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C.R.P. No.129



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

**DATED : 03.07.2025**

**CORAM**

**THE HON'BLE DR. JUSTICE P.B. BALAJI**

**C.R.P. No.1293 of 2024  
and C.M.P. No.6853 of 2024**

S.M. Krishnan

... Petitioner/ 7<sup>th</sup> Defendant

-VS-

1. Ramar @ Raman
2. Manikam
3. Bala Krishnan
4. Nagammal
5. Muthulakshmi
6. Pachiyammal
7. Varlarmathi

... 1<sup>st</sup> Respondent/ Plaintiff

... Respondents 2 to 7/ Defendants 1 to 6

**Prayer:** This Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the suit in O.S.No.224 of 2022 on the file of the II Additional District Court, Salem.

For Petitioner : Mr. N. Manoharan

For Respondent 1 : Mr. M. Santhanaraman

For Respondents 2 to 7 : No Appearance

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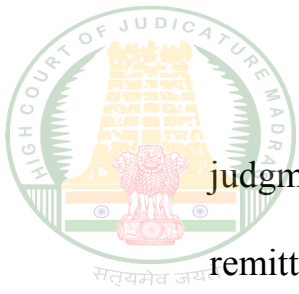
## **ORDER**

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The present revision has been filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.224 of 2022 on the file of the II Additional District Court, Salem.

2. Heard Mr. N. Manoharan, the learned counsel for the petitioner and Mr. M. Santhanaraman, the learned counsel for the first respondent/ plaintiff.

3. The learned counsel for the petitioner would state that the suit, that has been filed before the II Additional District Court, Salem in O.S.No.224 of 2022, clearly amounts to re-litigation and is also barred under the provisions of Order II Rule 2 of CPC. He would invite my kind attention to the earlier suit that was filed by the first respondent/ plaintiff in O.S. No.91 of 2004, which came to be decreed on 01.04.2011. The defendants in the said suit, aggrieved by the decree, preferred an appeal before the first Appellate Court and subsequently, the first Appellate Court, after hearing the parties, remanded the matter to the Trial Court. As against the remand order, the plaintiff filed an appeal before this Court in C.M.A. No.3576 of 2018 and this Court, vide



judgment dated 27.02.2018 has set aside the order of remand and instructs to remitted the matter to the first Appellate Court with a direction to decide the appeal on merits, and in accordance to law.

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4. The learned counsel for the petitioner would invite my attention to the memo filed by the first respondent/ plaintiff before the Trial Court seeking to withdraw the suit in O.S.No.91 of 2004. The said memo was also taken on file and the Trial Court by a judgment and decree dated 11.02.2021, dismissed the said suit as not pressed. The first respondent admittedly did not seek for any leave to file a fresh suit and in fact no application was also filed as contemplated under Order XXIII of the CPC. However, subsequently, the defendants in the said suit sold the property to the present revision petitioners and thereafter, the second suit has been filed in O.S.No.224 of 2022 before the II Additional District Judge, Salem. It is therefore, the contention of the learned counsel for the petitioner that the second suit is a gross abuse of process, clearly amounting to re-litigation and also hit by provisions of Order II Rule 2 of CPC.

5. Per contra, the learned counsel for the first respondent/ plaintiff would however state that though this Court in C.M.A.No.3576 of 2018

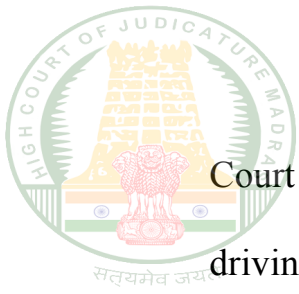


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remanded the matter to the first Appellate Court, without noticing the judgment of this Court in the said civil miscellaneous appeal, the Trial Court based on the remand order passed by the first Appellate Court has reopened the suit and proceeded with the matter. Pending the suit, there was a settlement talk between the parties and in view of the same, the plaintiff has chosen to withdraw the suit. The learned counsel would however state that the order passed by this Court in the said Civil Miscellaneous Appeal has not been given effect to and therefore, he would request that, if the second suit is not maintainable, at least a direction can be issued to the first Appellate Court, to dispose of the appeal in terms of the order of remand passed by this Court, in the Civil Miscellaneous Appeal.

6. I have considered the submissions advanced by the learned counsels on either side.

7. Admittedly, the second suit has been filed without leave being obtained, as mandated under the provisions of Order XXIII Rule 3 of CPC. Merely based on a memo, the plaintiff had only chosen to withdraw the suit as not pressed, without any further relief. Therefore, the second suit on the same cause of action is not maintainable and the same amounts to re-litigation and this



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Court can certainly take note of the same and strike off the plaint, without driving the parties to go for one more round of litigation. The learned counsel for the first respondent/ plaintiff seeks a direction to be issued to the first Appellate Court to re-hear the appeal, in terms of the remand order of this Court in C.M.A.No.3576 of 2018. Unfortunately, I am unable to consider the said request for the simple reason that, the suit itself has been withdrawn by the first respondent/ plaintiff and therefore, there is nothing to be decided in the first appeal, post remand by this Court in C.M.A.No.3576 of 2018. No doubt, it appears that there was some mis-communication and the same has resulted in the directions of this Court not being complied with.

8. However, in view of the fact that the first suit is not pending on the file, the only option that is open to the first respondent/ plaintiff, is to take out an application, supported by an affidavit, assigning reasons as to why the said suit was withdrawn and attempt to reopen the said suit. Instead of doing so, the first respondent/ plaintiff cannot maintain a fresh suit on the same cause of action.



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**P.B. BALAJI, J.,**

stn

9. In the light of the above, I am inclined to strike off the plaint in O.S.No.224 of 2022, with a liberty to the first respondent/ plaintiff to approach the Trial Court in O.S.No.91 of 2004, in accordance with law.

10. Accordingly, this civil revision petition is allowed. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs.

**03.07.2025**

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

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To

The II Additional District Judge,  
Salem.

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