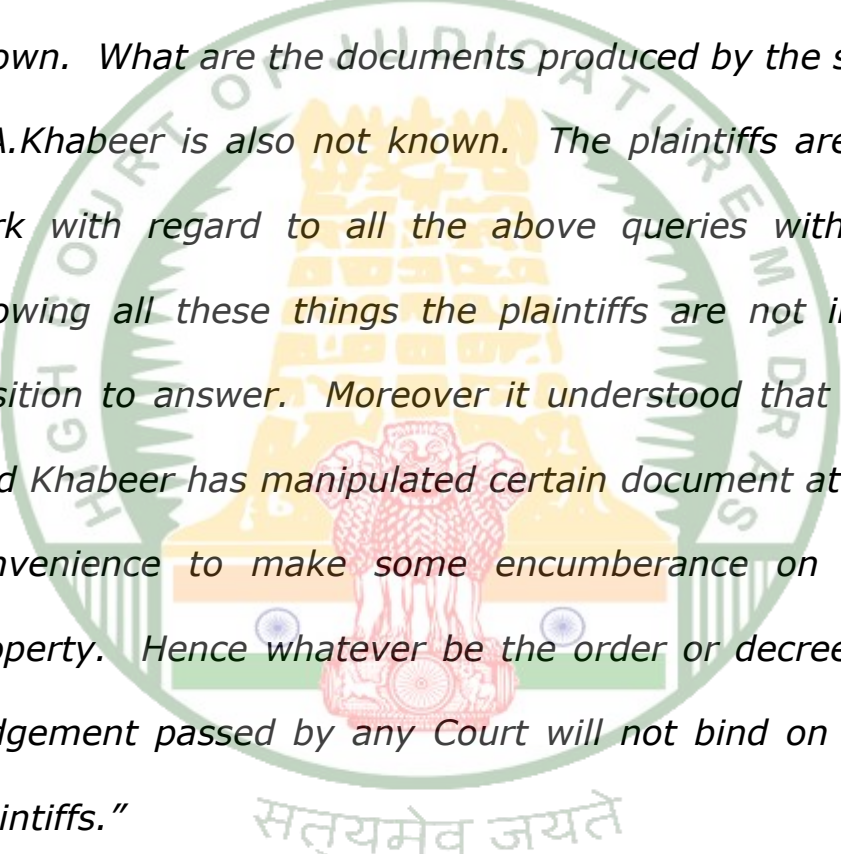
*"We find, as such, that the respondent had omitted certain reliefs which were available to it at the time of filing of the first suit and after having relinquished the same, it cannot file a separate suit in view of the provisions of Sub-rule 2 of Order 2 Rule 2 CPC. The object of Order 2 Rule 2 is to avoid*

*multiplicity of proceedings and not to vex the parties over and again in a litigative process. The object enunciated in order 2 Rule 2 is laudable and it has a larger public purpose to achieve by not burdening the Court with repeated suits."*

19. Therefore, from a reading of the provisions of Order II Rule 2 of the Code of Civil Procedure coupled with the Judgements cited supra it is clear that the suit O.S.No.1740 of 2017 is barred by the provisions of Order II Rule 2, since the plaintiffs have omitted to file for the relief to declare the ex parte decree in O.S.No.8667 of 1985, as null and void though the existed even when the suit O.S.No.39 of 2017 was filed. Further in the earlier suit of the year 2011 the plaintiff has specifically pleaded has follows:

*"From the order the plaintiffs came to know that the said C.A.Khabeer filed some suit on the file of City Civil Court and obtained a decree. How the suit was*

*filed in City Civil Court is now known why the suit was not filed in Chengalpattu Court where the properties are available in Chengalpattu Taluk limit is not known. Moreover who are the parties to suit is also not known. What are the documents produced by the said C.A.Khabeer is also not known. The plaintiffs are at dark with regard to all the above queries without knowing all these things the plaintiffs are not in a position to answer. Moreover it understood that the said Khabeer has manipulated certain document at his convenience to make some encumbrance on the property. Hence whatever be the order or decree or Judgement passed by any Court will not bind on the plaintiffs."*



20. Therefore, it is clear that the plaintiffs who at that point of time did not have any details about the earlier suit had simply filed a suit for a bare injunction since the 1st defendant therein

had tried to enter the property on 23.08.2011 forcing the plaintiffs to emergently file the suit. They had therefore chosen to not sue for the relief of declaring the ex parte decree in O.S.No.8667 of 1985 as null and void in the earlier suit of the year 2011. However even in the suit O.S.No.39 of 2017 this relief has not been asked though extensive pleadings had been made. Therefore the omission squarely comes within the phrase "intentionally relinquishes" as provided in Order II Rule 2 of the Code of Civil Procedure.

**Re-litigation and Abuse of Process of Court:**

21. The next point which has been urged by the revision petitioners for striking off the plaint is on the ground of re-litigation. From a reading of the three suits that have been filed by the plaintiffs, namely, O.S.No.195 of 2011, O.S.No.39 of 2017 and the instant suit O.S.No.1740 of 2017, it is seen that even in the year 2011 the plaintiffs was aware of a decree being granted against their vendor though without knowledge of its finer

details. The plaintiffs had only filed a suit for bare injunction as the cause of action there had arise since the 1st defendant therein has threatened his possession and the 1st defendant therein was the power agent of the one of the plaintiffs in the suit in O.S.No.8667 of 1985 and two others. They are also parties in the plaint O.S.No.39 of 2017.

22. The plaintiffs in the suit O.S.No.39 of 2017 has elaborated on the suit O.S.No.8667 of 1985 and narrated as to how the decree has been obtained fraudulently by the plaintiffs therein, the plaintiffs have also deemed it fit to narrate in detail about all the proceedings that had followed the suit O.S.No.8667 of 1985. They have also stated that on 10.02.2014, when they were served with the order of the Tahsildar dated 29.01.2014 they had contacted their vendors and from whom they had come to know about the ex parte decree and finer details about the suit O.S.No.8667 of 1985.

23. These narrations are available in paragraph Nos.2 to 6 of the plaint in O.S.No.39 of 2017. The very same statements has been carried over in the suit O.S.No.1740 of 2017. Despite having full knowledge about the ex parte in the suit O.S.No.8667 of 1985 even when the suit O.S.No.39 of 2017 was filed, the plaintiffs have omitted to seek a relief to declare the ex parte decree in O.S.No.8667 of 1985 as null and void. However, within a month thereafter on the very same set of pleadings as in the suit O.S.No.39 of 2017, the second suit O.S.No.1740 of 2017 for setting aside the decree in O.S.No.8667 of 1985 was filed. It is clearly a case of re-litigation.

24. The Honourable Supreme Court in the Judgement reported in **AIR 1977 SC 2421 – T.Arivanandam Vs. T.V.Satyapal and another**, for the first time explained the grounds under which Courts could strike off/reject the plaint in addition to the circumstances found in the Provisions of Order VI

Rule 16 and Order VII Rule XI of the Code of Civil Procedure. The Honourable Supreme Court included re-litigation and abuse of process of the court as two more grounds to strike off/reject the plaint.

25. This Judgement was followed in the Judgement reported in **(1998) 3 SCC 573 - K.K.Modi Vs. K.N.Modi**, where the Honourable Supreme Court has observed as follows:

*"42. Under Order 6 Rule 16, the Court may, at any state of the proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the court. Mulla in his treatise on the Code of Civil Procedure. (15th Edition, Volume II, page 1179 note 7) has stated that power under clause (c) of Order 6 Rule 16 of the Code is confined to cases where the abuse of the process of the Court is manifest from the pleadings; and that this power is unlike the power under [Section 151](#)*

*whereunder Courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of Court on the basis of what is stated in the plaint.*

*43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus:*

*"This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but*

*depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."*

*44. One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the Court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power*

*to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."*

In the said Judgement the Honourable Supreme Court has equated re-litigation as one of the examples of an abuse of process of the Court.

26. In the Judgement of this Court reported in **2012-1-LW-437 - R.M.Subbiah Vs. S.Ramakrishnan and others**, this Court while considering a similar situation as in the instant case had observed as follows:

*"15. Normally a plaint cannot be rejected*

*exercising power under Article 227 of the Constitution. However, if a party comes to the Court with unclean hands and re-agitate the matter again and again, the Courts are not powerless to exercise its discretion in putting a full stop to the same. The suits that have been filed by the first respondent is a glaring example where the Courts have to exercise its power to stop the first respondent is a glaring example where the Courts have to exercise its power to stop the first respondent from proceeding with the matter endlessly.”*

27. The issue of re-litigation and abuse of process of Court was elaborately dealt with in another Judgement of this Court reported in **2013-5-LW-350 – N.A.Chinnasamy and another Vs. S.Vellingirinathan**, where this Court has elaborated the superintending power of this Court under Article 227 of the Constitution of India to strike of the plaint. The learned Judge

has observed as follows:

*"As the revision petition has been filed under Article 227 of the Constitution of India, it being the superintending power of the High Court over all subordinate Courts, including Tribunals, this Court can interfere, only if there is clear abuse of process of Court, based on the averments or pleadings of the plaint. If it is established that the suit has been filed as an abuse of process of Court, in order to prevent the abuse of process of Court and to avoid miscarriage of justice, this Court has to order strike off the plaint."*

The learned Judge had also followed the dicta laid down in

**K.K.Modi's case.**

28. This Court also had an occasion to deal with a case of re-litigation in the Judgement reported in **2018 (4) CTC 483 - Vijayalakshmi Vs. R.Balasubramaniam**, where following the K.K.Modi's case this Court had struck off the plaint. The fact that

the plaintiffs have successively filed suits on the very same cause of action (atleast the cause of action in O.S.No.39 of 2017 and O.S.No.1740 of 2017 are identical). The defendants are put to a great deal of hardship and the said exercise by the plaintiffs is nothing but a sheer abuse of process of Court.

29. By filing various suits on the same cause of action the plaintiffs are attempting not only to protract the proceedings but also to keep litigation alive which is also abuse of process of Court in another garb. Having failed to seek the relief for declaring the suit O.S.No.8667 of 1985 as null and void in the earlier suit O.S.No.39 of 2017 and omitting to seek leave to file for the said relief on a later point of time, the second suit is liable to be dismissed on the ground of Order II Rule 2 of the Code of Civil Procedure. The plaintiffs who are very much aware of this position has intentionally omitted to sue for the said relief. This is nothing but an abuse of process of Court.

30. Therefore considering the above factors I am of the view that the suit O.S.No.1740 of 2017 is nothing but a re-litigation and abuse of process of Court and further barred by the provisions of Order II Rule 2 of the Code of Civil Procedure.

In the result, the Civil Revision Petitions Nos.2741 of 2017, 3447, 3452, 3827 and 4159 of 2018 are all allowed. The suit in O.S.No.1740 of 2014 pending on the file of the XVIII Assistant City Civil Judge, Chennai is struck off from the file. C.R.P.Nos.1245 of 2017 and C.R.P.No.85 of 2019 stands dismissed. However, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are also closed.

सत्यमेव जयते

**09.07.2019**

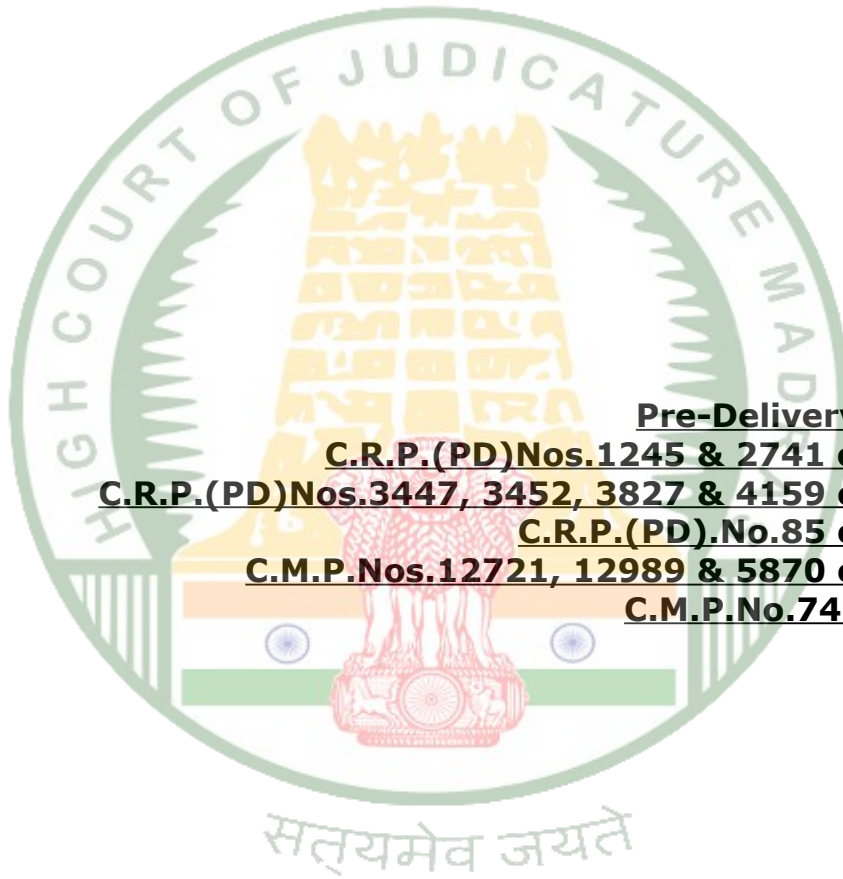
Kan  
Index : Yes/No  
Speaking order/non-speaking order

To  
1.The District Munsif,  
Chengalpattu  
2.The XVIII Assistant City Civil Judge,  
Chennai.

WEB COPY

**P.T.ASHA, J.,**

kan



**Pre-Delivery order in**  
**C.R.P.(PD)Nos.1245 & 2741 of 2017 &**  
**C.R.P.(PD)Nos.3447, 3452, 3827 & 4159 of 2018 &**  
**C.R.P.(PD).No.85 of 2019 &**  
**C.M.P.Nos.12721, 12989 & 5870 of 2017 &**  
**C.M.P.No.740 of 2019**

**WEB COPY**

**09.07.2019**