



C.R.P.No.1728 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 18.04.2023

Pronounced on 29.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1728 of 2021

and

C.M.P.No.13450 of 2021

1.Pratima Joshi

2.K.R.Ashok Kumar Thangaraj

3.Vincent Perianayakam

...Petitioners/Petitioners/Defendants

-Vs-

Medavakkam Ishwarya Homes
Apartment Owners Association
Rep. By its President S.Rajavelu,
S/o.Sivasankaran having office at No.12,
Ishwarya Homes Apartments,
Mambakkam Main Road,
Chennai – 600 100.

... Respondent/Respondent/Plaintiff

Petition filed under Article 227 of the Constitution of India, seeking to set aside the order dated 03.12.2019 passed in I.A.No.992 of 2018 in O.S.No.180 of 2018 by the learned Additional District Munsif, Alandur.

For Petitioners : Mr.V.Krishnamoorthy
For Respondent : Mr.M.Manoharan
for Mr.M.Thangadurai



C.R.P.No.1728 of 2021

ORDER

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This Civil Revision Petition is filed by the Defendants in O.S.No.180 of 2018 challenging the order dated 03.12.2019 passed in I.A.No.992 of 2018 in O.S.No.180 of 2018 by the learned Additional District Munsif, Alandur.

2.The learned Counsel for the Revision Petitioners submitted that the Petitioners had been the Defendants 1 to 3 in the earlier suit in O.S.No.835 of 2011 filed by the then President of the Medavakkam Panchayat for declaration to declare that the suit property is 16 feet Road and consequential injunction restraining the Defendants 1 to 3 from interfering with the peaceful possession and enjoyment of the 16 feet wide pathway. After the Panchayat election, the said President was defeated. Therefore, he could not proceed with the case. In the place of the said President, as Plaintiff, Medavakkam Panchayat, Represented by the Block Development Officer, Chitlapakkam, had filed I.A.No.449 of 2017 in O.S.No.835 of 2011 to implead himself as Plaintiff to proceed further with the suit. After due enquiry, the said petition was dismissed. Against which, the Block Development Officer, Chitlapakkam had not filed any Appeal or Revision.



C.R.P.No.1728 of 2021

Therefore, the said order had attained finality.

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3. Thereafter, Ishwariya Homes Association – Medavakkam, Represented by its President had filed I.A.No.704 of 2017 in O.S.No.835 of 2011 to implead them as Plaintiff to proceed with the suit in O.S.No.835 of 2011. After due enquiry, the said petition was also dismissed. Against which, Ishwariya Homes Association – Medavakkam had not filed any Appeal or Revision. Therefore, the said order had also attained finality. While so, the present suit in O.S.No.180 of 2018 is filed by the Medavakkam Ishwarya Homes Apartment Owner's Association, Represented by its President, Mr.S.Rajavel, S/o.Mr.Siva Sankaran, Having office at No.12, Ishwarya Homes Apartment, Mambakkam Main Road, Medavakkam, Chennai – 600 100. The cause of action is of imaginary cause of action. The averments in the plaint in O.S.No.835 of 2011 and O.S.No.180 of 2018 are similar. The Defendants are the same. Therefore, the plaint is to be rejected.

4. The learned Counsel for the Revision Petitioners invited the attention of this Court to the plaint averments in O.S.No.835 of 2011 and



C.R.P.No.1728 of 2021

O.S.No.180 of 2018 and also the schedule of property in O.S.No.835 of 2011 and schedule of property in O.S.No.180 of 2018. The learned Counsel for the Revision Petitioners submitted that the Counsel appearing for the Plaintiff in O.S.No.835 of 2011 and the Respondent in this Civil Revision Petition is the very same Counsel. Therefore, the cause of action mentioned in O.S.No.180 of 2018 is an imaginary cause of action. Whereas the cause of action in O.S.No.835 of 2011 could not be proceeded. There was no Appeal or Revision against the order dismissing Petition under Order VII, Rule 11 of CPC filed by the Flat Owners Association in O.S.No.180 of 2018 seeking to implead themselves in the place of the Plaintiff in O.S.No.835 of 2011. While so, the very same Plaintiff had filed the present suit in O.S.No.180 of 2018. Therefore, the Petition under Order VII, Rule 11 of CPC filed by the Defendants in O.S.No.180 of 2018 ought to have been allowed and the plaint ought to have been rejected. Instead, the learned Additional District Munsif, Alandur, had dismissed the Petition under Order VII, Rule 11 of CPC in O.S.No.180 of 2018 filed by the Defendants.

5.The learned Counsel for the Revision Petitioners invited the attention of this Court to the documents relied on by the Defendants sale and also to the plaint plan annexed to the plaint in O.S.No.180 of 2018. The



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learned Counsel for the Revision Petitioners contended that the Plaintiff in the suit in O.S.No.180 of 2018 does not have any right over the 'B' schedule property, which is the property of the Defendants. Through the Defendants' property, the Plaintiff cannot seek injunction against the Defendants. Therefore, the plaint ought to have been rejected. The cause of action mentioned in O.S.No.180 of 2018 is nothing but cleverly drafted by the learned Counsel appearing for the Plaintiff in O.S.No.180 of 2018. Therefore, the order passed by the learned Additional District Munsif, Alandur, dismissing the Petition in I.A.No.992 under Order VII, Rule 11 of CPC in O.S.No.180 of 2018 is to be set aside.

6.In support of his submission, the learned Counsel for the Revision Petitioners relied on the reported decision of the Hon'ble Supreme Court in **(1994) 2 SCC 14 [Sulochana Amma -vs- Narayanan Nair]** wherein it has been held as follows:-

“A. Civil Procedure Code, 1908 - Section 11 Explanation VIII - Applicability – Judgment of Court of limited pecuniary jurisdiction will operate as *res judicata* to a later suit laid in a Court of unlimited jurisdiction on the same issue between the same parties or persons under whom they claim title or litigating under the same title.

B. Civil Procedure Code, 1908 – Section 11 – *Res judicata* –



C.R.P.No.1728 of 2021

Injunction suit – Title is issue – Decree of court based on equitable relief of injunction operates as *res judicata* in later suit based on title between the same parties.”

7.The decision reported in ***(2004) 3 SCC 137 [Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner and others]*** wherein it is held as under:-

“C. Civil Procedure Code, 1908 – Order 7, Rule 1(e) and (g), Order II, Rule 2, Order 23, Rule 1 and Order VI, Rule 2 - Cause of action and relief claimed – Relative scope and meaning – Relinquishment of reliefs with permission of Court – Does not imply that plaint is not being read as a whole.”

8.Also he relied on the decision of the Hon'ble Supreme Court in ***(2005) 5 SCC 548 [N.V.Srinivasa Murthy and others -vs- Mariyamma (Dead) by propsed LRs. and others]*** wherein it is held as under:-

“CPC 1908 Order VII, Rule 11(d), 7 and 8 - Omitting to claim relief warranted on facts and claiming other relief, to get around bar of limitation – Impermissibility.”

9.The learned Counsel for the Respondent submitted his arguments.

As per his submission, the order passed by the learned Additional District Munsif, Alandur, in I.A.No.992 of 2018 in O.S.No.180 of 2018, which is a Petition filed by the Defendants under Order VII, Rule 11 of CPC, does not warrant any interference. The Plaintiff in the suit in O.S.No.180 of 2018 is the Resident Welfare Association of a block developed which is on the other side of the pathway which is a 16 feet broad pathway for which the



C.R.P.No.1728 of 2021

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developers of the flat had in their sale deed handed over the land earmarked for pathway to the Panchayat. The cause of action for the earlier suit in O.S.No.835 of 2011 arose on 16.12.2011 and the earlier suit in O.S.No.835 of 2011 was filed by the President of the Panchayat restraining the Defendants in that suit from causing interference in the 16 feet broad pathway. Whereas in the present suit in O.S.No.180 of 2018, the cause of action is dated 15.05.2018 which is filed by the Flat Owners Association against the Defendants/Revision Petitioners herein. In the earlier suit in O.S.No.835 of 2011, the President of the Panchayat filed it. Subsequent to the Panchayath Election, the said Panchayat President lost the election. Therefore, he cannot proceed with the trial.

10. Under those circumstances, the earlier suit in O.S.No.835 of 2011 is still pending for want of proper party to proceed with the suit as Plaintiff. While that be the case, the present suit in O.S.No.180 of 2018 had been filed by the Medavakam Ishwarya Homes Apartment Owners Association against the Defendants who are the same Defendants in O.S.No.835 of 2011 but that suit is still pending.



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11. In the plaint plan annexed along with the plaint, the suit property in O.S.No.180 of 2018 includes part of the suit property in O.S.No.835 of 2011 wherein it is stated as 'B' property. Just because part of the earlier suit property in O.S.No.835 of 2011 was included in this plaint plan, it does not mean that the suit is barred by *res judicata*. Also, the earlier suit in O.S.No.835 of 2011 had not been decided and disposed. Only after filing of written statements, issues having been framed and after the trial is completed, the suit was disposed of. The present Petition in I.A.No.992 of 2018 filed under Order VII, Rule 11 of CPC by the Defendants in O.S.No.180 of 2018 is maintainable. It is to be noted that the plaint can be rejected in the following circumstances:-

If there is any relief sought by the Plaintiff which is against public policy of the State, which is against any law in the statute book and also in cases where the suit property and the relief sought for by the Plaintiff had not been properly valued as per the Tamil Nadu Court Fees And Suit Valuation Act, in cases when the suit had not been properly valued, if the Court arrives at the conclusion after holding enquiry, directing the Plaintiff to pay the deficit Court fees by granting time and within the specified time, if the Plaintiff fails to pay the deficit Court fees as per the order passed by the Court, in those circumstances, the plaint can be rejected.

12. Here, the points raised by the Defendants in O.S.No.180 of 2018 does not attract any of those provisions. The plaint averments alone is



C.R.P.No.1728 of 2021

considered to reject the plaint. The submission of the learned Counsel for the Revision Petitioners placing reliance on documents to reject the plaint is unacceptable.

13.The second objection is with regard to the points raised by the learned Counsel for the Revision Petitioners that the earlier suit was disposed of. The orders passed in I.A.Nos.449 and 704 of 2017 in O.S.No.835 of 2011 having been dismissed, that cannot be held to attract the principles for rejecting the plaint under Order VII, Rule 11 of CPC. Even to attract *res judicata*, there should have been issues framed in the earlier suit in O.S.No.835 of 2011 and after completion of trial, if the suit had been decided on merits by answering the issues framed in that suit, then the submission of the learned Counsel for the Revision Petitioners seeking to reject the plaint to invoke *res judicata* may be found acceptable. Here such circumstance does not arise as the earlier suit in O.S.No.835 of 2011 is still pending on the file of the very same Judge.

14.It is true that the 16 feet broad pathway is the subject matter of the the earlier suit in O.S.No.835 of 2011 is also part of the pathway which is a



C.R.P.No.1728 of 2021

subject matter of the suit in O.S.No.180 of 2018. Whereas, 16 feet pathway also includes the earlier suit property. The learned Counsel for the Respondent submitted that 16 feet broad pathway was gifted by the plot promoters to the Local Body/Panchayat for pathyway from the main road leading to the plots. The Plaintiff in the earlier suit in O.S.No.835 of 2011 was the Panchayat President, to protect the pathway which was gifted to the Panchayat by the developers of the plots.

15.Here, the present suit in O.S.No.180 of 2018 is filed by the Medavakam Ishwarya Homes Apartment Owners Association which is a different Association on the other side of the very same 16 feet broad pathway. Here also, promoters of the flat had invoked settlement deed in favour of the Local Body. Therefore, the Plaintiff in the present suit in O.S.No.180 of 2018 viz., Medavakam Ishwarya Homes Apartment Owners Association and the implead party in O.S.No.835 of 2011 viz., Ishwariya Homes Association – Medavakkam are different Associations. Even in such cases, the plaint cannot be rejected on the ground of *res judicata* alone.

16.In support of his contention, the learned Counsel for the



Respondent relied on the following decisions:-

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16.1. The Hon'ble Supreme Court in **(2008) 12 SCC 661 [Kamala and others -vs- K.T.Eshwara Sa and others]** has observed as under:-

“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 VII, 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 VII, Rule 11 of the Code is 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 VII, Rule 11 of the Code is one, Order XIV, Rule 2 is another.”

16.2. This Court in **2009 (5) CTC 444 (Mad) [Mangayarakarasi Ammal and 2 others -vs- Nagammal and 2 others]** has observed as follows:-

*“9. It is relevant to refer to the some of the decisions on this aspect. In the case of **Pandurang Ramachandra Mandlik and another vs. Shanta Bai Ramachandra Ghatge and others [AIR-1989-SC-2240]**, it is held that **Section 11** of CPC is applicable only to the suit and not to the other proceedings.*

*10. A Division Bench of the Karnataka High Court in **[1983-1-KLJ-Short Notes of Cases]** has held that "so far as the interlocutory matters are concerned, the principles of res-judicata do not strictly apply."*

*11. Their Lordships in the case of **U.P.E.Supply Co. Vs. T.N.Chatterjee [AIR-1972-SC-1201]**, has held that the principles of res judicata is not applicable to interlocutory orders as they are not final orders.”*



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16.3. The Hon'ble Supreme Court in **(2017) 13 SCC 174 [Madanuri**

Sri Rama Chandra Murthy -vs- Syed Jalal] held as follows:-

“7.The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

16.4. The Hon'ble Supreme Court in **(2020) 12 SCC 809 [Vaish**

Aggarwal Panchayat -vs- Inder Kumar and others] held as follows:-

“Civil Procedure Code, 1908 – Order VII, Rule 11(d) and Section 11 – Rejection of plaint – On ground that suit was barred by law i.e., on principle of res judicata – Propriety – Where on perusal of plaint alone it could not be said that suit was barred by principle of res judicata, held, plaint could not have been rejected on that ground, and the issue would have to be determined at trial.”



17. In the light of the above decisions, the order passed by the learned Additional District Munsif, Alandur, in dismissing the I.A.No.992 of 2018 in O.S.No.180 of 2018, which is a Petition filed under Order VII, Rule 11 of CPC is a well reasoned order, it does not warrant any interference by this Court exercising discretion under Article 227 of the Constitution of India. Therefore, this Civil Revision Petition is to be dismissed.

Point for consideration:

Whether the Revision Petition filed by the Defendants in I.A.No.992 of 2018 in O.S.No.180 of 2018 is to be allowed and the order dated 03.12.2019 passed by the learned Additional District Munsif, Alandur dismissing the petition in I.A.No.992 of 2018 in O.S.No.180 of 2018 under Order VII Rule 11 of CPC, is to be set aside as perverse?

18. On perusal of the documents and on consideration of the submissions made by the learned Counsel appearing on both sides, it is found that the earlier suit in O.S.No.835 of 2011 was filed by the then President of the Medavakkam Panchayat for declaration to declare that the suit property is 16 feet Road and consequential injunction restraining the



C.R.P.No.1728 of 2021

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Defendants 1 to 3 from interfering with the peaceful possession and enjoyment of the 16 feet wide pathway. After the Panchayat election, the said President was defeated and therefore, he could not proceed with the suit. In his place, the petition filed by the Block Development Officer, Chitlapakkam, in I.A.No.449 of 2017 in O.S.No.835 of 2011 to implead himself as Plaintiff was dismissed after due enquiry. Against which, he had not filed any Appeal or Revision. Therefore, the said order had attained finality. Thereafter, Ishwariya Homes Association – Medavakkam, Represented by its President had filed I.A.No.704 of 2017 in O.S.No.835 of 2011 to implead them as Plaintiff to proceed with the suit in O.S.No.835 of 2011 which was also dismissed. Against which, they had not filed any Appeal or Revision. Therefore, the said order had also attained finality. While so, the present suit in O.S.No.180 of 2018 is filed by the Medavakkam Ishwarya Homes Apartment Owners Association, Represented by its President, Mr.S.Rajavel, S/o.Mr.Siva Sankaran, Having office at No.12, Ishwarya Homes Apartment, Mambakkam Main Road, Medavakkam, Cheennai – 600 100. The cause of action is of imaginary cause of action. The averments in the plaint in O.S.No.835 of 2011 and O.S.No.180 of 2018 and the Defendants are similar. Therefore, the Revision



C.R.P.No.1728 of 2021

Petitioners sought the plaint to be rejected on the ground of *res judicata*.

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19.The Respondent in the Petition under Order 7, Rule 11 of CPC in I.A.No.992 of 2018 in O.S.No.180 of 2018 is the Plaintiff in O.S.No.180 of 2018 which is a different person and not the persons stated by the Revision Petitioners in the earlier suit in O.S.No.835 of 2011. Not only that, the order passed in I.A.No.704 of 2017 in O.S.No.835 of 2011 to implead the Plot Owners' Association as Plaintiff in O.S.No.835 of 2011 even though attained finality, cannot be treated as *res judicata* for filing the present suit in O.S.No.180 of 2018.

20.As per the settled proposition of law, as laid down in the decisions of the Hon'ble Supreme Court, to consider *res judicata* there shall be issues framed in the earlier suit and after trial issues ought to have been answered either in favour of the Plaintiff or Defendant, only then, the subsequent suit can be treated as *res judicata*. Here it was only the order passed in an Interlocutory Application under Order VII, Rule 10 CPC seeking impleadment of the Plaintiff to proceed with the suit and the proposed Plaintiff was Flat Owners Association, which is a different Association also.



C.R.P.No.1728 of 2021

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The subsequent Petition filed by the Block Development Officer to implead himself as co-plaintiff in the place of the erstwhile Panchayat President, the original Plaintiff in O.S.No.835 of 2011 to proceed with the suit even though attained finality, cannot attract the principles of *res judicata* to reject the plaint in the subsequent suit in O.S.No.180 of 2018. The next submission of the learned Counsel for the Revision Petitioners Thiru.V.Krishnamoorthy that the learned Counsel for the Plaintiff in the suit in O.S.No.835 of 2011 and learned Counsel for the Respondent in this Civil Revision Petition is similar. The learned Counsel Thiru.M.Thangadurai appeared for the Plaintiff in the suit in O.S.No.835 of 2011 on behalf of Medavakkam Panchayat represented by its President. He is also appeared for the Respondent in this Civil Revision Petition which is a different Association – Medavakkam Ishwarya Homes Apartment Owners Association. Therefore, it is not a ground to reject the plaint.

21.The cause of action stated in O.S.No.835 of 2011 reads as follows:

“7. The cause of action for this suit arose on 16.12.2011 when the Defendants have made attempt to close the suit property and subsequently and at Medavakkam Village, Pallikaranai Firka, Sholinganallur Taluk, where the suit property is situated within the jurisdiction of the Hon'ble Court.”



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22.The cause of action in O.S.No.180 of 2018 reads as follows:

“11.The cause of action for this suit arose on 15.05.2018 when the Defendants have made attempt to block the suit B schedule property and subsequently and at Medavakkam Village, Pallikaranai Firka, Sholinganallur Taluk, where the suit B schedule property is situated within the jurisdiction of the Hon'ble Court.”

Therefore, the cause of actions in both the suits are different.

23.The schedule of property in O.S.No.835 of 2011 reads as under:-

“Schedule Property

All that piece and parcel of 16 feet Road comprised in Old Survey No.426/1B2, New Survey No.426/5 in Medavakkam Village, Pallikaranai Firka, Sholinganallur Taluk, Kancheepuram District, running towards East to West from Medavakkam-Mambakkam Main Road, measuring to an extent of 3920 Sq. ft. Bounded on the:

North by: Property comprised in Survey No.426/3, 426/4

South by: Property comprised in Survey No.426/7B, 426/7A and 20 feet Road,

East by: Property comprised in Survey No.426/6

West by: Medavakkam-Mambakkam Main Road,
Measuring

Northern side 245 feet, Southern side 245 feet

Eastern side 16 feet, Western side 16 feet”

24.The schedule of properties in O.S.No.180 of 2018 are as follows:

“A Schedule property:

All that piece and parcel of Land with residential apartments contributed thereon under the name and style of “Medavakkam Iswarya Homes Apartment Owner's Association” situated at No.12, Mambakkam main road, Medavakkam, Chennai – 600 100, Sholinganallur Taluk, Kancheepuram District comprised in old Survey No.426/1B3, New Survey No.426/7A, measuring 46 cents.

Bounded on the:

North by : Survey No.426/5 and 6



C.R.P.No.1728 of 2021

WEB COPY

South by : Survey No.426/8 and 9
East by : Survey No.423 and
West by : Survey No.426/7B

Measuring

North to South on the eastern side : 26.00 meters
North to South on the western side : 28.60 meters
East to West on the northern side : 72.60 meters
East to West on the southern side : 74.40 meters

The suit A schedule property is marked in Green Colour of the plaint plan.”

“B Schedule property:

All that piece and parcel of passage road situated at No.12, Mambakkam main road, Medavakkam, Chennai – 600 100, Sholinganallur Taluk, Kancheepuram District, comprised in old survey No.426/1B3, New Survey No.426/7A, and in Survey No.426/1B2, New Survey No.426/5 running towards east to west and connecting western side Mambakkam main road with the suit A s schedule property.

Bounded on the:

North by : Property in Survey No.426/5 and 426/4
South by : Property in Survey No.426/7B and 426/7A
East by : Property in Survey No.426/6
West by : Medavakkam-Mambakkam main road.

The suit B schedule property is marked in Red Colour of the plaint plan.”
Therefore, in the schedule of property in O.S.No.180 of 2018 there are two properties. Therefore, the property already mentioned in O.S.No.835 of 2011 forms part of the schedule of property in O.S.No.180 of 2018 also. As far as O.S.No.835 of 2011 is concerned, the plaint averments stated that as per the developers of the plots, they had handed over the pathway leading to



C.R.P.No.1728 of 2021

their plots from Medavakkam main road having a width of 16 feet to the Panchayat. The Defendants 1 to 3 who had purchased the property in which the suit property - 16 feet pathway, had been shown as 16 feet road as the boundary of their property for the plan approval of the Defendants 2 and 3 vide approval No.6393/1993. The suit property is 16 feet pathway that was handed over to the Panchayat/Panchayat Union as per the plan approval No.6393/1993. Therefore, the Defendants cannot close the said pathway. The suit property had been earmarked and approved in the said subdivision plan approved by St. Thomas Mount Panchayat Union and the Plaintiff Panchayat as 16 feet road, besides the said Mr.V.Rathinam, power of attorney of Mrs.Lekhaa Chandrasekar and Mrs.R.Indirakumari. The lands in Survey No.426/1B3, New Survey No.426/7A belongs to Mrs.Lekhaa Chandrasekar and Mrs.R.Indiarakumari they were laid out as house plots and they had obtained plan approval from St. Thomas Mount Panchayat Union vide PPA.No.251 of 2010 as per the proceedings of the Plaintiff Panchayat dated 03.01.2011 and also vide subdivision permission No.7837/2010 as per the proceedings of the Commissioner, St. Thomas Mount Panchayat Union at Chitlapakkam, dated 31.12.2010. The Plaintiff Panchayat is maintaining the suit property as 16 feet Road and had given

19/35



C.R.P.No.1728 of 2021

electricity service connection to the neighbouring plot owners. The Plaintiff Panchayat is maintaining the 16 feet Road for common use and enjoyment of all the public, therefore, no one is entitled to change or alter the 16 feet Road. Therefore, the Panchayat has filed the suit seeking injunction against the Defendants 1 to 3 from putting up wall, preventing the usage of 16 feet pathway which was subdivided as pathway by the Panchayat Union for the benefit of the people in the layout.

25. In the suit in O.S.No.180 of 2018, the learned Counsel for the Respondent had relied on the plaint plan stating that they had sought injunction against the very same Defendants in which 16 feet pathway mentioned in O.S.No.835 of 2011 also forms part of the suit schedule property. In the suit in O.S.No.180 of 2018 in addition to that 20 feet pathway is also part of the suit property. Therefore, the suit in O.S.No.180 of 2018 has two schedules of property – the pathway of 16 feet maintained as road by the Panchayat in which as per the plaint pleadings in O.S.No.835 of 2011 and the same pathway adjoining 20 feet pathway developed subsequently. The Defendants are attempting to obliterate the pathway and encroach the same thereby preventing the Plaintiff from enjoying the

20/35



C.R.P.No.1728 of 2021

common pathway for their ingress and egress to their respective plots from Mambakkam-Medavakkam main road.

26.The submission of the learned Counsel for the Revision Petitioners that the cause of action stated in O.S.No.180 of 2018 is a clever drafting. The cause of action as stated in O.S.No.835 of 2011 had been re-agitated in the suit with the clever drafting. Therefore, the plaint has to be rejected cannot at all be accepted considering the cause of action and the plaint averments in both the suits are different. The present Plaintiff is the person in the another layout where 20 feet pathway was earmarked for their common use and enjoyment.

27.It is the settled proposition of law that in considering the petition under Order VII, Rule 11 CPC the plaint averment alone is considered and nothing else. The attempt of the Defendants in O.S.No.835 of 2011 who are the Defendants in O.S.No.180 of 2018 also filed petition under Order VII, Rule 11 of CPC seeking to reject the plaint and rely upon the previous order passed by the very same Court dismissing the petition under Order I, Rule 10 of CPC seeking to implead themselves as Plaintiff in the place of

21/35



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Panchayat President having been dismissed and no Appeal or Revision having been filed, the same had attained finality, cannot be a ground to reject the plaint filed by the different Association who claims that the very same Defendants disturbing their peaceful possession and enjoyment of 16 feet pathway and 20 feet pathway. The very same 16 feet pathway was attempted to be encroached by putting up compound wall by Defendants 1 to 3 contrary to the recitals in the sale deed which specifically states 16 feet pathway as per the plan approval. Therefore, the Panchayat President was the competent person having personal knowledge of the facts mentioned in O.S.No.835 of 2011. Here the parties are different. The persons, who had purchased the house sites, plots in subsequent properties which is adjacent, the earlier Petitioner in I.A.No.704 of 2017 was dismissed by the learned District Munsif, Alandur, in the earlier suit. Therefore, the cause of action is different and the suit scheduled property is different. The only similarity is the Defendants are the same and considering the cause of action in O.S.No.835 of 2011 and O.S.No.180 of 2018, it should be presumed that the cause of action is a continuous cause of action. The Defendants 1 to 3 had been continuously preventing the Plaintiffs from enjoying the common pathway approved and handed over in possession to the Panchayat by the

22/35



persons who laid out house plots and sought approval from the Panchayat.

Once a common pathway for the benefit of the house owners, as the owners had handed over it to the local body and then nobody has any right to interfere in the common pathway as rightly pointed out by the learned Counsel for the Respondent, the Plaint cannot be rejected based on the extra materials. The Plaint in O.S.No.835 of 2011 is to be rejected based on the plaint averments in O.S.No.835 of 2011. The Plaint in O.S.No.180 of 2018 is to be rejected only based on pleadings in the plaint in O.S.No.180 of 2018 and no extra materials need be considered.

28.To consider rejection of the plaint on the point of *res judicata*, the dismissal of the Interlocutory Application No.704 of 2017 in O.S.No.835/2011 filed by the different Home Owners Association and O.S.No.180 of 2018 is filed by different Home Owners Association, therefore, the earlier suit cannot be treated as *res judicata* to reject the plaint in O.S.No.180 of 2018. As the Association in this suit is a different association and they are the Plaintiff in the suit. I.A.No.449 of 2017 in O.S.No.835 of 2011 filed by the Block Development Officer, St. Thomas Mount Block to implead himself as Co-Plaintiff to proceed with the suit to



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protect the 16 feet pathway which is to be maintained by the Panchayat was also dismissed. That cannot act as *res judicata* for the Plaintiff in O.S.No.180 of 2018. The decision cited by the learned Counsel for the Revision Petitioners reported in **1964 7 SCR 831 [Gurbax Singh vs. Bhooralal]** wherein it is stated that 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 reliefs so omitted. Rule 4 no cause of action shall, unless with the leave of the Court be joined with a suit for the recovery of immovable property, except -

- (a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;
- (b) claims for damages for breach of any contract under which the property or any part thereof is held; and
- (c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property".

as an aid to the construction of the term 'cause of action' and the expression 'relief based on the same cause of action' in Order II, Rule 2(3). Reading these two provisions together, it has been held that the cause of action for



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suits for possession of immoveable property and the cause of action for a suit in respect of mesne profits from the same property are distinct and different. On the other hand, it has been held, particularly, by the High Court of Allahabad that the basis of a claim for mesne profits is wrongful possession of property and so is a claim for possession and thus the cause of action for claiming either relief is the same viz., wrongful possession of property to which the plaintiff is entitled. On this reasoning, it has been held that a plaintiff, who brings in the first instance a suit for possession alone or for mesne profits is afterwards debarred from suing for the other relief under Order II, Rule 2(3). In order that a plea of a bar under Order 2, Rule 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.

29.The decision cited by the learned Counsel for the Revision



C.R.P.No.1728 of 2021

Petitioners in **Gurbux Singh** case will not help this case. In the reported decision, the District Judge had rejected the contention under Order 2, Rule 2 of CPC stating that the pleadings were not furnished. The written statements were not furnished. Therefore, the Court was unable to appreciate the facts and remitted the case for consideration by the trial Judge/District Judge. The findings of the District Judge was confirmed in the High Court. Against which, the same was agitated upto the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the appeal observing the merits of the suit have yet to be tried and therefore, the order of remand was affirmed. The same holds good in the points raised. In this case, the learned trial Judge/Additional District Munsif, Alandur had observed that the Defendants are yet to file their written statement in O.S.No.180 of 2018 but had filed petition under Order VII, Rule 11 of CPC raising rejection of the plaint based on the earlier suit in O.S.No.835 of 2011 and the learned Additional District Munsif, Alandur had rightly rejected the petition under Order VII, Rule 11 CPC that there are points to be considered only in the suit.

30.In the decision relied by the learned Counsel for the Revision



C.R.P.No.1728 of 2021

Petitioners in **(1994) 2 SCC 14 [Sulochana Amma -vs- Narayanan Nair]** it has been held that Judgment of Court of limited pecuniary jurisdiction will operate as *res judicata* to a later suit laid in a Court of unlimited jurisdiction on the same issue between the same parties or persons under whom they claim title or litigating under the same title.

31.Here the earlier suit in O.S.No.835 of 2011 is still pending because of the technicalities of the law before the very same Court. Therefore, issues had not been framed. Trial had not been proceeded in either deciding the issue after full trial to attract the ratio laid down in **(1994) 2 SCC 14**. Therefore, the same decision will not help the case of the Revision Petitioners. Hence, it is rejected.

32.The decision relied on by the learned Counsel for the Revision Petitioners reported in **(2004) 3 SCC 137 [Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner and others]** will not applicable to the facts and circumstance of this case.

33.In the above decision relied by the learned Counsel for the



C.R.P.No.1728 of 2021

Revision Petitioners states that it is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession, will not be applicable to the facts of this case. Here in this case, the true owner, as in the plaint averments, is the Panchayat who is the custodian of 16 feet pathway or road thereafter it may be for the use of the owners of the properties abutting the 16 feet pathway/road maintained by the Panchayat.

34.The decision relied by the learned Counsel for the Revision Petitioners in **(2005) 2 SCC 256 [National Institute of Mental Health and Neuro Sciences vs. C.Parameshwara]** is not applicable to the facts of this case. It is with reference to Section 19 of the Civil Procedure Code seeking stay of the subsequent suit. Here the Revision Petitioners had not sought stay before the trial Court. They had filed petition only to reject the plaint in O.S.No.180 of 2018 and it is not invoking Section 10 of Civil Procedure Code to attract the decision reported in **(2005) 2 SCC 256**.

35. The facts of the reported decision of the Hon'ble Supreme Court in **(2005) 5 SCC 548 [N.V.Srinivasa Murthy and others -vs- Mariyamma**



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(Dead) by propsed LRs. and others] relied on by the learned Counsel for the Revision Petitioners will not be applicable to the facts of this case. The earlier suit had not been disposed of. On point of technicalities of law, it could not be prosecuted and is still pending on the file of the same Judge. Whereas the subsequent suit was filed by the people affected by the conduct of the Defendants. Here the cause of action is continuous. Here, it is not clever drafting. Also the Counsel in the earlier suit is different Counsel, the Counsel in the present suit is a different Counsel. Therefore, the decision will not be applicable to the facts of this case.

36.The decision of the Hon'ble Supreme Court in **(2011) 3 SCC 408 [M.Nagabhushana vs. State of Karnataka and others]** relied on by the learned Counsel for the Revision Petitioners is also not applicable to the facts of this case as it deals with *res judicata*. Here *res judicata* is not at all attracted as the earlier suit had not been decided after full trial, issues framed had not been answered. Only if the issues had been answered after full trial, it attracts *res judicata*.

37.The reported decision of the Hon'ble Supreme Court in **(2008) 4**



C.R.P.No.1728 of 2021

SCC 594 [Anathula Sudhakar -vs- P.Buchi Reddy (Dead) by LRs and

others] for the proposition that the suit for injunction is maintainable only if the Plaintiff is in possession of the property, is not applicable to the facts of this particular case. Here, the possession of the Plaintiff in O.S.No.180 of 2018 cannot be treated as exclusive possession. They are in joint possession. They are seeking injunction against individuals through Defendants whose vendors alone had handed over the pathway to the Panchayat to be developed as Panchayat road for the common benefit of Plaintiff and Defendants in O.S.No.180 of 2018. The earlier suit in O.S.No.835 of 2011 was filed by the Panchayat President seeking injunction against the Defendants as custodian of the 16 feet pathway alone. At that time, the vendors of the Defendants 1 and 3 had sought approval for the layout with the Panchayat Union.

38. Whether the Defendants 1 to 3 are in possession, whether the 16 feet pathway mentioned in O.S.No.835 of 2011 and also mentioned in O.S.No.180 of 2018 also the 20 feet pathway mentioned in O.S.No.180 of 2018 was handed over by the vendors of the Plaintiff in O.S.No.180 of 2018 to the Panchayat as well as the Panchayat Union and obtained approval after

30/35



C.R.P.No.1728 of 2021

handing over possession to the Panchayat Union are the subject matters of evidence. That cannot be tested while considering the petition to reject the plaint. Therefore, the order passed by the learned Additional District Munsif, Alandur rejecting the plaint under Order VII, Rule 11 of CPC on the ground that the contentions for rejecting the plaint under Order VII, Rule 11 were not at all raised by the Petitioners in I.A.No.992 of 2018 in O.S.No.180 of 2018 is found justified. Therefore, the said ruling cited by the learned Counsel for the Revision Petitioners is not applicable to the facts of this case. Hence, rejected.

39.In the light of the decisions in **2009 (5) CTC 444 (Mad)** [**Mangayarakarasi Ammal and 2 others -vs- Nagammal and 2 others**] and **(2020) 12 SCC 809 [Vaish Aggarwal Panchayat -vs- Inder Kumar and others]** the principles of *res judicata* is not applicable to interlocutory orders as they are not final orders. The submission of the learned Counsel for the Revision Petitioners seeking to reject the plaint on the ground of dismissing the interim application by the same Judge in the earlier application moved by Flat Owners Association seeking to implead them as Plaintiff in O.S.No.835 of 2011 and also petition filed by the Block Development

31/35



C.R.P.No.1728 of 2021

Officer as Commissioner of the St. Thomas Mount Panchayat Union in the place of the President as Plaintiff in O.S.No.835 of 2011 having been dismissed, cannot be treated as *res judicata* to reject the plaint in O.S.No.180 of 2018 is found acceptable in the light of the reported ruling in **2009 (5) CTC 444 (Mad) [Mangayarakarasi Ammal and 2 others -vs- Nagammal and 2 others]** and **(2020) 12 SCC 809 [Vaish Aggarwal Panchayat -vs- Inder Kumar and others]**. Hence, the above said decisions are acceptable and applicable to the facts of this case.

40.In the light of the above discussion from paragraphs 18 to 39, this Court arrives at a conclusion that the submission made by the learned Counsel for the Revision Petitioners contending that the learned Additional District Munsif, Alandur, rejecting the petition under Order VII, Rule 11 CPC is perverse, cannot at all be accepted. The learned Additional District Munsif, Alandur, had exercised his discretion which is a well reasoned order based on the facts stated in the plaint and based on law applicable as per Order VII, Rule 11 CPC. The grounds for rejecting the plaint are (i) deficit court fee; (ii) pecuniary jurisdiction; (iii) undervaluation and (iv) fictitious cause of action. Those materials were not available in the pleadings in the

32/35



C.R.P.No.1728 of 2021

plaint in O.S.No.180 of 2018. Therefore, the learned Additional District Munsif, Alandur, had rejected the contentions of the learned Counsel for the Defendants before the trial Court as Petitioners in I.A.No.992 of 2018 in O.S.No.180 of 2018.

41. In the light of the above discussion, **the Point for consideration is answered against the Revision Petitioners and in favour of the Respondent.** The order dated 03.12.2019 passed by the learned Additional District Munsif, Alandur dismissing the petition in I.A.No.992 of 2018 in O.S.No.180 of 2018 under Order VII Rule 11 of CPC, is a well reasoned order which does not warrant any interference by this Court exercising discretion under Article 227 of the Constitution of India.

In the result, **this Civil Revision Petition fails and the same is dismissed** with costs throughout. Consequently, the connected miscellaneous petition is closed.

The learned Additional District Munsif, Alandur, is directed to dispose of the cases in O.S.No.835 of 2011 and O.S.No.180 of 2018 within a



C.R.P.No.1728 of 2021

reasonable period of three months from the date of receipt of a copy of this order.

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29.04.2024

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Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

SATHI KUMAR SUKUMARA KURUP, J.,

SRM

**Order made in
C.R.P.No.1728 of 2021**



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C.R.P.No.1728 of 2021

29.04.2024