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C.R.P. (PD) .No.2300 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.10.2021	Delivered on: 23.12.2021
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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.2300 of 2018
and C.M.P.Nos.14354 & 17091 of 2018

M/s. Coramandal Beach Properties Private Limited,
Rep. by its Director,
Monisha Ranjan,
W/o. Pramod Ranjan,
Flat No.1-B, Ranga Prasad Apartments,
No.9, Binny Road, Poes Garden,
Chennai – 600 086.

.. Petitioner

Vs.

1.D.Selvi

2.R.Soundarapandian

3.R.Sankar

4.P.Devada

5.R.Arulmozhi

(Respondents 2 to 5 are represented by their
Special Power of Attorney, D.Selvi,
W/o. B.Dayalan,
No.1/32, Anna Street,
Periyapanicherry Village, Kovur Post,
Chennai – 600 128)



6.G.Madusudana Reddy

7.G.Thirupal Reddy

8.M/s. Shreyas Investments,
Rep. by its Partner,
N.Balasubramanian,
S/o. Late M.Natarajan,
No.240, Royapettah High Road,
Chennai – 600 014.

9.V.Krishnaveniammal

10.S.Dhanalakshmi

11.A.Santha

12.H.Sudha Lakshmi

13.A.Kumaran

14.A.Karthik

15.V.Kanniappan

16.V.Dhanasekaran (alias) Pavadai

17.P.Sathish

18.V.Kamalakani

19.V.Malar

20.K.Karnan

.. Respondents

(Respondents 6 to 20 remained exparte
in the Suit. Hence, they are given up)



Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 07.04.2018 passed in I.A.No.2324 of 2017 in O.S.No.294 of 2013 on the file of the District Munsif Court at Madurantakam, Kancheepuram District.

For Petitioner : Mr.T.V.Ramanujam
Senior Counsel
for Ms.R.Ramya
For RR 1 to 5 : Mr.B.Dayaalan
For RR 6 to 20 : Exparte vide in E.B.

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decretal order dated 07.04.2018 passed in I.A.No.2324 of 2017 in O.S.No.294 of 2013 on the file of the District Munsif Court at Madurantakam, Kancheepuram District.

2.The petitioner is 1st defendant in O.S.No.294 of 2013 on the file of the District Munsif Court at Madurantakam, Kancheepuram District. The respondents 1 to 5 herein are plaintiffs represented through their Special Power of Attorney. The respondents 1 to 5 filed the said suit for declaration that legal heirs of late A.Ganapathy Gramani viz., the respondents 1 to 5 and



respondents 9 to 20 are absolute owner of the suit schedule properties and have got title over the same and for possession from the petitioner and respondents 6 to 8, for declaration that respondents 1 to 5 as well as Mother of 7th defendant by name Yasodha, defendants 5 & 6 viz., V.Krishnaveniammal, S.Dhanalakshmi, who are respondents 9 & 10 herein, the father of defendants 8 to 10 by name T.G.Angamuthu viz., H.Sudha Lakshmi, A.Kumaran, A.Karthik, who are respondents 12 to 14 herein, mother of defendants 11, 12, 14 & 15/ respondents 15, 16, 18 and 19 and grand mother of 13th defendant/17th respondent herein and mother of 16th defendant/20th respondent herein are son and daughters are his surviving legal heirs and for permanent injunction restraining the petitioner and defendants 2 to 4 from encumbering or alienating the suit schedule property and permanent injunction restraining the petitioner and defendants 2 to 4 from any manner carrying out development in the lay-out of suit schedule properties. The petitioner filed I.A.No.2324 of 2017 under Order VII Rule 11(d) read with Section 151 of the Code of Civil Procedure to reject the suit as abuse of process of law and barred by law.

3.According to the petitioner, the suit in O.S.No.294 of 2013 is to be rejected on the ground of abuse of process of law namely under Order II



Rules 2(2) and (3) of the Code of Civil Procedure. The respondents filed suit in O.S.No.150 of 2013 for permanent injunction. The present suit in O.S.No.294 of 2013 has been filed for declaration and other consequential relief. The parties in O.S.No.150 of 2013 are parties in the present suit. The properties in the present suit are inclusive of suit properties in O.S.No.150 of 2013. The respondents have intentionally relinquished their alleged portion of claim in the schedule of properties filed in O.S.No.150 of 2013. Therefore, they cannot subsequently file the present suit in respect of portions of properties relinquished and the same is barred by provisions of Order II Rule 2(2) of Code of Civil Procedure. Both O.S.No.294 of 2013 and earlier suit in O.S.No.150 of 2013 are based on same cause of action. The petitioner extracted paragraph No.7 - cause of action in O.S.No.150 of 2013 and paragraph No.6 - cause of action in O.S.No.294 of 2013 in the affidavit filed in support of the present application and stated that a perusal of the two cause of action paragraphs clearly shows that present second suit in O.S.No.294 of 2013 has been filed in respect of same cause of action on which the earlier suit in O.S.No.150 of 2013 was filed, namely the alleged dispossession of respondents from suit properties by the petitioner along with one K.Vinayagam and others.



4.The plaint in O.S.No.150 of 2013 is dated 01.04.2013. The alleged cause of action for filing of O.S.No.294 of 2013 is stated to have arisen on 17.02.2013, when petitioners, defendants 2 & 3, their henchmen and local 'Dada' by name K.Vinayagam dispossessed the suit properties. When the respondents filed suit in O.S.No.150 of 2013 on 01.04.2013 for permanent injunction, the respondents were entitled to file a suit for declaration of title. On the other hand, the respondents filed suit in O.S.No.294 of 2013 on 19.08.2013, for declaration of title on the same cause of action which is barred by law. No fresh cause of action arose between the earlier suit and second suit. The respondents having relinquished the relief of declaration in O.S.No.150 of 2013, cannot file a separate second suit in view of provisions of Order II Rule 2(3) of the Code of Civil Procedure. The respondents in O.S.No.150 of 2013 did not obtain any leave of Court under Order II Rule 2(3) of the Code of Civil Procedure.

5.In paragraph No.16(b) of the plaint in O.S.No.294 of 2013, the respondents are seeking declaration in respect of dead persons, which is unknown in law and it is nothing but, abuse of process of law. In view of cause of action for both the suits in O.S.Nos.150 and 294 of 2013, the respondents ought to have claimed all the reliefs in the first suit in



O.S.No.150 of 2013 and second suit in O.S.No.294 of 2013 is not maintainable by law and hit by Order II Rule 2 (2) & (3) of the Code of Civil Procedure and prayed for rejection of plaint in O.S.No.294 of 2013.

6.The respondents 1 to 5 filed counter affidavit and denied all the averments contained in the affidavit filed in support of the above application. According to respondents 1 to 5, they filed suit in O.S.No.150 of 2013 on 01.04.2013 originally for the relief of permanent injunction against the petitioner and other defendants based on cause of action that arose on 17.03.2013, when defendants 14 to 18 and their henchmen attempted to interfere with their joint possession and enjoyment of suit schedule properties along with petitioner and defendants 3 to 13 for forming a layout road in the suit schedule properties as an ingress and egress to adjacent lands comprised in Survey Nos.617 to 633, 643 & 202 to 209 of the suit village, which is part of cause of action to file the above suit. The respondents have already filed suit in O.S.No.329 of 2012 against the defendants for declaration, consequential injunction and other reliefs and have obtained leave under Order II Rule 2 of the Code of Civil Procedure to file a suit or suits based on the same cause of action or fresh cause of action against the defendants or with third parties. The schedule of properties mentioned in O.S.No.329 of



2012 and schedule of properties mentioned in O.S.No.150 of 2013 are one and the same. The defendants 14 to 18 in O.S.No.150 of 2013 interfered with suit properties and the respondents 1 to 5 have filed the suit for permanent injunction. The respondents have already obtained leave under Order II Rule 2 of the Code of Civil Procedure in O.S.No.329 of 2012. Once leave has been obtained, any number of suits can be instituted on the same cause of action or fresh cause of action and question of barred by law under Order VII Rule 11(d) of the Code of Civil Procedure does not arise. The respondents 1 to 5 have extracted the schedule of properties in O.S.No.329 of 2012 and O.S.No.150 of 2013.

6(i). Even assuming, without admitting that the suit schedule properties in plaint in O.S.No.294 of 2013 is inclusive of properties mentioned in O.S.No.150 of 2013, there is no necessity to obtain leave once again under Order II Rule 2 (2) & (3) of the Code of Civil Procedure. Only to drag on the proceedings, the petitioner has filed the present application. The cause of action for the suit in O.S.No.294 of 2013 arose on 17.02.2013 when the petitioner, the defendants 2 & 3 along with 'Dada' K.Vinayagam with their henchmen dispossessed the respondents from properties in Sl.Nos.1, 2 and 12 to 19 and when the respondents issued Lawyer's notice dated 25.02.2013 and



on 23.06.2013, when they had dispossessed Sl.Nos.3 to 11.

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6(ii). The properties in O.S.No.150 of 2013 and O.S.No.294 of 2013 are different, distinct and separate properties. The respondents 1 to 5 extracted the schedules mentioned in both the suits. The cause of action for filing the suits in O.S.Nos.150 of 2013 and 294 of 2013 are also different and distinct and not connected with each other in any manner whatsoever. The respondents 1 to 5 denied the averments of the petitioner that parties in both the suits are one and the same. The defendants 14 & 15 in O.S.No.150 of 2013 are not parties in O.S.No.294 of 2013. Similarly, the 8th respondent / 4th defendant in O.S.No.294 of 2013 was not impleaded in O.S.No.150 of 2013. Subsequently, the 8th respondent / 4th defendant was impleaded as 19th defendant as per order dated 20.01.2016 made in I.A.No.1520 of 2015.

6(iii).The respondents 1 to 5 denied the allegation that they have intentionally relinquished their claim in O.S.No.150 of 2013 as baseless and false. The suit in O.S.No.294 of 2013 is not barred by law under Order II Rule 2(2) & (3) of the Code of Civil Procedure. Cause of action for the two suits are different and arose on 25.02.2013 for the suit in O.S.No.150 of 2013 and on 23.06.2013 for the suit in O.S.No.294 of 2013. The respondents 1 to 5



are not seeking relief against the dead persons, but they are seeking relief only against the existing persons. The petitioner can seek rejection of plaint not only against the respondents 1 to 5, but also against the respondents 6 to 20 / defendants 2 to 16, which is not maintainable and prayed for dismissal of the application.

7.The petitioner filed reply affidavit and denied all the averments made in the counter affidavit. The petitioner submitted that they are not parties to O.S.No.329 of 2012 and the leave obtained in the said suit is not binding on them. The cause of action for the said suit and O.S.No.150 of 2013 are different. O.S.No.150 of 2013 is pending and hence, O.S.No.294 of 2013 is hit by Order II Rule 2 (2) & (3) of the Code of Civil Procedure. The petitioner further stated that a plain reading of the plaints in O.S.Nos.150 & 294 of 2013 clearly demonstrate that subsequent suit in O.S.No.294 of 2013 is hit by Order II Rule 2 (2) & (3) of the Code of Civil Procedure.

8.The respondents filed rejoinder affidavit and denied all the allegations in the reply affidavit and repeated the averments in the plaint in both the suits and counter affidavit filed in the application filed under Order VII Rule 11 of the Code of Civil Procedure.



9.The learned Judge, considering the materials placed and judgments relied on by the petitioner, dismissed the application, holding that respondents 1 to 5 have obtained leave in O.S.No.329 of 2012. The properties and relief sought for in O.S.Nos.150 of 2013 and 294 of 2013 are different.

10.Challenging the said order of dismissal dated 07.04.2018 made in I.A.No.2324 of 2017 in O.S.No.294 of 2013, the petitioner has come out with the present Civil Revision Petition.

11.Both the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 to 5 filed written arguments.

12.Mr.T.V.Ramanujam, learned Senior Counsel appearing for the petitioner submitted that the learned Judge has erroneously held in the impugned order that respondents 1 to 5 / plaintiffs in the present application had obtained leave under Order II Rule 2 of the Code of Civil Procedure in some other suit in O.S.No.329 of 2012, in which the petitioner is not a party, especially when the respondents 1 to 5 have not produced the said leave granted in O.S.No.329 of 2012. The learned Judge failed to see that as per Order II Rule 2 of the Code of Civil Procedure, it is mandatory for the



plaintiff to include whole of the claim which he is entitled to make in respect of cause of action. The cause of action for the present suit has already arisen when the respondents filed suit in O.S.No.150 of 2013 for permanent injunction. The respondents 1 to 5 intentionally relinquished to claim the reliefs now sought for in the present suit. The learned Judge erred in holding that said subject matter in O.S.No.150 of 2013 and O.S.No.294 of 2013 are different. As per Order II Rule 2 of the Code of Civil Procedure, when the cause of action has already arisen, the plaintiff has to file the suit for all the reliefs he is entitled to at the time of filing of the suit. The respondents have specifically mentioned in the notice dated 25.02.2013, that the cause of action has arisen on 17.02.2013 when they were dispossessed and did not include the relief in O.S.No.150 of 2013. As per Order II Rule 2 of the Code of Civil Procedure, the plaintiff must include whole claim and seek for all the reliefs in respect of cause of action and if he fails to seek any relief, he is precluded from filing another suit in respect of omitted portion of the relief. The purpose of enacting Order II Rule 2 of the Code of Civil Procedure is to avoid multiplicity of proceedings and not to vex the defendants with a number of suits based on same cause of action. The learned Judge failed to see that respondents cannot split the cause of action. No fresh cause of action arose between filing O.S.No.150 of 2013 and O.S.No.294 of 2013. The



parties in both the suits are substantially identical. The present suit is clearly hit by provisions of Order II Rule 2 (2) & (3) of the Code of Civil Procedure as respondents failed to obtain leave to file subsequent suit.

12(a).The learned Senior Counsel further contended that respondents filed the first suit on 03.04.2013 and after various returns, it was lastly re-presented on 28.06.2013 and it was taken on file only on 01.07.2013 and numbered as O.S.No.150 of 2013. The plaint was returned on various dates and respondents ought to have amended the plaint to include the relief now claimed in O.S.No.294 of 2013. Even after the suit in O.S.No.150 of 2013 was taken on file, the respondents have filed two applications for amendment of plaint and at that time also, the respondents have not sought to include the reliefs sought for in the subsequent suit in O.S.No.294 of 2013.

12(b).The respondents 1 to 5 are filing multiplicity of proceedings and abusing the process of law. The respondents 1 to 5 have filed O.S.No.329 of 2012 and the petitioner is not a party in the said suit. The respondents 1 to 5 only filed two suits in O.S.Nos.150 and 294 of 2013. In both the suits, the plaintiffs are one and the same. The petitioner is 16th defendant in O.S.No.150 of 2013 and 1st defendant in O.S.No.294 of 2013.



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12(c).The respondents 1 to 5 issued notice dated 25.02.2013 through their counsel to the petitioner and two others. In the said notice, the respondents 1 to 5 have admitted that on 17.02.2013, the petitioner and others dispossessed the respondents 1 to 5 from 10 properties mentioned in the schedule therein. The said properties are described in schedule to O.S.No.294 of 2013 as item Nos.1, 2, 12 to 19 and also subject matter of O.S.No.150 of 2013. The survey numbers given for the properties in O.S.No.150 of 2013 are new survey numbers and sub-division of item Nos.16 to 19 in O.S.No.294 of 2013.

12(d).In support of his contention, the learned Senior Counsel appearing for the petitioner relied on the following judgments:

(i) Judgment of the Hon'ble Apex Court reported in ***(2013) 1 SCC 625, [Virgo Industries (Eng.) Private Limited Vs. Venturetech Solutions Private Limited]***, wherein the Hon'ble Apex Court at paragraph Nos.8 to 11 & 14, held as follows:

“... 8.The necessary discussions that will have to follow may be initiated by extracting the



provisions of Order II Rule 2 of the CPC:

“ORDER II

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 intentionally 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.”

9. Order II Rule 1 requires every suit to include the whole of the claim to which the plaintiff is entitled in respect of any particular cause of action. However, the plaintiff has an option to relinquish any part of his claim if he



chooses to do so. Order II Rule 2 contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, Order II Rule 2 of CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order II Rule 2 (2) does not contemplate omission or relinquishment of any portion of the plaintiff's claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the Court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave of the Court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order II Rule 2 (2) and (3) of the CPC that the aforesaid two sub-rules of Order II Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled



to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situations where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit proved that at the time of omission to claim the particular relief he had obtained leave of the Court in the first suit.

10. The object behind enactment of Order II Rule 2 (2) and (3) of the CPC is not far to seek. The Rule engrafts a laudable principle that discourages/prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the Court which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons. The situations where the bar under Order II Rule 2 (2) and (3) will be attracted have been enumerated in a long line of decisions spread over a century now. Though each of the aforesaid decisions contain a clear and precise narration of the principles of law arrived at after a detailed analysis, the principles laid down in the judgment



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of the Constitution Bench of this Court in [Gurbux Singh v. Bhooralal](#) may be usefully recalled below:

“6. In order that a plea of a bar under O. 2. r. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar.”

The above principles have been reiterated in several later judgments of this Court. Reference by way of illustration may be made to the judgments [Deva Ram & Anr. v. Ishwar Chand & Anr.](#)[3] and [M/s. Bengal Waterproof Ltd. v. M/s Bombay Waterproof Manufacturing Co.& Anr.](#)[4]

11. The cardinal requirement for application of the provisions contained in Order



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II Rule 2(2) and (3), therefore, is that the cause of action in the later suit must be the same as in the first suit. It will be wholly unnecessary to enter into any discourse on the true meaning of the said expression, i.e. cause of action, particularly, in view of the clear enunciation in a recent judgment of this Court in the Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman v. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee[5]. The huge number of opinions rendered on the issue including the judicial pronouncements available does not fundamentally detract from what is stated in Halsbury's Law of England, (4th Edition). The following reference from the above work would, therefore, be apt for being extracted hereinbelow:

“Cause of Action” has been defined as meaning simply a factual situation existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. ‘Cause of action’ has also been taken to mean that particular action the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance



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founding the action, not merely the technical cause of action."

14. The averments made by the plaintiff in C.S. Nos. 831 and 833 of 2005, particularly the pleadings extracted above, leave no room for doubt that on the dates when C.S. Nos. 831 and 833 of 2005 were instituted, namely, 28.8.2005 and 9.9.2005, the plaintiff itself had claimed that facts and events have occurred which entitled it to contend that the defendant had no intention to honour the agreements dated 27.7.2005. In the aforesaid situation it was open for the plaintiff to incorporate the relief of specific performance alongwith the relief of permanent injunction that formed the subject matter of above two suits. The foundation for the relief of permanent injunction claimed in the two suits furnished a complete cause of action to the plaintiff in C.S. Nos. 831 and 833 to also sue for the relief of specific performance. Yet, the said relief was omitted and no leave in this regard was obtained or granted by the Court."

(ii) Judgment of the Hon'ble Apex Court reported in **(2014) 6 SCC 424, [Coffee Board Vs. Ramesh Exports Private Limited]**, wherein the



Hon'ble Apex Court at paragraph Nos.9 to 11, held as follows:

“9.The above rules are offshoots of the ancient principle that there should be an end to litigation traced in the Full Bench decision of the Court in Lachmi vs. Bhulli[1] and approved by this Court in many of its decisions. The principle which emerges from the above is that no one ought to be vexed twice for the same cause. In light of the above, from a plain reading of Order 2 Rule 2, it emerges that if different reliefs and claims arise out of the same cause of action then the plaintiff must place all his claims before the Court in one suit and cannot omit one of the reliefs or claims except without the leave of the Court. Order 2 Rule 2 bars a plaintiff from omitting one part of claim and raising the same in a subsequent suit. (See: [Deva Ram & Anr. vs. Ishwar Chand & Anr.](#)[2]).

10.Furthermore, this Court in [Alka Gupta v. Narender Kumar Gupta](#)[3] stated that:

“12..... The object of Order 2 Rule 2 of the Code is twofold. First is to ensure that no defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The



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effect of Order 2 Rule 2 of the Code is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action. It does not however bar a second suit based on a different and distinct cause of action.”

11. The bar of Order 2 Rule 2 comes into operation where the cause of action on which the previous suit was filed, forms the foundation of the subsequent suit; and when the plaintiff could have claimed the relief sought in the subsequent suit, in the earlier suit; and both the suits are between the same parties. Furthermore, the bar under Order 2 Rule 2 must be specifically pleaded by the defendant in the suit and the Trial Court should specifically frame a specific issue in that regard wherein the pleading in the earlier suit must be examined and the plaintiff is given an opportunity to demonstrate that the cause of action in the subsequent suit is different. This was held by this Court in [Alka Gupta v. Narender Kumar Gupta](#) (supra) which referred to decision of this Court in [Gurbux Singh vs. Bhooralal](#)[4] wherein it was held that:

“13..... 6. In order that a plea of a bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the



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defendant who raises the plea must make out: (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar.”

(iii) Judgment of the Hon'ble Apex Court reported in **(2014) 3 SCC 595, [State Bank of India Vs. Gracure Pharmaceuticals Limited]**, wherein the Hon'ble Apex Court at paragraph Nos.16 & 17, held as follows:

“ ... 16.Let us now examine the averments contained in paragraph 37 of the subsequent suit No.288/03/04 of 2003 in the above perspective. Paragraph 37 is extracted hereinbelow for easy reference:

“37. That the cause of action to file the present suit accrued in favour of the plaintiff and against the Defendants on all those occasions when the Defendants



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wrote various letters to the Plaintiff threatening initiate or actually initiating action against the Plaintiff in relation to various credit facilities which were being enjoyed by the Plaintiff. The cause of action to file the present suit accrued further in favour of the Plaintiff and against the Defendants on all those occasions when the Defendants actually initiated action against the Plaintiff in relation to various credit facilities, which were being enjoyed by the plaintiff and thereby did not provide the said facilities to the Plaintiff. The cause of action further accrued when the Defendants wrote letter dated 20.03.2002 to the Plaintiff conveying their decision to unilaterally and illegally rescind and contract between the parties and thereby stopping all credit facilities to the Plaintiff. The cause of action accrued further when on 26.3.2002, the general Manager (Commercial) of the Defendant No.1 did not intervene to stop the arbitrary and illegal action of the concerned officers of the Industrial Finance Branch. The cause of action accrued further when prior to filing of the suit, the Plaintiff through its counsel, issued and served upon the Defendants a legal notice dated 24.12.2002. The cause of action is still continuing and subsisting.”

17. When we go through the above quoted paragraph it is clear that the facts on the basis of which subsequent suit was filed, existed on the date on which the earlier suit was filed. The earlier suit was filed on 15.03.2003 and



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subsequent suit was filed on 21.05.2003. No fresh cause of action arose in between the first suit and the second suit.”

(iv) Judgment of this Court reported in **2011 (2) CTC 177, [Joseph Arokiados, rep. by Power Agent, T.Kasi Vs. P.Pradeep]**, wherein this Court at paragraph Nos.7 to 9, held as follows:

“ ... 7.It would be also useful to extract paragraph 11 of the Complaint in O.S.No.124/2009, which narrates the cause of action:

'11.The case of action for the aforesaid Suit arose on 18.8.2007, the Defendant claimed that he is the owner of the suit property belonging to the Plaintiff and daringly threatened that if the Plaintiff made construction in the suit property the Plaintiff will face dire consequences and immediately the Plaintiff made a Complaint before the Ambattur Police and the Ambattur Police verified and satisfied with the records of the Plaintiff, advised the Defendant not to disturb the Plaintiff's possession and the Defendant in O.S.No.435 of 2007 on the file of District Munsif Court at Ambattur and having an ex-parte injunction he managed trespassed into the suit property at Orgadam Village, Ambattur Firka and Ambattur Taluk and subsequently.'



8.The above extracted portions of the Plaint in the latter Suit would disclose that the necessity to file the latter Suit by the Respondent has arisen because the Petitioner herein, namely the Defendant in the said Suit, had trespassed into the property on 18.8.2007 and hence it has made the Respondent to file a comprehensive Suit for declaration and for other incidental reliefs. I am unable to accept the said contention of the learned Counsel appearing for the Respondent, since the cause of action alleged, namely that the Petitioner, has trespassed into the Property even according to the Respondent, was on 18.8.2007 i.e. after filing of the Suit by the Respondent in O.S.No.576 of 2008 for injunction. The said Suit in O.S.No.576 of 2008 for injunction. The said Suit in O.S.No.576 of 2008 was filed on 21.10.2008 i.e. much later to the allegation of trespass of the Petitioner. In such circumstances, instead of filing an Application for amending the plaint under Order 6, Rule 17, C.P.C., the Respondent has chosen to file the subsequent Suit. Thus, the later Suit is clearly hit by Order 2, Rule 2(3), C.P.C. At this stage, it would be useful to extract Order 2 of the Civil Procedure Code.



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Order 2 Rule 2 of the code of Civil Procedure:

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 intentionally 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.

Order 2, Rule 2, C.P.C. extracted above, clearly envisages that every Suit shall include the whole of the claim which the Plaintiff is entitled to make in respect of the cause of action. If the Plaintiff omits to sue in respect of a particular cause of action, he shall not afterwards sue in respect of the other portions so omitted or relinquish. If he omits to incorporate a prayer except with the leave of the Court, he shall not file



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another Suit.

9. When such is the position, it is not known why the Respondent herein has filed the latter Suit in O.S.No.124 of 2009 for declaration, possession and injunction. The best course would have been only to file an Application under Order 7, Rule 17, C.P.C. for amendment in the earlier Suit filed by him viz., O.S.No.576/2008. The Court below failed to take into account the said aspect while dismissing the Application preferred by the Petitioner.”

(v) Judgment of this Court reported in **2014 SCC Online Mad 125, [N.Suresh and others Vs. T.Radhakrishnan]**, wherein this Court at paragraph No.26, held as follows:

“... 26. The earlier suit was filed by the plaintiff before the City Civil Court, Chennai, only for bare injunction on the allegation that the defendants are proceeding with the unauthorized construction in the suit property, which belongs to the plaintiff. Whereas, according to the defendants, they are the owners of the suit property having purchased the same for the valuable consideration under three sale deed



dated 21.11.2011. The case rests on the plaintiff's title over the suit property and for possession. Under such circumstances, the plaintiff ought to have prayed for declaration of title and recovery of possession in the earlier suit itself. When he omitted to claim for the said relief in the earlier suit, before filing the subsequent suit with a prayer for declaration, he ought to have obtained leave of the Court as observed above. But, in the instant case, no such leave was sought for by the plaintiff. Hence, I am of the opinion, the suit is liable to be rejected for non-obtaining leave under Order II Rule 2(3) of CPC.”

(vi) Judgment of the Hon'ble Apex Court reported in **(2005) 5 SCC 548, [N.V.Srinivasa Murthy and others Vs. Mariyamma (dead) by proposed Lrs. and others]**, wherein the Hon'ble Apex Court at paragraph Nos.11, 13 & 14, held as follows:

“11.On the above averments, relief of declaring the registered sale deed dated 5.5.1953 to be a loan transaction and second relief of Specific Performance of oral agreement of re-conveyance of the property by registered instrument should and ought to have been claimed



in the suit. A suit merely for declaration that the plaintiffs are absolute owners of the suit lands could not have been claimed without seeking declaration that the registered sale deed dated 5.5.1953 was a loan transaction and not a real sale. The cause of action for seeking such a declaration and for obtaining re-conveyance deed according to the plaintiff's own averments in paragraph 9 of the plaint, arose on 25.3.1987 when the plaintiffs claimed to have paid back the entire loan amount and obtained a promise from the defendants to reconvey the property. Reckoning the cause of action from 25.3.1987, the suit filed on 26.8.1996, was hopelessly barred by time.

.....

13. In paragraph 11 of the plaint, the plaintiffs have stated that they had earlier instituted original suit No.557 of 1990 seeking permanent injunction against defendants and the said suit was pending when the present suit was filed. Whatever relief the petitioners desired to claim from the civil court on the basis of averment with regard to the registered sale deed of 1953 could and ought to have been claimed in original civil suit No.557 of 1990 which was pending at



that time. The second suit claiming indirectly relief of declaration and injunction is apparently barred by Order 2, Rule 2 of the Code of Civil Procedure.

14.After examining the pleadings of the plaint as discussed above, we are clearly of the opinion that by clever drafting of the plaint the civil suit which is hopelessly barred for seeking avoidance of registered sale deed of 5.5.1953, has been instituted by taking recourse to orders passed in mutation proceedings by the Revenue Courts.”

(vii) Order of this Court reported in **2017 SCC Online Mad 31245, [Sarangapani Vs. T.Dhanavel and another]**, wherein this Court at paragraph Nos.14 to 17, held as follows:

“... 14. The first respondent originally filed O.S.No.109 of 2007 for injunction restraining the petitioner, second respondent and others from interfering with his peaceful possession and enjoyment of the suit property. According to the first respondent, after receiving the advance amount, the petitioner entered into an agreement of sale to sell the suit property. The petitioner expressed his difficulty in executing the sale deed



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within the time limit and requested for extension of time. He received a further sum of Rs.1,00,000/- on 15.01.2003 and made an endorsement in the agreement of sale. The petitioner handed over the possession to the first respondent and the first respondent was cultivating sugarcane crop in the suit property from that day onwards. Again on 15.12.2005, the petitioner received a further sum of Rs.50,000/- and made an endorsement in the agreement of sale.

15. According to the first respondent, the petitioner was evading execution of sale deed. The first respondent sent a notice to the petitioner on 09.04.2007 to execute the sale deed. On 16.04.2007, the petitioner, second respondent and two others attempted to trespass into the suit property. The first respondent prevented the same. In view of the threat and trespass by the petitioner, second respondent and two others, the first respondent filed suit for injunction. According to the first respondent, in the said suit, the respondent has stated that he would file suit for specific performance before the competent court. Subsequently, the first respondent filed present suit for specific performance of agreement of sale.

16. The petitioner filed I.A.No.123 of 2008



for rejection of plaint on the ground that the second suit is hit by provisions of Order II Rule 2 CPC. A reading of both the suits reveal that the first suit is filed for permanent injunction while the second suit is filed for specific performance of agreement of sale. Question that arose for consideration is whether the relief of specific performance was available to the first respondent when he filed the first suit on 19.04.2007. A reading of Para (g) of the plaint reveals that the first respondent came to know that the petitioner is making arrangements to sell the suit property to third party when agreement of sale in his favour is in force. The relevant portion of the plaint in O.S.No.109 of 2007 is extracted hereunder for better appreciation.

“PARA (g)The plaintiff has recently come to know that the Ist Defendant is making an attempt to sell the suit property to some third parties, when the agreement for sale executed by the 1st defendant in favour of the plaintiff in respect of suit property is in force. Hence, the plaintiff issued a legal notice to the Ist defendant demanding that to execute the sale deed in favour of the plaintiff as per the sale agreement on 09.04.2007. The said notice was duly served upon the Ist defendant.”

17. Considering these facts, alongwith the



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contention of the learned counsel for the petitioner that in the reply notice dated 12.04.2007, the petitioner has categorically stated that he is not willing to execute the sale deed in favour of the first respondent which was received by the first respondent on 15.04.2007 and suit was filed only on 19.04.2007, without seeking the relief of specific performance, amounts to giving up the relief of specific performance by the first respondent. The first respondent has not produced any material to show that he filed petition under Order II Rule 3 seeking leave to file the suit for specific performance at a later stage. Having failed to obtain leave of the court to file a suit for specific performance at a subsequent date, the first respondent is not entitled to maintain the present suit for specific performance of agreement of sale. In this regard, it is useful to extract again PARA 29 (A) of the judgment of the Hon'ble Apex Court reported in 2014 (6) SCC 445, cited supra relied on by the learned counsel for the first respondent.

“29A. In the instant case, as discussed above, suit for injunction was filed since there was threat given from the side of the defendant to dispossess him from the suit property. The plaintiff



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did not allege that the defendant is threatening to alienate or transfer the property to a third party in order to frustrate the agreement.”

(viii) Order of this Court reported in **2018 (1) MWN (Civil) 465, [Ramachandran Vs. Krishnamurthy and others]**, wherein this Court at paragraph No.16, held as follows:

“ ... 16. Applying the principles laid down by the Hon'ble Apex Court in the judgment referred supra, it is clear that cause of action for specific performance of agreement of sale was available to the first respondent at the time of filing of the first suit itself, as alleged in O.S.No.52 of 2005 that the petitioner is giving evasive reply with regard to execution of sale deed and is trying to alienate the suit property to third parties. In the said circumstances, the first respondent ought to have filed comprehensive suit for specific performance of agreement of sale or atleast obtained leave of the court to file suit for specific performance at a later stage. The first respondent has omitted to sue for the relief of specific performance of agreement of sale which amounts to relinquishing the right to claim the said relief. The learned Judge has failed to



consider the scope of Order II Rule 2 CPC and failed to hold that the plaint can be rejected under Order VII Rule 11 (d) CPC when the suit is barred under Order II Rule 2 CPC. The learned Judge failed to consider the contention of the petitioner that cause of action for all the three suits is one and the same and the present suit is barred as per Order II Rule 2 CPC as first respondent failed to sue for all the reliefs in the first suit O.S.No.52 of 2005 itself and plaint in present suit is liable to be rejected as under Order VII Rule 11 (d) CPC. The reasoning of the learned Judge that the first respondent had time to file the suit for specific performance when he filed the suit for injunction is not valid reason on the facts of the present case. ”

13.The learned counsel appearing for the respondents 1 to 5 submitted that the respondents have obtained leave under Order II Rule 2 of the Code of Civil Procedure in O.S.No.329 of 2012, to file suit or suits on the same cause of action or on new cause of action. Once leave is obtained under Order II Rule 2 of the Code of Civil Procedure, it is not necessary to obtain leave again and again for filing suits subsequently. Even though the petitioner is not a party to the said suit, the leave obtained in the said suit is binding on the



petitioner also.

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13(a).The properties involved in O.S.Nos.150 of 2013 and 294 of 2013 are different, Survey numbers are distinct and extent of properties are also different. The cause of action for the suit in O.S.No.150 of 2013 arose on 17.03.2013 in respect of three items of properties. The respondents 1 to 5 have not omitted or intentionally relinquished any claim that was available at the time of filing of O.S.No.150 of 2013. The cause of action in the suit in O.S.No.294 of 2013 arose on 17.02.2013 and 23.06.2013, in respect of 19 items of properties. The respondents 1 to 5 have filed the suit claiming all the reliefs available based on the cause of action. The parties to the suits are different. The defendants 14 & 15 in O.S.No.150 of 2013 are not parties in O.S.No.294 of 2013. The respondents 1 to 5 have not initiated any multiplicity of proceedings and are not abusing process of law. The defendants 14 to 18 attempted to interfere with the peaceful possession and enjoyment of the respondents 1 to 5 in respect of properties in O.S.No.150 of 2013 and the said suit is filed for injunction as said defendants tried to form lay-out road in the suit properties as an ingress and egress to the 16th defendant's properties. The petitioner and defendants 2 to 4 have dispossessed the respondents 1 to 5 from the suit schedule properties in



O.S.No.294 of 2013 and the said suit is filed for declaration of title, possession and declaration that legal heirs of A.Ganapathy Gramani and for permanent injunction in respect of formation of lay-out. The relief claimed in O.S.No.294 of 2013 did not arise when the suit in O.S.No.150 of 2013 was filed and the respondents 1 to 5 have not relinquished any relief available. O.S.No.294 of 2013 is not hit by provisions of Order II Rule 2 of the Code of Civil Procedure.

13(b). The respondents 1 to 5 presented the plaint in SR.No.1149 of 2013 on 03.04.2013, which was returned on 05.04.2013, 13.04.2013 and 28.06.2013, based on cause of action that arose on 17.03.2013 and the same was taken on file as O.S.No.150 of 2013 on 01.07.2013 and no relief was omitted in the said suit.

13(c).The plaint in O.S.No.294 of 2013 was presented on 19.04.2013 and was returned by the Court on 23.08.2013, 27.08.2013, 11.09.2013 and 05.11.2013 for complying certain defects and it was registered on 05.11.2013 in respect of 19 items of properties based on cause of action that arose on 17.02.2013 and 23.06.2013. The respondents 1 to 5 filed application in I.A.No.660 of 2017 in O.S.No.150 of 2013 for amendment, for declaration of



survival of legal heirs from their maternal grand father A.Ganapathy Gramani and by the order dated 10.08.2014, the said application was allowed. The learned counsel appearing for the respondents 1 to 5 further submitted that the judgments relied on by the learned Senior Counsel appearing for the petitioner are not applicable to the facts of the present case.

13(d).The learned counsel appearing for the respondents 1 to 5, in support of his contentions, relied on the judgment of the Division Bench of this Court dated **24.11.2016** made in **C.R.P.(PD).No.1872 of 2016 and C.M.P.No.9778 of 2016**, wherein this Court at paragraph Nos.22 & 23, has held as follows:

“ ... 22.The aforesaid decision took into consideration, the Full Bench decision of this Court in PONNAMMAL V. RAMAMIRDA AIYAR (AIR 1915 Mad. 127 (FB)). Thus, considering the above said declaration of law in such a case even the leave may not be necessary.

23. Applying the principles aforesaid, this Court is of the view that there is no error in the order passed by the trial Court in I.A.No.2001 of 2015 in O.S.No.101 of 2015. Admittedly, the



cause of action governing both the cases are different. A mere averment in the earlier suit would not be sufficient. The trial Court has come to the conclusion after thorough analysis of the pleadings contained in both the suits. The petitioner has not filed an application, but the order was passed on an application filed by the respondent seeking leave. The issue in the first suit is as to whether the respondent is entitled for a decree for permanent injunction and mandatory injunction. This relief has been sought for based upon the warehouse agreement dated 01.12.2012. The relief sought for in the subsequent suit is with respect to the claim of arrears of payment and damages. Even in the first suit, the respondent has stated that it reserves its right to file a suit against the petitioner for recovery of arrears and damages. Further, the cause of action in the first suit was on the refusal of the petitioner to vacate and hand over the schedule mentioned properties. For the aforesaid purpose alone, it has been averred that the amount due has not been paid by the petitioner. In any case, leave has been obtained. The question as to whether the cause of action in both the suits are different and the respondent is entitled for the leave or not, being



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contradictory to each other, is irrelevant. If cause of action in both the suits are different, the subsequent suit is maintainable. If both are same, even then leave can be granted. Though this Court finds the cause of action in both the suits are different, there is no error in the order passed by the trial court. Therefore, in my opinion, the trial Court has passed the order based on proper appreciation of the facts of the case. The petitioner has also filed an application for rejecting the plaint in the subsequent suit filed. As this order is passed with respect to the civil revision petition as well as the application filed under Order VII Rule 11 of C.P.C., the contention of the learned Senior Counsel for the petitioner that if cause of action in both the suits are same, the leave ought not to have been granted is nothing but technical and thus, deserves to be rejected.”

14. Heard the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 1 to 5 and perused the entire materials on record.



15.The petitioner who is the 1st defendant in the suit in O.S.No.294 of 2013, filed the present application under Order VII Rule 11 (d) read with Section 151 of C.P.C., to reject the plaint in the suit. While deciding the application under Order VII Rule 11 of C.P.C., the Court can take into consideration only the averments in the plaint and documents filed along with the plaint. The plaint has to be read as a whole and averments in the plaint has to be taken as correct. The plaint has to be read in a meaningful manner. On such consideration, the Court has to decide whether the applicant has satisfied any of the ingredients of Order VII Rule 11 of C.P.C. The proceedings under Order VII Rule 11 of C.P.C., is summary in nature and only when the application substantiates any of the conditions mentioned in the said Rule, the Court can reject the plaint. If the applicant fails to substantiate his contention in consonance with Order VII Rule 11 of C.P.C., the application filed under Order VII Rule 11 of C.P.C. has to be rejected. The contentions of the petitioner in the affidavit or written statement and documents relied on by the petitioner are immaterial and cannot be taken into account while deciding the application.

16.In the present case, the petitioner is seeking to reject the plaint on the ground that suit is barred by provisions of Order II Rule 2 of C.P.C. Order



II Rule 2 of C.P.C. is extracted hereunder for ready reference:

Order II Rule 2 of C.P.C:

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“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 intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.”

As per this Rule, every suit shall include all the claims the plaintiff is entitled to. If the plaintiff omits to include or intentionally relinquishes any portion of his claim, he is not entitled to sue in respect of portion so omitted or relinquished in subsequent suit. But the plaintiff can obtain leave of the Court to sue for a portion of the relief in a particular suit. The purposes of enactment of this relief is two fold:

First, to ensure that no defendant is sued and vexed by repeatedly filing suits on the same cause of action.

Secondly, to prevent the plaintiff from split of claims and remedies.



To decide the issue in the Civil Revision Petition, the necessary averments in O.S.Nos.294 and 150 of 2013 are mentioned hereunder:

O.S.No.294 of 2013 -

Sl.No.	Date	Facts
1.	17.02.2013	Defendants 1 to 3 along with their henchmen and a local 'Dada' K.Vinayagam, dispossessed the schedule properties bearing Sl.Nos.1,2 and 12 to 19 from the plaintiffs (respondents 1 to 5) and their family members.
2.	25.02.2013	Plaintiffs sent Lawyer's notice dated 25.02.2013 to the defendants 1 to 3 and 'Dada' K.Vinayagam, to surrender possession of the said properties within one week from the date of receipt of said notice.
3.	23.06.2013	Defendants 1 to 4 along with their henchmen and 'Dada' K.Vinayagam, dispossessed plaintiff schedule properties bearing Sl.Nos.3 to 11 from plaintiffs 2 to 5 and their family members.
	23.06.2013	Plaintiffs (respondents 1 to 5) went to the suit properties and found defendants 1 to 4 and 'Dada' K.Vinayagam had been marking lines in Survey Nos.620/1 and 620/2 of plaintiff schedule properties for forming a lay-out road to their newly formed lay-out,



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Sl.No.	Date	Facts
		comprised in Survey Nos.611/126 to 133, 3B1F2A and 3B1F3A of suit village; when questioned by plaintiffs (respondents 1 to 5) and their family members, they were threatened to cause death to them.
	23.06.2013	The plaintiffs even claimed their rights over the suit properties as the surviving legal heirs of their deceased mother, Yasodha.
6.	Para 10 of the plaint	Leave may be granted in terms of Order II Rule 2 of C.P.C., based on the same cause of action or fresh cause of action as to avoid any technicality that may be raised by the defendants at a later stage.
7.	Para 11 - 23.06.2013	Defendants 1 to 4 have been making arrangements to carry out development of lay-outs and roads in the plaint schedule properties.
8.	Para 14 - Cause of action paragraph	Traces title of plaintiffs and dispossession on 17.02.2013, 23.06.2013 and 25.02.2013 - Notice through Lawyer.
9.	Para 16 - Reliefs	(a) Declaration to declare that the plaintiffs 1 to 5 as well as the defendants 5 to 16, as legal heirs of Ganapathy Gramani, are absolute owners and have got title over the suit properties and possession



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Sl.No.	Date	Facts
		from the petitioner and defendants 2 to 4. (b) - (d) are another declaration and two permanent injunctions respectively.
10.	Paragraphs 1 to 5	Traced title through Ganapathy Gramani.
11.	19.08.2013	Plaint in O.S.No.294 of 2013 was presented and the same was returned by the Court for certain defects to be rectified and re-presented on 23.08.2013, 27.08.2013, 11.09.2013 and 05.11.2013.
12.	05.11.2013	Suit was registered as O.S.No.294 of 2013.

O.S.No.150 of 2013 -

Sl.No.	Date	Facts
1.	17.03.2013	Cause of action arose when petitioner and 16 th defendant along with the defendants 14, 15, 17 and 18 threatened the respondents 1 to 5 with regard to three items of properties mentioned in the schedule.
2.	03.04.2013	Plaint was presented. Court returned for certain defects. Represented the plaint on 05.04.2013, 06.04.2013, 13.04.2013 and 28.06.2013.



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Sl.No.	Date	Facts
3.	01.07.2013	The suit was registered as O.S.No.150 of 2013.
4.	Paragraphs 1 to 4 - plaint averments	The respondents traced title to the property from Ganapathy Gramani.
5.	Paragraphs 8 and 9 of the plaint	The petitioner and defendants 14, 15, 17 and 18 are making arrangements to interfere with the joint possession and enjoyment of the suit properties with a view to form a lay-out road as an ingress and egress to adjacent lands and very keen to create documents by showing the suit properties as an ingress and egress to adjacent lands bearing Dry Survey Nos.617 to 633, 643 and 202 to 209 of suit village.
6.	Paragraph 16 of the plaint - reliefs	Permanent injunction against the defendants 14 to 18 [petitioner is 16 th defendant in the suit].

17.From the averments in O.S.No.294 of 2013 mentioned above, it is seen that the petitioner and others, on 17.02.2013, dispossessed the respondents 1 to 5 from properties mentioned in the Sl.Nos.1, 2 and 12 to 19 in the schedule of the plaint in O.S.No.294 of 2013. The respondents 1 to 5 issued a notice dated 25.02.2013, through their Advocate to the petitioner and others, calling upon them to surrender possession within a week. It is the case of the respondents that the petitioner and others did not surrender possession



to them, but again on 23.06.2013, dispossessed the respondents from the properties in Sl.Nos.3 to 11. From these averments, it is seen that to the respondents 1 to 5, the relief sought for in O.S.No.294 of 2013 were available as on 17.02.2013 and 23.06.2013. When the respondents filed O.S.No.150 of 2013 on 17.03.2013, they ought to have claimed these reliefs also. The plaint in O.S.No.150 of 2013 presented on 03.04.2013 was returned on three occasions viz., 05.04.2013, 13.04.2013 and 28.06.2013 and plaint was registered as O.S.No.150 of 2013 only on 01.07.2013. In the said suit in O.S.No.150 of 2013, the respondents have claimed only permanent injunction. In paragraph No.9 of the plaint, the respondents 1 to 5 have stated that the petitioner, who is the 16th defendant, along with the defendants 14 to 18 are also very keen to create documents by showing the suit properties as ingress and egress to adjacent lands bearing Dry Survey Nos.617 to 633, 643 and 202 to 209 of the suit village. As per this averment, it is the stand of the respondents 1 to 5 that the petitioner and others are trying to create documents disputing title of respondents 1 to 5. In such a case, for a permanent injunction against interference of their possession, it is necessary to establish title on basis of which possession is sought to be retained or claimed.



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18.From the averments in the plaint in O.S.Nos.150 and 294 of 2013, it is seen that no fresh cause of action arose after 17.03.2013, after the respondents 1 to 5 filed O.S.No.150 of 2013 on 03.04.2013, for permanent injunction. The reliefs sought for in O.S.No.294 of 2013 were available to the respondents 1 to 5 on 03.04.2013 itself. The respondents ought to have claimed the said reliefs in O.S.No.150 of 2013. It is well settled that the plaintiffs must claim all the reliefs in one and the same suit. If the plaintiff reserves his or her right to claim some of the reliefs, the plaintiff must obtain leave of the Court under Order II Rule 2 (2) and (3) of C.P.C. If the plaintiff fails to claim all the reliefs in the suit, the reliefs not claimed amounts to relinquishing and abandoning the said reliefs unless the plaintiff obtained leave for reserving the said reliefs to subsequent suit. The similar issue was considered by the Hon'ble Apex Court in the judgment reported in **(2005) 10 SCC 218 [Union of India Vs. H.K.Dhruv]**. In the said judgment, the Hon'ble Apex Court held that when cause of action on which subsequent claim is founded arose when the prior claim was made before any Court, the subsequent suit was hit by the bar under Order II Rule 2 of C.P.C. In paragraph No.4 of the said judgment, the Hon'ble Apex Court has held as follows:



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“4.Having heard the learned Senior Counsel for the appellant as also the respondent appearing in person, we are satisfied that no fault can be found with the view taken by the High Court. In order to attract applicability of the bar enacted by Order 2 Rule 2 C.P.C., it is necessary that the cause of action on which the subsequent claim is founded should have arisen to the claimant when he sought for enforcement of the first claim before any Court. On the facts found and as recorded in the judgment of the High Court and with which we find no reason to differ, the second demand raised by the respondent was not available to be made a part of the claim raised in the first application. The bar enacted by Order 2 Rule 2 C.P.C. is clearly not attracted.”

19.In the judgments reported in **2005 (5) SCC 548, 2018 (1) MWN (Civil) 465, 2014 SCC Online Mad 125** and **2014 (3) SCC 595**, (referred to above), the Courts have held that all the reliefs available to the plaintiff at the time of filing first suit must be included in the said suit itself and subsequent suit filed for some of the reliefs not claimed in the earlier suit is hit by principles of Order II Rule 2 of C.P.C. The Courts have consistently held that if the plaintiff fails to include the reliefs available at the time of filing first



suit and did not obtain leave to file subsequent suit for the reliefs not included in the first suit, the subsequent suit for the reliefs not claimed in the first suit is barred by law as per provisions of Order II Rule 2 of C.P.C. The ratio in the above judgments are squarely applicable to the facts of the present case and subsequent suit in O.S.No.294 of 2013 is hit as per the provisions of Order II Rule 2 of C.P.C.

20.This Court also held in the judgment reported in **2011 (2) CTC 177 [Joseph Arokiados, rep. by Power Agent T.Kasi Vs. P.Paradeep]** that the second suit filed by the respondent is hit by Order II Rule 2 (3) of C.P.C. This Court held that the plaintiff, instead of filing application for amendment, filed subsequent suit, which is hit by Order II Rule 2(3) of C.P.C. The relevant portion of the said order is extracted supra.

21.The foundation for both the suit is one and the same, namely claiming title as descendants and legal heirs of A.Ganapathy Gramani.

22.The respondents 1 to 5 claimed that they have already obtained leave in O.S.No.329 of 2012 to file subsequent suit in same cause of action or new cause of action. Therefore, according to the respondents 1 to 5, they need



not obtain leave again and again. The respondents have not produced the said leave granted to them in O.S.No.329 of 2012. The learned Judge held that the respondents have already obtained leave when no such order was produced before the Court. It is to be taken note of in paragraph no.10 of the plaint filed in O.S.No.294 of 2013, that the respondents 1 to 5 intended to file suit or suits for partition and other reliefs as prayed for in O.S.No.294 of 2013 in respect of suit properties and other reliefs and sought for leave to the respondents 1 to 5 in terms of Order II Rule 2 of C.P.C. based on the same cause of action or fresh cause of action as to avoid any technicality that may be raised by the defendants at a later stage. This stand is contrary to the stand taken by the respondents that in view of leave obtained in O.S.No.329 of 2012, there is no need to obtain leave again and again.

23.The respondents amended the plaint in O.S.No.150 of 2013 twice. The respondents impleaded M/s.Shreyas Investments, represented by its Partner, N.Balasubramanian as 4th defendant in O.S.No.294 of 2013, who according to the respondents 1 to 5 along with the petitioner and others, dispossessed the respondents 1 to 5.



24.The respondents 1 to 5 again, as per the order dated 10.08.2017 made in I.A.No.660 of 2017, amended the plaint in O.S.No.150 of 2013, by including paragraph (d-1), for declaration. The said declaratory relief reads as follows:

“(d-1).For declaration that the mother of the plaintiffs and the 4th defendant by name, Yashoda, defendants 1 and 3, the father of the defendants 5 to 7 by name, T.G.Angamuthu, the mother of the defendants 8, 9, 11, 12 by name, Rukmani and the mother of the 13th defendant by name, Chandra are the son and daughters of said Late.Ganapathy Gramani and as such, the plaintiffs as well as the defendants 1 to 13 are his surviving legal heirs;”

25.The respondents have claimed the same relief in paragraph no.16(b) in O.S.No.294 of 2013. The said relief reads as follows:

“16.(b).Declaring that the plaintiffs as well as 7th defendant's mother by name Yashoda, defendants 5, 6, the father of the defendants 8 to 10 by name, T.G.Angamuthu, mother of the defendants 11, 12, 14 and 15 and the grand-



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mother of the defendant No.13 by name Rukmani and the mother of the 16th defendant by name Chandra are the son and daughters of Late.Ganapathy Gramani and as such the plaintiffs as well as the defendants 5 to 16 are his surviving legal heirs;”

26.From the above facts, it is clear that the reliefs sought for by the respondents in O.S.No.294 of 2013 were available to them when they filed O.S.No.150 of 2013 for permanent injunction. The respondents ought to have included the reliefs sought for in O.S.No.294 of 2013 in O.S.No.150 of 2013 or ought to have obtained leave under Order II Rule 2 (2) and (3) of C.P.C., to file subsequent suit for other reliefs not claimed in O.S.No.150 of 2013. As held by this Court in the judgment reported in **2011 (2) CTC 177** (cited supra), the respondents should have amended the plaint in O.S.No.150 of 2013, instead of filing a fresh suit in O.S.No.294 of 2013. The respondents have amended the plaint in O.S.No.150 of 2013 to include only one relief of declaration claimed in O.S.No.294 of 2013.

27.Considering the above facts and judgments relied on by the learned Senior Counsel appearing for the petitioner, especially the judgments reported in **2011 (2) CTC 177** and judgment of the Hon'ble Apex Court



reported in **(2005) 10 SCC 218** (cited supra), the suit in O.S.No.294 of 2013 is hit by principles contained in Order II Rule 2 of C.P.C. and said suit is barred by law and the plaint is liable to be rejected. In view of the above, judgment relied on by the learned counsel appearing for the respondents 1 to 5 does not advance the case of the respondents 1 to 5. The learned Judge, without properly appreciating the scope and reason for enacting Order II Rule 2 of C.P.C. and the order alleged to have been granted leave under Order II Rule 2 of C.P.C. in O.S.No.329 of 2012 to the respondents 1 to 5, which was not produced before the learned Judge, has erroneously held that respondents 1 to 5 have obtained leave. The reasoning of the learned Judge for dismissing the application is erroneous. The learned Judge failed to exercise the power properly and committed an irregularity. The order of the learned Judge for the above reasons, is liable to be set aside and is hereby set aside.

28.It is submitted that both the suits were transferred to Judicial Magistrate-cum-District Munsif Court at Cheyyar and O.S.No.150 of 2013 is re-numbered as O.S.No.48 of 2013 and O.S.No.294 of 2013 is re-numbered as O.S.No.54 of 2013.



29. For the reasons stated, I.A.No.2324 of 2017 in O.S.No.294 of 2013 is allowed and plaint in O.S.No.294 of 2013, now renumbered as O.S.No.54 of 2013 on the file of the Judicial Magistrate-cum-District Munsif Court, Cheyyar is rejected.

Accordingly, C.R.P.(PD).No.2300 of 2018 is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

23.12.2021
(1/2)

gsa / krk

Index : Yes
Internet : Yes

To

1. The learned District Munsif,
Madurantakam,
Kancheepuram District.
2. The learned Judicial Magistrate-cum-District Munsif,
Cheyyar.



WEB COPY



C.R.P. (PD) .No.2300 of 2018

V.M.VELUMANI, J.
gsa / krk

C.R.P.(PD).No.2300 of 2018

23.12.2021
($\frac{1}{2}$)

**C.R.P No.2300 of 2018****V.M.VELUMANI, J.**

At the instance of the learned counsel appearing for the petitioner, this matter is posted today under the caption “For Being Mentioned”.

2. Heard the learned counsel for the petitioner.

3. It is represented by the learned counsel for the petitioner that pending suit O.S.No.150 of 2013 pending on the file of District Munsif Court, Madhurantakam was transferred to Judicial Magistrate cum District Court Munsif at Cheyyur and re-numbered as O.S.No.48 of 2013 and the same is pending. Similarly, O.S.No.294 of 2013 pending on the file of District Munsif Court, Madhurantakam was transferred to Judicial Magistrate cum District Court Munsif at Cheyyur and re-numbered as O.S.No.54 of 2013. However, in paras 28 & 29 of the order of this court dated 23.12.2021, it has been wrongly mentioned as “Judicial Magistrate cum District Court Munsif at **Cheyyar**”.

4. In view of the above, in the order of this court dated 23.12.2021, wherever the word “cheyyar” is mentioned, it shall be replaced as “Cheyyur”.

5. Accordingly, paras 28 & 29 of the order of this court dated 23.12.2021 is rectified as follows -

28. It is submitted that both the suits were transferred to Judicial Magistrate cum District Court Munsif at Cheyyur and O.S.No.150 of 2013 is re-numbered as O.S.No.48 of 2013 and O.S.No.294 of 2013 is re-numbered as O.S.No.54 of 2013.

29. For the reasons stated, I.A.No.2324 of 2017 in O.S.No.294 of 2013 is allowed and plaint in O.S.No.294 of 2013, now re-numbered as O.S.No.54 of 2013 on the file of the Judicial Magistrate -cum-District Munsif Court, Cheyyur is rejected.



WEB COPY

C.R.P. (PD) .No.2300 of 2018



V.M.VELUMANI, J.
rgr/krk

6. Registry is directed to issue the fresh order copy, after carrying out the above corrections. The other contents of the order of this court dated 23.12.2021 shall stand unaltered.

18.02.2022
(1/2)

rgr/krk

CRP (PD) No.2300 of 2018