



C.R.P.(MD)No.49 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 07.07.2023

Delivered on : 01.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.49 of 2019

and

C.M.P.(MD)No.435 of 2022

K.P.John

... Petitioner / Petitioner / 1st Defendant

Vs.

1.The President,

Solavanthan Nainar Tholugai

Pallivasal Jamath Committee,

Solavanthan Village,

Vadipatti Taluk, Madurai District.

2.The Secretary,

Solavanthan Nainar Tholugai

Pallivasal Jamath Committee,

Solavanthan Village, Vadipatti Taluk,

Madurai District.

... Respondents / Respondents /Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.289 of 2015, in W.O.P.No.2 of 2012, dated 16.08.2018, on the file of the Court of the Principal Sub Court, Madurai.



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For Petitioner : Mr.M.Venkatesan

For Respondents : Mr.P.T.S.Narendravan

ORDER

The instant Civil Revision Petition has been filed against the order passed in I.A.No.289 of 2015, in W.O.P.No.2 of 2012, dated 16.08.2018, on the file of the Principal Sub Court, Madurai.

2. The revision petitioner is the first defendant and the respondents are the plaintiffs before the trial Court. The revision petitioner filed an application under Order 7 Rule 11 C.P.C for rejection of the W.O.P.No.2 of 2012.

3. For the sake of convenience, the parties are referred according to their litigative status before the trial Court.

4. The brief facts which gives rise to filing of the instant Civil Revision Petition is that, the petitioner has filed an application for rejection of plaint. It appears that the respondents have filed a petition in W.O.P.No.



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2 of 2012, for recovery of possession and for declaration. They took a defence that, the Solavanthan Nainar Tholugai Pallivasal, belongs to Wakf Board, and that the petitioner herein should hand over the possession to them. It appears that the second defendant to the W.O.P.No.2 of 2012 filed a suit in O.S.No.283 of 1968 against the father of the petitioner before the District Munsif, Tirumangalam, in respect of the same suit property. The said suit was ultimately dismissed by the District Munsif Court, Tirumangalam.

5. Against which, an appeal was filed by the Tamil Nadu Wakf Board in A.S.No.39 of 1991 and the said first appeal was also dismissed on 06.07.1981. It is also the submission of the petitioner that no second appeal has been filed against the decree and judgment of A.S.No.39 of 1991, and thereby, it reached the finality. It is the submission of the petitioner that, when the earlier suit for the very same relief of recovery of possession in O.S.No.283 of 1968, was dismissed, the present W.O.P.No.2 of 2012 is hit by the principles of *res judicata*. Therefore, prayed to reject the plaint.



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6. However, the respondent filed a counter statement denying the allegations made by the petitioners. According to the respondent, the very principle of *res judicata* will not be applicable to the instant case as the cause of actions of the two proceedings were different, and it is also the submissions of the respondent that the earlier suit, namely, in O.S.No.283 of 1968 was only in respect of two cents of property, whereas, the instant petition is in respect of 11 cents. Therefore, contended that the present petition is no way hit by *res judicata*.

7. The learned counsel for the respondent would also submit that, while considering the application under Order 7 Rule 11, the pleadings and the plaint documents alone are to be considered, and that no other document could be considered. Therefore, it is the submission of the petitioner that from reading of the plaint and from the plaint documents, no *res judicata* could be visualised, and therefore, prayed to dismiss this application.

8. The learned trial Judge after hearing either party, passed an order by dismissing the application, on the finding that the very ground



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urged by the petitioner does not come within the four corners of Order 7 Rule 11 C.P.C, and has ultimately dismissed this application.

9. Aggrieved with the order of the learned trial Judge, the learned counsel for the revision petitioner would submit that the Court below without understanding Order 7 Rule 11 C.P.C has passed the dismissal order. He would also further submit that the trial Court failed to see that relief sought for in O.S.No.283 of 1968, and W.O.P.No.2 of 2012 and the suit property are one and the same. Therefore, he would submit that the very order rejecting the Order 7 Rule 11 application by the learned trial Judge is liable to be interfered with.

10. The learned counsel for the revision petitioner has invited the attention of this Court in respect of the compromise decree in O.S. No.14 of 1919 and Gazette Notification, dated 27.05.1959, and the judgment in O.S.No.125 of 1975, and other documents. Apart from that, the learned counsel for the petitioner has also relied the following judgments:

(i) 2016-3-MWN (Civil)-740 (T.Kanchanadevi V. Dr.P.Balachander)



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- (ii) 2017-2-CTC-531 (A.Valliammai V. Karuppaya)
- (iii) 2012-1-MWN(Civil) 28 (P.Leelarathinam V. P.E.Srinivasan)
- (iv) 2021-2-MWN(Civil)-133 (A.Soundararsan V. Chennai Metro Rail Ltd.,)
- (v) 2020-7-SCC-366 (Dahiben V. Arvindbhai Kalyanji Bhanusali (Gajra) Dead), and
- (vi) 2018-1-LW-163 (Madanuri Sri Rama Chandra Murthy V. Syed Jalal)

11. Per contra, the learned counsel for the respondent would vehemently submit that when the application filed under Order 7 Rule 11 C.P.C, is considered the Court should only go by the plaint pleadings, and when the Court proceed on the presumption that the plaint averments are true, and in that process if the ground urged by the petitioner in respect of *res judicata* emerges without any external aid or the other documents, then only the contention of the petitioner can be considered



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12. This Court deems it appropriate to extract, Order 7 Rule 11 of the Code of Civil Procedure for ready reference :-

“11. “11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-



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paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.] ”

13. In this case, we are only concerned about Order 7 Rule 11 (d) C.P.C as the only ground urged by the petitioner is *res judicata*. As per Order VII of C.P.C., except the ground mentioned under Rule 11, the plaint cannot be rejected on any other ground. The learned counsel for the petitioner by relying upon Rule 11 (d) C.P.C, would submit that W.O.P No. 2 of 2012 is barred by law under principles of *res judicata*.

14. The *res judicata* has been defined under Section 11 of C.P.C and the same is extracted for ready reference :-

“11. Res judicata.- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”



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15. In order to bring a suit as *res judicata* to the subsequently instituted suit, it is for the parties to prove that the issue involved in earlier suit is directly and substantially an issue in the subsequently instituted suit, and that the parties and subject matter are also the same.

16. In this case, it is the submission of the learned counsel for the petitioner herein that, the issue, which have been dealt in O.S.No.283 of 1968 are directly and substantially, the same issue in the subsequently instituted instant suit.

17. At this juncture, this Court deems it appropriate, to refer to the judgment of the Hon'ble Supreme Court reported in **2021-9-SCC-99 (Srihari Hanumandas Totala V. Hemant Vithal Kamat)** the relevant portion of the judgment is as follows:-

“16. Order 7 Rule 11(d) of the Code of Civil Procedure provides that the plaint shall be rejected “where the suit appears from the statement in the plaint to be barred by any law”. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the



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statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case. Before proceeding to refer to precedents on the interpretation of Order 7 Rule 11(d) CPC, we find it imperative to refer to Section 11 of CPC which defines res judicata:

“11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

17. Section 11 of the Code of Civil Procedure enunciates the rule of res judicata : a court shall not try any suit or issue in which the matter that is directly in issue has been directly or indirectly heard and decided in a ‘former suit’. Therefore, for the purpose of adjudicating on the issue of res judicata it is necessary that the same issue (that is raised in the suit) has been adjudicated in the former suit. It is necessary that we refer to the exercise taken up by this Court while adjudicating on res judicata, before referring to res judicata as a ground for rejection of the plaint under



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Order 7 Rule 11. Justice R C Lahoti (as the learned Chief Justice then was), speaking for a two Judge bench in V. Rajeshwari v. T.C. Saravanabava⁵ discussed the plea of res judicata and the particulars that would be required to prove the plea. The court held that it is (2004) 1 SCC 551, necessary to refer to the copies of the pleadings, issues and the judgment of the 'former suit' while adjudicating on the plea of res judicata:

“11. The rule of res judicata does not strike at the root of the jurisdiction of the court trying the subsequent suit. It is a rule of estoppel by judgment based on the public policy that there should be a finality to litigation and no one should be vexed twice for the same cause.

13. Not only the plea has to be taken, it has to be substantiated by producing the copies of the pleadings, issues and judgment in the previous case. Maybe, in a given case only copy of judgment in previous suit is filed in proof of plea of res judicata and the judgment contains exhaustive or in requisite details the statement of pleadings and the issues which may be taken as enough proof. But as pointed out in Syed Mohd. Salie Labbai v. Mohd. Hanifa [(1976) 4 SCC 780] the basic method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as



res judicata. It is risky to speculate about the pleadings merely by a summary of recitals of the allegations made in the pleadings mentioned in the judgment. The Constitution Bench in Gurbux Singh v. Bhooralal [AIR 1964 SC 1810 : (1964) 7 SCR 831] placing on a par the plea of res judicata and the plea of estoppel under Order 2 Rule 2 of the Code of Civil Procedure, held that proof of the plaint in the previous suit which is set to create the bar, ought to be brought on record. The plea is basically founded on the identity of the cause of action in the two suits and, therefore, it is necessary for the defence which raises the bar to establish the cause of action in the previous suit. Such pleas cannot be left to be determined by mere speculation or inferring by a process of deduction what were the facts stated in the previous pleadings. Their Lordships of the Privy Council in Kali Krishna Tagore v. Secy. of State for India in Council [(1887-88) 15 IA 186 : ILR 16 Cal 173] pointed out that the plea of res judicata cannot be determined without ascertaining what were the matters in issue in the previous suit and what was heard and decided. Needless to say, these can be found out only by looking into the pleadings, the issues and the judgment in the previous suit.” (emphasis supplied)

18. At this stage, it would be necessary to refer to the decisions that particularly deal with the question whether res judicata can be the basis or ground for



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rejection of the plaint. In Kamala & others v. KT Eshwara Sa6, the Trial Judge had allowed an application for rejection of the plaint in a suit for partition and this was affirmed by the High Court. Justice S B Sinha speaking for the two judge bench examined the ambit of Order 7 Rule 11(d) of the CPC and observed:

*“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. **What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction.** Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.*

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter



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of an order under the said provision.” (emphasis supplied).

The Court further held:

“23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a (2008) 12 SCC 661. preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained.” (emphasis supplied) The above view has been consistently followed in a line of decisions of this Court. In Church of Christ Charitable Trust & Educational



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*Charitable Society v. Ponniamman Educational Trust*⁷,
Justice P Sathasivam (as the learned Chief Justice then
was), speaking for a two judge Bench, observed that

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

11. This position was explained by this Court in
Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557] ,
in which, (2012) 8 SCC 706. while considering Order 7 Rule
11 of the Code, it was held as under: (SCC p. 560, para 9)

“9. A perusal of Order 7 Rule 11 CPC makes it
clear that the relevant facts which need to be looked into for
deciding an application thereunder are the averments in the
plaint. The trial court can exercise the power under Order 7
Rule 11 CPC at any stage of the suit—before registering the
plaint or after issuing summons to the defendant at any time
before the conclusion of the trial. **For the purposes of**



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*deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.” It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. **It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [(2006) 3 SCC 100].” Similarly, in Soumitra Kumar Sen (supra), an application was moved under Order 7 Rule 11 of the CPC claiming rejection of the plaint on the ground that the suit was barred by res judicata. The Trial Judge dismissed the application and the judgement of the Trial Court was affirmed in***



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revision by the High Court. Justice AK Sikri, while affirming the judgment of the High Court held:

*“9. In the first instance, it can be seen that insofar as relief of permanent and mandatory injunction is concerned that is based on a different cause of action. At the same time that kind of relief can be considered by the trial court only if the plaintiff is able to establish his locus standi to bring such a suit. If the averments made by the appellant in their written statement are correct, such a suit may not be maintainable inasmuch as, as per the appellant it has already been decided in the previous two suits that Respondent 1-plaintiff retired from the partnership firm much earlier, after taking his share and it is the appellant (or appellant and Respondent 2) who are entitled to manage the affairs of M/s Sen Industries. However, at this stage, as rightly pointed out by the High Court, the defense in the written statement cannot be gone into. **One has to only look into the plaint for the purpose of deciding application under Order 7 Rule 11 CPC. It is possible that in a cleverly drafted plaint, the plaintiff has not given the details about Suit No. 268 of 2008 which has been decided against him. He has totally omitted to mention about Suit No. 103 of 1995, the judgment wherein has attained finality. In that sense, the plaintiff-Respondent 1 may be guilty of suppression and concealment, if the averments made by the appellant are ultimately found to be correct. However,***



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as per the established principles of law, such a defense projected in the written statement cannot be looked into while deciding application under Order 7 Rule 11 CPC.”

Referring to Kamala (supra), the Court further observed that

*“12. ... The appellant has mentioned about the earlier two cases which were filed by Respondent 1 and wherein he failed. These are judicial records. The appellant can easily demonstrate the correctness of his averments by filing certified copies of the pleadings in the earlier two suits as well as copies of the judgments passed by the courts in those proceedings. In fact, copies of the orders passed in judgement and decree dated 31-3-1997 passed by the Civil Judge (Junior Division), copy of the judgment dated 31-3-1998 passed by the Civil Judge (Senior Division) upholding the decree passed by the Civil Judge (Junior Division) as well as copy of the judgment and decree dated 31-7-2014 passed by Civil Judge, Junior Division in Suit No. 268 of 2008 are placed on record by the appellant. While deciding the first suit, the trial court gave a categorical finding that as per MoU signed between the parties, Respondent 1 had accepted a sum of Rs 2,00,000 and, therefore, the said suit was barred by principles of estoppel, waiver and acquiescence. **In a case like this, though recourse to Order 7 Rule 11 CPC by the appellant was not appropriate, at the same time, the trial court may, after framing the issues,***



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take up the issues which pertain to the maintainability of the suit and decide the same in the first instance. In this manner the appellant, or for that matter the parties, can be absolved of unnecessary agony of prolonged proceedings, in case the appellant is ultimately found to be correct in his submissions.” (emphasis supplied) While holding that “recourse to Order 7 Rule 11” by the appellant was not appropriate, this Court observed that the Trial Court may, after framing the issues, take up the issues which pertain to the maintainability of the suit and decided them in the first instance. The Court held that this course of action would help the appellant avoid lengthy proceedings.

.....

20. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in **the plaint will have to be referred to;**

(ii) The defense made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that

(i) the ‘previous suit’ is decided, (ii) the issues in the subsequent suit were directly and



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substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the ‘previous suit’, such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.”

(Emphasis supplied by this Court)

18. In the above judgment, it has been lucidly held that the adjudication of plea of *res judicata* is beyond the scope of Order 7 Rule 11 (d) C.P.C, as it involves considering of plaint and judgment of the earlier suit, which course is beyond the frame work of Order VII Rule 11 C.P.C.

19. However, the learned counsel for the petitioner has invited the attention of this Court in respect of the judgment of this Court reported in **2011-3-MLJ-21 (M.V.Jayavelu V. E.Umapathy)**, wherein, the learned Single Judge of this Court held that when the plaint does not disclose any



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cause of action, then the same would amount to abuse of process of law and is liable to be rejected. But, here the petitioners' ground is not the absence of cause of action. Similarly, the petitioners also relied upon the judgment of this Court reported in **1998-III-CTC-165 (Nesammal V. Edward)**, wherein, the learned Single Judge, from the pleadings of the plaint, has found the ingredients for *res judicata* and has ultimately rejected the plaint. Whereas, in our case, this Court could not find the ingredients for *res judicata* from the statement of the plaint. But, even on cursory reading of the judgment of O.S.No.283 of 1968, the same is for 2 cents of property. Whereas, in the instant petition, the petition mentioned property is 11 cents. Similarly, he has also relied upon the judgment of this Court reported in **2000-III-CTC -74 (Seeni alis Sundarammal V. Ramasamy Poosari)** in respect of scope of interference under Article 227 of the Constitution of India, the process of Court is misused or abused. But, the very judgment has no relevance to the facts and circumstances of the instant case.

20. The learned counsel for the petitioner has also referred a famous judgment of the Hon'ble Supreme Court reported in **1977-4-SCC-467 (T.A.Rivanandam V. T.V.Satyapal)** and contended that vexatious



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and meritless suit should be nipped it in the bud. Similarly, the learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court reported in **2012-8-SCC-706 (Church of Christ Charitable Trust and Educational Charitable Society rep. by its Chairman V. Ponniamman Educational Trust rep. by its Chairperson / Managing Trustee)** in respect of non-disclosure of cause of action and he also referred the another judgment of the Hon'ble Supreme Court reported in **2016-2-MWN(Civil)-106 (State of Gujarat V. Kothari & Associates)**, in respect of limitation, whereas, the facts referred to in those reported judgments are in no way applicable to the facts of this case.

21. In view of the above detailed discussion, this Court is of the firm view that the petitioner has miserably failed to project the case of *res judicata* through the plaint pleadings. Therefore, the finding of the learned trial Judge dismissing the application cannot be found faulted. Eventually, there is no scope for interference in the well considered order of the learned trial Judge.



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22. Hence, the instant Civil Revision Petition stands **dismissed**.

Considering the long pendency of the petition, the learned trial Judge is directed to dispose of the W.O.P.No.2 of 2012, as expeditiously as possible, preferably, within a period of six months from the date of receipt of the copy of this order. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

01.08.2023

NCC : Yes/No
Index : Yes/No
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To

1.The Principal Sub Judge,
Madurai.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

Ls

Pre-delivery Order made in
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