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CRP.No.3411 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.3411 of 2024

& CMP.Nos.18441 of 2024

A.Mohammed Malick

... Petitioner

Vs.

C.Athavullah

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to strike off the plaint in O.S.N.196 of 2023 on the file of the Additional District Munsif, Kanchipuram.

For Petitioner : M/s.I.Kowser Sulthana

For Respondent : Mr.P.Dinesh Kumar

ORDER

At the request of the learned counsel for the respondent, by order dated 02.07.2025 in C.M.P.No.15183 of 2025, I recalled my earlier order in C.R.P. No. 3411 of 2024 dated 19.06.2025.

2. Today, the Civil Revision Petition has been heard.

3. The learned counsel for the petitioner reiterated the submissions earlier made, which formed the basis of the order in the C.R.P., striking off the plaint in O.S. No. 196 of 2023 before the District Munsif Court, Kanchipuram. However, the learned counsel for the respondent submitted



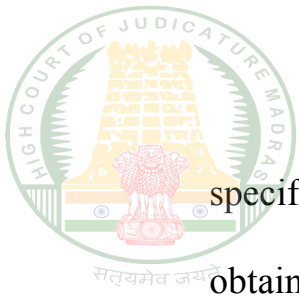
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that, insofar as the earlier suit for declaration and partition is concerned, from the available records, it does not appear that an interlocutory application was filed in the said suit. He further contended that the cause of action in the said suit arose from an entirely different incident relating to steps taken by the respondent, one of the brothers, who had put up construction in the suit property.

4. In view of the aforesaid, no fault can be found in filing the second suit for bare injunction. The learned counsel also submitted that under Order II Rule 2 of C.P.C, the suit cannot be held to be barred by law. As regards the contention of abuse of process, the learned counsel for the respondent submitted that, since the cause of action arose only in 2023, there is neither *res judicata* nor abuse, and the petitioner has merely availed a remedy under law to protect his interest in the suit property.

5. I have considered the submissions of the learned counsel for the petitioner and the learned counsel for the respondent.

6. Admittedly, the suit for larger relief is pending before the Sub-Court, where the parties herein are also parties. The suit for declaration and permanent injunction is at the stage of completion of pleadings. It is a



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specific allegation of the revision petitioner that, without successfully obtaining any interim orders in the earlier suit in O.S. No. 266 of 2019, the second suit has been filed. I am unable to find from the records whether any interlocutory application was filed in the earlier suit, and whether it was rejected, and thereafter the present suit came to be filed.

7. Therefore, there is force in the submissions of the learned counsel for the respondent. However, at the same time, in order to avoid multiplicity of proceedings and inconsistent orders being passed by two different Courts of different jurisdictions altogether, it would be proper for the respondent to approach the very same Court in O.S. No. 266 of 2019 and seek any interim relief, with such liberty being granted, the present revision is being disposed of.

8. I find that the second suit is unnecessary, and in view of the above, I affirm the findings rendered by me in the order dated 19.06.2025, holding that the subsequent suit, though may not strictly barred by law, is unwarranted.

9. However, the respondent is at liberty to file an interlocutory application seeking interim relief in the earlier suit in O.S. No. 266 of 2019. If such an application is filed, the Sub-Court, Kanchipuram shall take up the



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said application expeditiously and dispose of the same on merits, without being influenced by any observations made in this order, within a period of 30 days.

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10. If no interim injunction application has already been filed for the same relief earlier, the respondent is entitled to file a fresh application, for which liberty is granted.

11. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

04.07.2025

Speaking/Non-speaking : Yes/No
Index : Yes / No
msv

Note: Issue order copy on 14.07.2025.

To
The Additional District Munsif, Kanchipuram.



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P.B. BALAJI,J.

msv

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :19.06.2025

CORAM:

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

C.R.P.No.3411 of 2024
and CMP No.18441 of 2024

A.Mohammed Malikck
Petitioner

....

VS

C.Athavullah
Respondent

...

Revision filed under Article 227 of the Constitution of India against the plaint in O.S.No.196 of 2023 on the file of Additional District Munsif, Kancheepuram.

For Petitioner

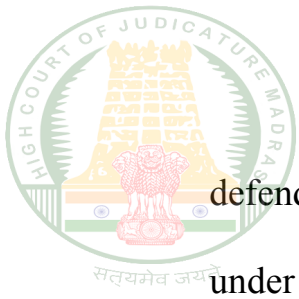
: Mr.Kowser Sulthana I.

For Respondent

: No appearance

ORDER

Heard the learned counsel for the petitioner. The petitioner is the



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defendant in O.S.No.196 of 2023. The present revision is filed, invoking under Article 227 of Constitution of India to strike off the plait in O.S.No.196 of 2023 pending before the District Munsif Court, Kancheepuram.

2. The respondent, despite service of notice in the present civil revision petition, has not chosen to appear either in person or through counsel. Therefore, I have proceeded to hear the learned counsel for the petitioner.

3. Learned counsel for the petitioner would take through the earlier suit pending before the Subordinate Court, Kancheepuram in O.S.No.266 of 2019, where the respondent/plaintiff herein, joining hands with his brother, has filed a substantial suit for relief of declaration and partition. The said suit is pending and the petitioner herein was not successful in obtaining any interim orders in the said suit. Therefore, the respondent has approached the Additional District Munsif Court, Kancheepuram in O.S.No.196 of 2023 and has sought for the following relief:-

“ To grant a permanent injunction as



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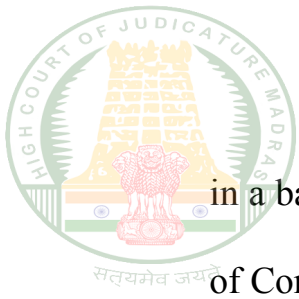
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against the defendant and his men and hirelings not to construct the building in the schedule of property in any manner whatsoever till the disposal of the Suit in O.S.No.266 of 2019 on the file of Hon'ble Subordinate Judge, Kancheepuram”.

4. Learned counsel for the petitioner would state this is a clear abuse of process of law and when the petitioner's earlier suit is subjudice before the Sub Court, Kancheepuram, the present suit for bare permanent injunction that too in the nature of relief to injunct the defendant/ the revision petitioner from not putting up any construction, till disposal of the suit in O.S.No.266 of 2019 before Sub Court, Kancheepuram is unsustainable.

5. I find that such a prayer for permanent injunction before the Court which is subordinate to the Sub Judge, Kancheepuram, after having been unsuccessful in obtaining interim orders in O.S.No.266 of 2019, is clearly unsustainable in the eye of law. What the respondent could not achieve in O.S.No.266 of 2019, is being indirectly attempted in a subsequent suit suit



in a back door method. This Court, exercising jurisdiction under Article 227 of Constitution of India, certainly would nip such action in the bud.

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P.B.BALAJI.,J.

sr

6. I find force in the submissions of the learned counsel for the petitioner that subsequent suit is clearly an abuse of process of law and cannot be allowed to stand.

7. In the result, the Civil Revision Petition is allowed and the suit in O.S.No.196 of 2023 is struck off. However, it should not preclude the respondent from putting forth all his contentions in the suit in O.S.No.266 of 2019. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2025

Index: Yes/No
Website:yes/no
sr



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To

The Additional District Munsif, Kancheepuram.

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