



C.R.P.No.2315 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.06.2025

Pronounced on : 19.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.2315 of 2024

and

C.M.P.No.12182 of 2024

Gopi

... Petitioner

Vs.

1.Shanthi

2.Gnanasekar

... Respondents

Prayer : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 08.03.2024 in I.A.No.4 of 2023 in O.S.No.63 of 2023 on the file of the IV Additional District Court, Thiruvallur at Ponneri.

For Petitioner : Mr.A.E.Ravichandran

For Respondents : Mr.V.Raghavachari
Senior Counsel
for Mr.N.R.Anantha Rama Krishnan



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ORDER

Aggrieved over the order of the IV Additional District Court, Thiruvallur at Ponneri, dated 08.03.2024 in I.A.No.4 of 2023, dismissing the application under Order 7 Rule 11 CPC to reject the plaint in O.S.No.63 of 2023, the present revision has been filed by the 4th defendant in the suit.

2.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.Brief background of the case is as follows :

3.1.The plaintiffs have filed the suit in O.S.No.63 of 2023 for declaration of title over the suit property; for consequential relief of permanent injunction as against the defendants 3 and 4; for declaration of the settlement deed dated 16.09.2013 in favour of the 2nd defendant as invalid; to declare the sale deed dated 01.06.2020 in favour of the 3rd defendant and the sale deeds dated 13.07.2022 and 03.08.2022 in favour of the 4th defendant as null and void and not binding on the plaintiffs; to declare the mortgage deed dated 01.12.2022 in favour of the 5th defendant



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as null and void; and also for permanent injunction.

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3.2.Reddy Kuppana Mudali married Aayammal. Reddy Naasamma, Reddy Muthammal and Reddy Munusamy Mudali were the children born to Reddy Kuppana Mudali and Aayammal. Reddy Naasamma and Reddy Muthammal died at young age. They both did not have any issues.

3.3.Reddy Munusamy Mudali's first wife Nallammal was Kanakammal's daughter. Nallammal died issueless. Reddy Munusamy Mudali's second wife was Raakammal, daughter of Sundarammal and Reddy Rangappa Mudali. Reddy Munusamy Mudali and Raakammal had four children namely Balakrishnan, Kamatchi Ammal, Kangammal and C.M.Raja. Balakrishnan and his wife Manikammal had two children Devaraj and Malliga, who both died unmarried. Balakrishnan died about 50 years ago. Manikammal also is no more.

3.4.Reddy Munusamy Mudali and Raakammal had given their daughters Kamatchi Ammal and Kanagammal in marriage and provided them sufficient Shridhana. Kamatchi Ammal got settled with her husband Venkatasubaraju Mudali and Kangammal got settled with her husband Appavu Mudali. Kamatchi Ammal and Kangammal were settled immovable assets by way of settlement and they had given up all their



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rights and interest in the other family properties of Reddy Munusamy Mudali and Raakammal, including the suit properties. Only the last son C.M.Raja was taking care of Reddy Munusamy Mudali and Raakammal. The 1st plaintiff is the wife of C.M.Raja. Baakialakshmi, wife of Kothandam, Ragini, wife of Sadhasivam, and Gnanasekar (2nd plaintiff) are the children born to C.M.Raja and the 1st plaintiff.

3.5.Reddy Narayana Mudali married Periya Kuzhandhai @ Lakshmi Ammal. Sundarammal and Reddy Kishtappa Mudali were the children born to Reddy Narayana Mudali and Periya Kuzhandhai. Reddy Kishtappa Mudali married Amirthammal. They had no issues. Sundarammal was married to Reddy Rangappa Mudali. Their only daughter was Raakammal, who married Reddy Munusamy Mudali, S/o.Reddy Kuppanna Mudali, as detailed above.

3.6.Reddy Kishtappa Mudali's wife Amirthammal was the daughter of Chellappa Mudaliar and Paapammal. Kulappa Mudaliar and Annammal were the other children born to Chellappa Mudaliar and Pappammal. Kulappa Mudaliar and his wife Lakshmi had four children namely Ponnuvel Mudaliar, Kamsala @ Kowsalya (1st defendant), Prakasam and Rajababu. Out of them, 1st defendant and Rajababu alone are alive. The 2nd



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defendant is the daughter of Kamsala @ Kowsalya. The 2nd defendant was married to one Suresh Babu.

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3.7.Reddy Kishtappa Mudali died in 1925 at young age. To discharge the family debts, Periya Kuzhandhai had proposed to sell some of the family properties. At that point of time, the family members of Amirthammal, widow of Reddy Kishtappa Mudali, had insisted for providing some assets to Amirthammal. Hence, Periya Kuzhandhai had executed a deed of maintenance, dated 18.07.1929, in favour of Amirthammal. The deed of maintenance is in respect of suit Item No.2 which relates to 25 Cents on the northern side. Periya Kuzhandhai has subsequently provided Shridhana to her daughter Sundarammal under Deed of Shridhana dated 20.09.1942, besides house site.

3.8.According to the plaintiffs, the deed of maintenance is not valid and binding on the plaintiffs who are the descendants of Reddy Kishtappa Mudali and it is their contention that the deed of maintenance stipulates that Amirthammal was given only limited rights to enjoy the income from the properties and she did not have any right of alienation over the said properties and the properties would revert to the legal heirs of Reddy Kishtappa Mudali after the lifetime of Amirthammal. According to the



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plaintiffs, after Amirthammal's death, the properties have reverted back and the properties devolved on the legal heirs of the Reddy Kishtappa Mudali and hence, Raakammal succeeded to the properties of Amirthammal after her death in 1984. It is their contention that Raakammal has therefore become the absolute owner and is in exclusive possession of the suit properties.

3.9.The 1st defendant is the daughter of Kullappa Reddiar, brother of Amirthammal. The 2nd defendant is the 1st defendant's daughter and she is married to Suresh Babu.

3.10.It is the contention of the plaintiffs that the 1st defendant has no manner of right, interest, title or possession in the suit property. The 1st defendant has created fraudulent and fictitious sale deed dated 25.08.2008 in favour of the 2nd defendant's husband Suresh Babu and he had in turn, created a fictitious mortgage deed in favour of his confidant V.P.Dhanasekar. It is the case of the plaintiff that those documents are fraudulently created.

3.11.The plaintiffs along with two others have earlier filed a suit in O.S.No.222 of 2009 before the District Munsif Court, Ponneri, against the 1st defendant, Suresh Babu, V.P.Dhanasekar and the 7th defendant to declare



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the sale deed and mortgage deed above referred to, as null and void. The said suit was dismissed on the technical ground that, without seeking declaration of title, the suit is not maintainable. The said suit is now pending in Second Appeal.

3.12.Subsequently, the plaintiffs have filed the present suit for various reliefs as stated above.

3.13.At this stage, the 4th defendant in the subsequent suit, who is the purchaser of the property, took out the present application to reject the plaint on the ground of *res judicata*, since the rights of the parties have already been decided in the earlier suit in O.S.No.222 of 2009. According to him, the subject property is the subject matter of maintenance deed 29.03.1929 in favour of Amirthammal who is the daughter-in-law of Periya Kuzhandhai. The said Amirthammal adopted her own brother's daughter Kamsala @ Kowsalya (1st defendant). The said Amirthammal died on 29.03.1979. Thereafter, the said Kamsala @ Kowsalya had been in peaceful possession and enjoyment of the said property and she settled the property on 25.08.2008 in favour of Suresh Babu. The said Suresh Babu executed a settlement deed in favour of his wife Malar @ Malarvizhi on 16.09.2013. The said Malar @ Malarvizhi had executed a General Power



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of Attorney on 05.01.2015 in favour of Rajan, who had subsequently executed a sale deed in favour of Shanmugasundaram @ Mahesh on 01.06.2020 and in turn, the said Shanmugasundaram had executed a Power of Attorney in favour of Ramesh on 12.07.2022. The said Ramesh had executed a sale deed in favour of the 4th defendant (revision petitioner) on 03.08.2022. According to the 4th defendant, the Revenue records also have been changed to his name and he has also filed a suit in O.S.No.59 of 2023 on the file of the Sub-Court, Ponneri, for permanent injunction. At this stage, summons in the present suit has been received by him.

3.14. According to the revision petitioner/4th defendant, the plaintiffs have already filed the suit in O.S.No.222 of 2009 on the file of the District Munsif Court, Ponneri, and the suit has been dismissed by the Court and an Appeal in A.S.No.31 of 2013 before the Sub-Court, Ponneri, was also dismissed. Now, a Second Appeal is pending before the High Court. Hence, according to the revision petitioner, the rights of the parties have already been decided in the earlier litigation. Therefore, the present suit in O.S.No.63 of 2023 is barred by principle of *res judicata* and there is no cause of action in the subsequent suit. Therefore, he has filed the present application to reject the plaint.



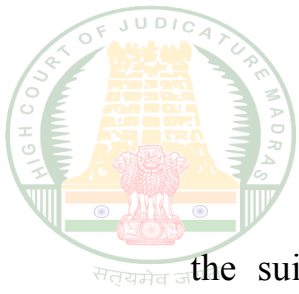
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3.15.The said application was opposed by the respondents. However, the trial Court, by the impugned order dated 08.03.2024, dismissed the application on the ground that Second Appeal is still pending and as the earlier suit has not reached finality, the principle of *res judicata* will not operate.

3.16.Challenging the said dismissal order, the present revision has been filed.

4.Learned counsel appearing for the revision petitioner would submit that the earlier suit in O.S.No.222 of 2009 has been filed by the present plaintiffs and others as against Kamsala @ Kowsalya, Suresh Babu and others. In the said suit, declaration has been sought against the defendants 1 and 2 in respect of sale deed and mortgage deed executed by them besides permanent injunction. The suit has been dismissed by the trial Court. In the judgment in the said suit, the trial Court has clearly held that the plaintiffs have failed to prove the relationship of C.M.Raja with Reddy Kishtappa Mudali and that the plaintiffs also failed to prove that only the said C.M.Raja had performed the cremation of Amirthammal and further,



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the suit without a prayer for declaration of title, is not maintainable.

Similarly, injunction relief was also negatived. The judgment of the trial Court has been upheld by the Appellate Court in A.S.No.31 of 2013. Therefore, it is the contention of the learned counsel for the revision petitioner that the issues of similar nature cannot be re-agitated and there is no cause of action for the subsequent suit. It is his contention that the present suit is nothing but abuse of process of law. The earlier suit is to declare the sale deed and mortgage deed executed by the defendants 1 and 2, namely Kamsala @ Kowsalya and Suresh Babu, as null and void. Now, the present suit is also filed as against the same Kamsala @ Kowsalya, Suresh Babu and others for a larger relief. However, when the issues have already been decided earlier, the decision in the earlier suit will operate as *res judicata*. Therefore, it is his contention that the present suit is not maintainable in law and the same is barred by the principle of *res judicata*.

5.Further, it is the contention of the learned counsel for the revision petitioner that there is no cause of action for the suit and if the present suit is allowed to continue, it would be a clear abuse of process of law and would amount to re-litigation. In support of his submissions, the learned



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counsel for the revision petitioner relied upon the following judgments :

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- i. *K.K.Modi v. K.N.Modi and others* [1998 (3) SCC 573]
- ii. *Suresh Kumar Kankariya v. K.Jigibal* [2022 SCC Online Mad 1931]
- iii. *S.J.S.Business Enterprises (P) Ltd. v. State of Bihar and others* [2004 (7) SCC 166]
- iv. *V.S.P.Sivan and others v. Balashanmugam and others* [AIR 2021 Mad 62]

6. Whereas, Mr.V.Raghavachari, learned Senior Counsel, appearing for the respondents, would submit that the earlier suit has not reached finality and the earlier suit has been filed for different reliefs and the present suit is on the basis of title. The earlier suit has been dismissed on a technical ground that the plaintiffs have not sought for the relief of declaration of title. Therefore, the plea of *res judicata* cannot be pressed into service at this stage. Further, there was no issue with regard to the title of the property in the earlier suit. The earlier suit has been filed only on the basis of the maintenance deed, wherein, Amirthammal has been given a life interest and the legal heirs of Reddy Kishtappa Mudaliar alone are entitled



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to do last rites and get the properties. Accordingly, one C.M.Raja, the successor of Reddy Kishtappa Mudaliar, performed the cremation of the said Amirthammal and therefore, he became the owner of the property. Only on that ground, the suit has been filed. Only in that context, the trial Court has held that the plaintiffs have not proved the relationship of the said C.M.Raja with Reddy Kishtappa Mudaliar and that the plaintiffs also failed to prove that the said C.M.Raja alone performed the cremation of Amirthammal. Whereas, the present suit is based on devolution of interest, and the plaintiffs in the present suit claim right on the basis of succession. Therefore, it is his contention that the plea of *res judicata* will not be applicable to the present case. It is his further contention that Second Appeal is still pending and the suit has not attained its finality. Hence, he opposed the revision.

7.In view of the submissions made by the learned counsel on either side, the points that arises for consideration in the revision petition are as follows :

- i. *Whether the plea of res judicata can be pressed into service in the present application under Order 7 Rule 11 CPC ?*



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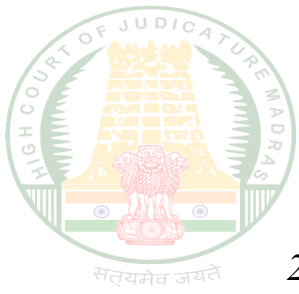
ii. *When the earlier suit has not reached its finality, whether the findings rendered by the trial Court and confirmed by the First Appellate Court will operate as res judicata and whether the subsequent suit amounts to re-litigation ?*

Point Nos.(i) & (ii) :

8.An application has been taken out by the 4th defendant, one of the purchasers of the suit property, to reject the plaint in the subsequent suit, on the ground that the rights of the parties have already been decided in the earlier suit.

9.The earlier suit in O.S.No.222 of 2009 has been filed by the plaintiffs for the following reliefs :

- i. *for a declaration that the registered sale deed executed by 1st defendant in favour of the 2nd defendant in the suit property is null and void;*
- ii. *for a declaration that the registered mortgage deed executed by the 2nd defendant in favour of the 3rd defendant is null and void;*
- iii. *for the relief of permanent injunction thereby restraining the*



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2nd defendant, his men, agents, servants and others authorised

by him from alienating the suit property to third parties;

iv. to direct the defendants to pay the cost of the suit; and

v. for such other reliefs as may deem fit and proper in the circumstances of this case and thus render justice.

10.The said suit proceeded as if the subject property was given to one Amirthammal towards maintenance with a condition that she will not alienate the property and after her death, the legal heirs of her husband Reddy Kishtappa Mudaliar, have to perform her last rites and they will get the property. According to the plaintiffs, one C.M.Raja, the husband of the 1st plaintiff and father of the 2nd plaintiff in the present suit (4th plaintiff in the earlier suit) performed the last rites of Amirthammal and therefore, the property came to the hands of C.M.Raja, and therefore, the plaintiffs, who are the legal heirs of C.M.Raja, are entitled to the property. In the said suit which was filed for declaration to declare the registered sale deed executed by the 1st defendant to the 2nd defendant therein and the mortgage deed executed by the 2nd defendant in favour of the 3rd defendant therein, as null and void, and for consequential permanent injunction, the following issues



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were framed by the trial Court :

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- i. *Whether the plaintiffs are entitled to get the relief of declaration as prayed for ?*
- ii. *Whether the plaintiffs are entitled to get the declaration that the mortgage deed is null and void ?*
- iii. *Whether the plaintiffs are entitled to get the permanent injunction as prayed for ?*
- iv. *To what other relief ?*

11.The trial Court, in the said suit, found that the plaintiffs have not established the relationship of the said C.M.Raja (deceased) with Reddy Kishtappa Mudaliar and that the plaintiff have also failed to prove that the said C.M.Raja alone had performed the cremation of Amirthammal and dismissed the suit on the ground that the suit is not maintainable without a prayer for declaration of title. Similarly, the relief of injunction was also negatived. The said finding has been confirmed by the Appellate Court in A.S.No.31 of 2013. It is an admitted fact a Second Appeal is pending before this Court. The pendency of the Second Appeal is not in dispute.



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12.The judgment of the earlier suit makes it clear that the relief of declaration of sale deed as null and void was sought on the ground that last rites of Amirthammal was done by C.M.Raja, one of the legal heirs of Reddy Kishtappa Mudaliar. However, the trial Court, holding that the said fact has not been established, dismissed the suit on the technical ground that, without a prayer for declaration of title, the suit is not maintainable. Whereas, on careful perusal of the plaint in the present suit, it is clear that the suit has been filed on the basis of the rights devolved upon the legal heirs of Reddy Kishtappa Mudaliar and Reddy Narayana Mudaliar, after the death of Amirthammal. The Geneology appended to the plaint makes it very clear that C.M.Raja is also a legal heir of Reddy Kuppanna Mudaliar through his son Reddy Munusamy Mudaliar. Reddy Kishtappa Mudaliar is the son of Reddy Narayana Mudaliar. In the plaint, it is stated that the said Reddy Kuppanna Mudaliar is the elder brother of Reddy Narayana Mudaliar. Therefore, the plaint clearly shows the relationship between the parties and the plaint proceeds as if the plaintiffs are entitled to the suit property as per succession. Necessary averments are also made that the other legal heirs of the family are not there and only the plaintiffs are



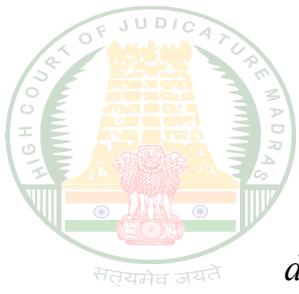
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entitled to. Therefore, the cause of action for the present suit is totally different.

13.Be that as it may, though the earlier suit is also in respect of the sale deed, the fact remains that the earlier suit has not reached finality. Therefore, merely because the earlier suit was dismissed on the ground that, without a prayer for declaration of title the plaintiffs are not entitled to the relief, it cannot be said that the subsequent suit which is based on the succession rights is barred by the principle of *res judicata*. Further, when the earlier suit has not reached finality and the Second Appeal is still pending, at this stage, application of the principle of *res judicata* will not arise at all.

14.In ***Suresh Kumar Kankariya v. K.Jigibal [2022 SCC Online Mad 1931]***, relied upon by the learned counsel for the revision petitioner, this Court has held as follows :

“32.The ratio that could be deduced from the above judgments are that the plaintiff cannot split up the claim so as to omit one part of the claim and sue for the other if the cause of action is available for all the claims. The Court in order to



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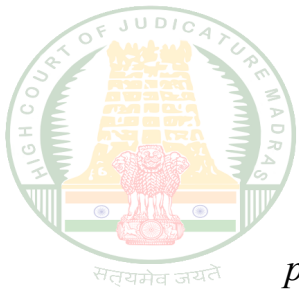
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determine whether a suit is barred by Order II Rule 2 of CPC must examine the cause of action pleaded by the plaintiff in the relevant suits. If the cause of action pleaded in both the suits is identical and the relief claimed in the subsequent suit could have been pleaded in the earlier suit, then the subsequent suit is barred by Order II Rule 2, unless a leave is obtained in the earlier suit where a lesser relief was sought for. This bar under Order II Rule 2 will even apply in a case where the second suit is filed during the pendency of the first suit and it is not necessary that the first suit should have been disposed of when the second suit is filed.”

In the case therein, the earlier suit has not even been disposed of to apply Order 2 Rule 2 CPC. Therefore, the above judgment is not applicable to the facts of the case on hand.

15.In the case of ***K.K.Modi v. K.N.Modi and others [1998 (3) SCC 573]*** relied upon by the learned counsel for the petitioner, the Apex Court has held as follows :

“42.Under Order 6 Rule 16, the Court may, at any state of he proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the court. Mulla in his treatise on the Code of Civil Procedure. (15th Edition, Volume II, page 1179 note 7) has stated that



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power under clause (c) of Order 6 Rule 16 of the Code is confined to cases where the abuse of the process of the Court is manifest from the pleadings; and that this power is unlike the power under Section 151 whereunder Courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of Court on the basis of what is stated in the plaint.

...
*46. In **McIlkenny v. Chief Constable of West Midlands Police Force and another** [1980 (2) AER 227], the Court of Appeal in England struck out the pleading on the ground that the action was an abuse of the process of the court since it raised an issue identical to that which had been finally determined at the plaintiffs' earlier criminal trial. The court said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the court because it is an abuse for a party to re-litigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of res judicata or the requirement of issue estoppel."*

However, in the present case, when this Court has already held that the present suit is on a different cause of action, it cannot be said that the



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present suit is an abuse of process of law.

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16. Similarly, in the judgment relied upon by the learned counsel for the revision petitioner in *V.S.P.Sivan and others v. Balashanmugam and others [AIR 2021 Mad 62]*, this Court has held that the issue in the suit therein has already reached finality and if at all there is any grievance for the appellant as to the judgment, they have to file an appeal as against the said judgment and no re-litigation can be allowed by way of another suit seeking to set aside the said judgment. It is to be noted that, the suit therein is to set aside the judgment and decree in the earlier suit and the earlier suit has attained finality. Therefore, this Court had held that no re-litigation can be allowed by way of filing another suit seeking to set aside the judgment in the earlier suit and that the appellants can only file an appeal, if aggrieved. Whereas, in the present case, as already stated, the earlier suit has not reached finality and the cause of action alleged in both the suits are totally different. The second suit is based on the rights of the parties on the basis of devolution of interest of succession rights. Whereas, the previous suit is filed on the ground that one of the legal heirs alone had performed the last rites of Amirthammal and therefore, he became the



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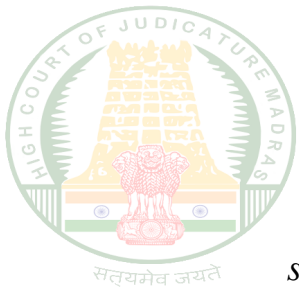
owner of the property. Therefore, the above judgment has no application to the facts of the case on hand.

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17.It is also to be noted that the Apex Court, in the case of ***Srihari Hanumandas Totala v. Hemant Vithal Kamat and others*** reported in ***(2021) 9 SCC 99***, has clearly held that the plaint in subsequent suit cannot be rejected on the ground that it is barred by principle of *res judicata*, as the same will require production of pleadings, issues framed, and judgment in previous suit, to compare it with the present suit, and that cannot be done while deciding an application under Order 7 Rule 11 CPC, as only the averments in the plaint itself may be considered at that stage.

18.Similar view has been taken by the Hon'ble Supreme Court in the case of ***Vaish Aggarwal Panchayat v. Inder Kumar and others*** reported in ***(2020) 12 SCC 809***, wherein, the Apex Court has held as follows :

“10.As is evident, after the framing of the issues the defendant filed the application under Order VII Rule 11 C.P.C. stating that the suit is not maintainable as barred by res judicata. The learned trial Judge, as is evident from the order passed by him, has taken note of the stand taken in the written



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statement which has been regarded as the incorrect approach by the learned appellate Judge. The High Court, as it appears, has been guided by the finding recorded by the learned trial Judge totally ignoring the factum that such a conclusion has been arrived at by taking into consideration the averments made in the plaint and the assertions put forth in the written statement. The crux of the matter is whether, in the obtaining factual matrix, the High Court should have applied the principle of res judicata. The cause of action for filing the suit is different. The grounds urged in the suit, as we find, are also quite different. Even if the plaint is read keeping in mind the cleverness and deftness in drafting, yet it is not prima facie discernible from the plaint that it lacks any cause of action or is barred by any law. On a perusal of the plaint alone it cannot be said that the suit is barred by the principle of res judicata.”

19. Similarly, the Apex Court, in ***V.Rajeshwari v. T.C.Saravanabava*** reported in ***(2004) 1 SCC 551*** has held that the plea of *res judicata* is founded on proof of certain facts and then by applying the law to the facts so found; and it is therefore, necessary that the foundation for the plea must be laid in the pleadings and then an issue must be framed and tried.



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20. Therefore, considering the above position of law, when the earlier suit has not reached finality, the subsequent suit cannot be rejected at this stage. While deciding the application under Order 7 Rule 11 CPC, the question as to whether there is cause of action or not, the averments in the plaint alone are to be taken note of, not anything else. When the earlier suit is still pending in Second Appeal and has not reached finality, this Court is of the view that the applicability of *res judicata* does not arise at all. Also, it cannot be said that it is re-litigation. Therefore, both ***Point Nos.(i) and (ii) are answered against the revision petitioners.***

21. In view of the above discussion, I do not find any infirmity in the order of the trial Court dismissing the application to reject the plaint. Accordingly, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2025

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Internet : Yes

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1.The IV Additional District Judge,
Thiruvallur at Ponneri.

2.The Section Officer,
VR Section,
High Court, Madras.



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N. SATHISH KUMAR, J.

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Order in
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