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C.R.P.No.3940 of 2023 and
C.M.P.No.24255 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.11.2025

Coram:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

**C.R.P.No.3940 of 2023 and
CM.P.No.24255 of 2023**

1. Masilamani (died)

2. Rani

3. Iyappan

4. Kavitha

5. Vanitha

6. Minior Gowtham

(Rep. by natural guardian/5th petitioner)

... Petitioners

(Petitioners 2 to 6 are impleaded as LR's of deceased sole petitioner as per order of this Court dated 04.11.2025 made in C.M.P.No.11486 of 2025)

Vs.

Boopalan (died)

1. Chinnakulandai

2. Ravi

3. Ulaganathan

4. Mahesh

5. Mathi

6. Pushpa

7. Jayakodi

.. Respondents



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PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India praying to set aside the order in I.A.No.2 of 2022 in O.S.No.169 of 2013 dated 06.07.2023 pending on the file of the District Munsif Court at Katpadi, Vellore.

For petitioners : Mr.S.Kaithamalai Kumaran

For respondents : R1 – Died

RR2 to 7–Served-No Appearance

ORDER

This Civil Revision Petition has been filed challenging the order passed in I.A.No.2 of 2022 in O.S.No.169 of 2013 dated 06.07.2023 by the learned District Munsif Court, Katpadi, Vellore, dismissing the application filed by the petitioner seeking withdrawal of the suit in O.S.No.169 of 2013 with liberty to file a fresh suit.

2 The petitioner filed a suit seeking declaration and injunction. The suit is of the year 2013 and after ten years the instant application has been filed by the petitioner seeking withdrawal of the suit with liberty to file a fresh



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suit on the same cause of action. In the affidavit filed in support of that application, the petitioner has averred as follows:

“I filed the main suit against the respondent/defendants for Declaration of title. And the same was wrongly mentioned in the suit facts. The facts are entirely different and wrong. But I have a good case and relevant original documents. I add some important prayers and provisions in the main suit.”

3 First of all, the affidavit has not been happily worded. Further, it is settled law that in order to allow the application under Order XXIII Rule 1 CPC, there must be a formal defect in the suit or some other sufficient grounds for allowing the petitioner to institute a fresh suit on the same cause of action. In the affidavit filed in support of the application, the petitioner has not mentioned any formal defect in the suit. He has not given any sufficient reason for allowing him to file fresh suit on the same cause of action. In the said circumstances, the trial Court, was justified in dismissing the application filed by the petitioner as the ingredients under Order XXIII Rule 1 CPC were not satisfied.



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4 I do not find any material irregularity or illegality in the order passed by the trial Court. Accordingly this Civil Revision Petition stands dismissed. No costs. Consequently connected miscellaneous petition stands closed.

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Speaking Order / Non Speaking Order

Neutral Citation : Yes/No

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To

The District Munsif Court at Katpadi, Vellore.



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S.SOUNTHAR, J.

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