



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 18.06.2025

Order pronounced on : 27.06.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.1025 of 2025
& C.M.P.No.5941 of 2025

V.Ramathal

..Petitioner/2nd Defendant

Vs.

1.B.Bagyalakshmi

..1st Respondent/Plaintiff

2.Kanchana

..2nd Respondent/1st Defendant

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 11.12.2024 made in I.A.No.3 of 2019 in O.S.No.194 of 2019 on the file of the I Additional District Judge, Coimbatore.

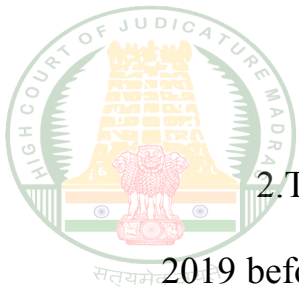
For Petitioner : Mr.P.Saravana Sowmiyan

For Respondents : Mr.A.E.Ravichandran for R1

No appearance for R2

ORDER

This Civil Revision Petition has been preferred to set aside the order dated 11.12.2024 made in I.A.No.3 of 2019 in O.S.No.194 of 2019 on the file of the I Additional District Judge, Coimbatore.



2.This revision is at the instance of the 2nd defendant in O.S.No.194 of 2019 before the I Additional District Judge, Coimbatore. The 2nd defendant took out an application in I.A.No.3 of 2019 in the said suit, seeking rejection of the plaint on the ground that the suit was barred by principles of constructive *res judicata* and estoppel. The said application was initially taken up for enquiry, at which point of time, the revision petitioner took out an application to produce certain documents. The said application was rejected by the Trial Court stating that an application for rejection of the plaint would have to be decided only based on the plaint averments and the documents filed by the plaintiff along with the suit. Challenging the said order, the petitioner moved this Court in CRP.(PD).No.4427 of 2023 and this Court, by order dated 08.12.2023, set aside the order passed by the Trial Court in I.A.No.11 of 2023 and directed the Trial Court to receive the documents which were sought to be produced by the revision petitioner. Thereafter, the Trial Court has conducted enquiry and dismissed the application under Order VII Rule 11 of CPC. Aggrieved by the said order, the revision petitioner, namely the 2nd defendant in the suit is before this Court.

3.I have heard Mr.P.Saravana Sowmiyan, learned counsel for the petitioner and Mr.A.E.Ravichandran, learned counsel for the 1st respondent.



There is no appearance on behalf of the 2nd respondent.

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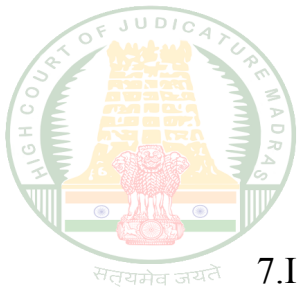
4.Mr.P.Saravana Sowmiyan, learned counsel for the petitioner would submit that the Trial Court, despite the order passed in the earlier revision petition in CRP.(PD).No.4427 of 2023, has not even considered the documents that were permitted to be filed by the revision petitioner. That apart, the learned counsel would state that the 1st respondent/plaintiff has clearly pleaded about the earlier proceedings which went up to the Hon'ble Supreme Court and it is only the documents that were not filed along with the plaint and only on that ground, this Court had permitted the said documents to be looked into while deciding the application for rejecting the plaint.

5.The learned counsel for the petitioner would further submit that a reading of the plaint clearly establishes that it was a clear case of re-agitating the same issues which had attained finality and therefore, it is clear abuse of process of the Court. He would also contend that the issue of constructive *res judicata* and estoppel are borne out of the documents substantiating the plaint allegations and he would therefore pray for the plaint to be rejected, by setting aside the order passed by the Trial Court dismissing the application for rejection of plaint.



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6. Per contra, Mr.A.E.Ravichandran, learned counsel for the 1st respondent/plaintiff would submit that the suit is one for partition and separate possession of the plaintiff's/1st respondent's right in the suit property. The 1st respondent has also sought for a relief of declaration that the Sale Deed dated 01.06.2025 is not binding on the plaintiff and for a permanent injunction to restrain the 2nd defendant from alienating or encumbering the suit properties. He would further state that the property which is the subject matter of the earlier suit and the property which is subject matter of the present suit are completely different and not overlapping. He would further state that the specific case of the 1st respondent/plaintiff was that despite the 2nd respondent having no share in the suit property and having admitted even in the pleadings in the earlier proceedings, has colluded with the revision petitioner and proceeded to execute a Sale Deed as if she had right and interest in the suit property and in the process, the right, title and interest of the 1st respondent/plaintiff has been seriously prejudiced and impeded and only under such circumstances, the present suit has been filed. He would therefore state that there is no question of constructive *res judicata* or estoppel, more so, when the earlier suit was for specific performance alone. He would also place reliance on the decision of the Hon'ble Supreme Court in *Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and Others*, reported in (2021) 9 Supreme Court Cases 99, in support of his contention.

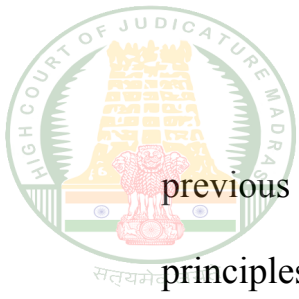


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7.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the order impugned in the revision and the judgment on which reliance has been placed on by the learned counsel for the 1st respondent.

8.The earlier suit proceedings which went up to the Hon'ble Supreme Court were pertaining to an agreement of sale that was entered into in the year 1986. The suit for specific performance was instituted by the revision petitioner and the suit came to be decreed and the matter attained finality before the Hon'ble Supreme Court. Thereafter, according to the revision petitioner, the execution proceedings were also laid and Sale Deed was executed and possession was also handed over to the decree holder. The learned counsel for the petitioner would take me through the plaint in the present suit in O.S.No.194 of 2019 and state that the very same issues are now been re-agitated and therefore, it is a clear case of abuse of process of law.

9.Per contra, Mr.A.E.Ravichandran, learned counsel for the 1st respondent has contended that an application under Order VII Rule 11 of CPC cannot be entertained on the ground that the suit is barred by principles of res judicata as the Court will have to examine the pleadings, issues framed and judgment in the

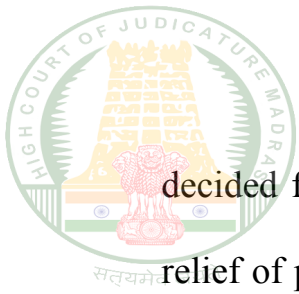


previous suit in order to come to a conclusion that the second suit is barred by principles of constructive *res judicata* and estoppel.

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10.The Hon'ble Supreme Court in *Srihari Hanumandas Totala's case*, has also in similar circumstances, held that while deciding an application under Order VII Rule 11(d) of CPC, the Trial Court can only go by the averments in the plaint and even the defense raised by the defendant cannot be considered while deciding the application to reject the plaint. It has been further held that to determine whether the suit is barred by *res judicata*, it would involve the questions that had to be adjudicated and finally decided by the Court only after trial and such pleas cannot be the foundation for entertaining an application under Order VII Rule 11(d) of the CPC.

11.It is the specific case of the revision petitioner that the suit filed by the 1st respondent is barred by law. The very same issue has been already decided by the Hon'ble Supreme Court and clearly held that the question of *res judicata* are not available to be taken by the defendant to seek rejection of the plaint invoking provisions under Oder VII Rule 11(d) of CPC. Even otherwise, from the the facts of the present case, it is seen that the subject matter of the earlier suit which went up to the Hon'ble Supreme Court was only a suit for specific performance for an agreement of sale where questions of title have not been



decided finally. However in the present suit, the 1st respondent has sought for relief of partition as well as declaration of Sale Deed to be not binding on him, besides the relief of permanent injunction.

12. Though the subject matter of the property in the agreement of sale is a larger extent in which the present 1st respondent/plaintiff claims a right of partition to a portion of the said property, it cannot be said that the issue has already been finally decided. The issues that arises in the present suit are certainly in variance to what was decided in the earlier suit for specific performance.

13. I have also gone through the order passed by the Trial Court dismissing the application under Order VII Rule 11(d) of CPC taken out by the revision petitioner. The Trial Court has rightly come to the conclusion that the issues of constructive *res judicata* and estoppel cannot be decided in an application under Order VII Rule 11 of CPC and can be decided only after the parties lead evidence, oral and documentary. As regards the submissions of the learned counsel for the petitioner that despite directions of this Court to consider the documents, the Trial Court has not even whispered about the additional documents that were produced by the revision petitioner, I have gone through the order of the Trial Court in this regard. I find that no doubt, it is rightly



contended by the learned counsel for the petitioner, the Trial Court has not even referred to the order of this Court, permitting the additional documents to be considered while disposing of the application for rejection of the plaint. However, I do not find that such omission on the part of the Trial Court has been fatal or has resulted in a perverse or unsustainable order.

14. On the questions of law, the Trial Court has appreciated the contentions of the parties and clearly come to the conclusion that since the plaint is sought to be rejected on the ground of constructive *res judicata* and estoppel, has proceeded to hold that such contentions cannot be gone into in an application for rejection of the plaint. Therefore, though the documents that have been relied on by the revision petitioner were not looked into or discussed, I find that the Trial Court has come to the right conclusion and no prejudice is caused to the revision petitioner on account of non-consideration of the documents which are only orders and judgments of the Courts in the earlier proceedings. In such circumstances, I do not find any illegality or perversity in the findings arrived at by the Trial Court.

15. In fine, the Civil Revision Petition is dismissed. The I Additional District Judge, Coimbatore is directed to dispose of O.S.No.194 of 2019, within a period of six weeks from the date of receipt of a copy of this order. There shall



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be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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27.06.2025

Speaking/Non-speaking order

Index : Yes/No

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To

The I Additional District Judge, Coimbatore.

P.B.BALAJI.J.

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Pre-delivery order made in
CRP.No.1025 of 2025
& C.M.P.No.5941 of 2025

27.06.2025