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CRP. No.4785 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:12.08.2025

Pronounced on: 12.09.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.4785 of 2024
and CMP. No.26776 of 2024**

1.A.Mahendran
2.S.Yogeeswaran

Petitioners

Vs

1.M.V.Arul
2.S.Sivasaravanan

Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike out the plaint in O.S. No.116 of 2023 on the file of the District Munsif Court, Sendamangalam.

For Petitioners : Mr.S.P.Chockalingam

For Respondents : Mr.P.Mathivanan

ORDER

The defendants 1 and 2 in O.S. No.116 of 2023 before the learned District Munsif, Senthamangalam are the revision petitioners seeking to strike off the plaint in the said suit on the ground of re-litigation.



2. I have heard Mr.S.P.Chockalingam, learned counsel for the petitioners and Mr.P.Mathivanan, learned counsel for the contesting first respondent/plaintiff.

3. The learned counsel for the revision petitioners, Mr.S.P.Chockalingam would contend that the present suit in O.S. No.116 of 2023 is on the same lines of the earlier suit in O.S. No.474 of 1996 on the file of the District Munsif, Namakkal. The earlier suit in O.S. No.474 of 1996 attained finality before the Subordinate Court, Namakkal in First Appeal proceedings and despite the same, the present suit has been filed before the learned District Munsif, Senthamangalam.

4. The learned counsel for the petitioner Mr.S.P.Chockalingam, would take me through the plaint in the earlier suit as well as the present suit to contend that the present suit is clearly an abuse of process of law and attempt at re-litigation which should never be entertained by this Court and therefore, he seeks interference under Article 227 of the Constitution of India to strike off the plaint.

5. The learned counsel for the petitioners would also draw my specific attention to the suit plans in both the suits, that is the present suit



as well as in the earlier suit, to fortify his contention that the plaintiff is re-agitating the very same disputes that have already attained finality.

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6. In support of the contentions of the learned counsel for the revision petitioners has placed reliance on the following decisions:-

(i) *Mani and Ors Vs. P.Ramakrishnan*, reported in *MANU/TN/2445/2018*;

(ii) *Surya Dev Rai Vs. Ram Chander Rai and Others*, reported in *Manu/SC/0559/2003*;

(iii) *M.Devaprakash Vs. P.P.Devaraj and Ors*, reported in *Manu/TN/1976/2022*; and

(iv) *R.Gopalakrishnan and Others Vs. K.Mani*, reported in *Manu/TN/0150/2019*.

7. Per contra, Mr.P.Mathivanan, learned counsel for the first respondent/plaintiff would submit that the revision filed under Article 227 of the Constitution of India, to strike off the plaint should not be entertained as it would deprive the first respondent/plaintiff of his legitimate rights. He would further state that the petitioners would have to approach the Trial Court for appropriate relief, instead of directly approaching the Article under 227 of the Constitution of India.



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8. In support of the contentions of the learned counsel for the first respondent has placed reliance on the following decisions:-

(i) *Annadurai Vs. Santhanakrishnan*, in CRP. (MD). No.2635 of 2023 dated 20.06.2024;

(ii) *Shanmugam and others Vs. Chief Secretary/Chairman, Commercial Tax Department, and others*, in CRP. No.852 of 2021, dated 24.01.2022;

(iii) *Pandurangan Vs. T.Jayarama Chettiar and Another*, reported in (2025) SCC Online SC 1425;

(iv) *Srihari Hanumandas Totala Vs. Hamant Vithal Kamat and others*, reported in (2021) 9 SCC 99;

(v) *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others*, reported in (2019) 9 SCC 538;

(vi) *Soumitra Kumar Sen Vs. Shyamal Kumar Sen and Others*, reported in (2018) 5 SCC 644;

(vii) *Kandasamy Vs. K.Duraisamy and others*, in CRP. (MD). No.610 of 2022 dated 20.06.2024.

9. I have carefully considered the submissions advanced by the



learned counsel on either side. I have gone through the records including the plaint in the present suit as well as the earlier suit. I have also gone through the decisions on which reliances placed on by the learned counsel on either side.

10. The present suit in O.S. No.116 of 2023, has been filed for the relief of declaration that the plaintiff is entitled to use the suit pathway A, B, C and D and for an injunction to restrain the defendants 1 and 2 from interfering with the plaintiff's right and enjoyment of the said passage and also for a declaration that the plaintiff is entitled to the A, B, C and D pathway an entitlement of easement by prescription.

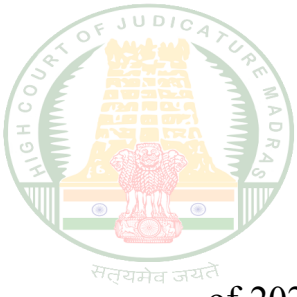
11. In O.S. No.474 of 1996, the relief sought by the plaintiff was for a declaration regarding the very same pathway and injunction to restrain the defendants in the said suit from interfering with the plaintiff's right of enjoyment of the same. It is not in dispute that the earlier suit in O.S.No.474 of 1996 came to be dismissed on 19.08.1999 and the First Appeal in A.S. No.22 of 2000 also came to be dismissed on 22.11.2005. The plaintiff in the earlier suit and appeal suit was none else than, the father of the first respondent herein. Therefore, the plaintiff in the subsequent suits is only a successor in interest who derived his right, title



and the interest in the suit properties. The earlier suit was filed by the second respondent's father one Subbarayan against the predecessor in title of the revision petitioner and the first respondent.

12. Admittedly, the suit was dismissed by the Trial Court and the same came to be confirmed by the First Appellate Court. The present plaintiff in O.S. No. 116 of 2023 was a party in the earlier suit being the 5th defendant in the suit and 4th respondent in the Appeal Suit.

13. The case of the revision petitioners is that the second respondent's father was in enjoyment of his portion of the lands which came to be owned and possessed by the second respondent subsequent, to the demise of the second respondent's father. The lands which were owned by the defendants 2, 3, 4 and 6 in O.S. No.474 of 1996 came to be owned and possessed by the first revision petitioner which is an extent of 4.51 acres comprised in S.No.108/03. The second petitioner owns and possesses lands measuring 3.3 acres comprises S.No.108/1. The lands of the petitioners and the respondents are located near to each others' land. The case of the revision petitioners is that the petitioners have an access from the Panchayat Tar Road to an exclusive pathway which is the only access for the petitioners to reach their respective lands.



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14. When the petitioners approached this Court in W.P. No.21877 of 2024 and W.P. No.23024 of 2024 for issuing direction to the Surveyor and measure the pathway and lay survey stones, it was brought to the notice of the petitioners, the present suit in O.S. No.116 of 2023 has been filed by the first respondent. According to Mr.S.P.Chockalingam, learned counsel for the revision petitioners, the very same issue was agitated in the earlier suit in O.S. No.474 of 1996 and the Court of competent jurisdiction has already decided the issue finally and the said decree was also unsuccessfully challenged in A.S. No.22 of 2000 and therefore, the dispute has been settled for good. Consequently, it would not be open to any of the parties to re-open the same and approach the Court, that too, for the very same reliefs, after lapse of close to two decades.

15. It is contended that the decree passed in O.S. No.474 of 1996 would bind the present plaintiff as well, being successors in interest of a party to the earlier suit proceedings. It is therefore contended that the suit is also barred by *res judicata* and being an abuse of process, the petitioners are entitled to seek striking off the plaint. However, it is contended by Mr.P.Mathivanan, learned counsel for the first respondent



that the suit cannot be struck off under Article 227 of the Constitution of India, as triable issues arise for consideration and the parties would have to be directed to undergo trial.

16. Coming to the decisions that has been relied on by the parties, the Hon'ble Supreme Court in *Surya Dev Rai's* case (referred herein supra) held that though the proceedings under Article 227 of the Constitution of India is supervisory in nature, such supervisory jurisdiction being a constitutional jurisdiction of the High Court, it cannot be limited, the High Court is well within its power to exercise such jurisdiction. When a Subordinate Courts assumed jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercise in a manner not permitted by law and failure of justice or grave injustice is occasioned thereby.

17. In *M.Devaprakash's* case (referred herein supra), this Court exercising power under Article 227 of the Constitution of India held that earlier suit clearly barred the subsequent suit under Order II, Rule 2 CPC and that being an abuse of process, the plaint was struck off.



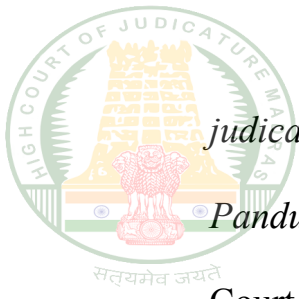
18. In *R. Gopalakrishnan's* case (referred herein supra), deprecating re-litigation and re-agitating, even after adjudicating of the dispute having reached finality, this Court proceeded to strike off the plaint.

19. In *Mani's* case, (referred herein supra), this Court finding that the plaint was frivolous, vexatious and fraudulent, exercised power under Article 227 of the Constitution of India and ordered striking off the plaint.

20. In *Soumitra Kumar Sen's* case, (referred herein supra), the Hon'ble Supreme Court held that the plaint cannot be rejected on the ground of *res judicata*, since it would require consideration of pleadings in the written statement.

21. In *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai's* case (referred herein supra), the Hon'ble Supreme Court held that the High Court as a matter of self-imposed restrictions, should refrain from interfering under Article 227 of the Constitution of India, when there was an alternate remedy available to the parties to resort to.

22. In *Srihari Hanumandas Totala's* case, (referred herein supra), the Hon'ble Supreme Court again held that the Applicability of bar of *res*

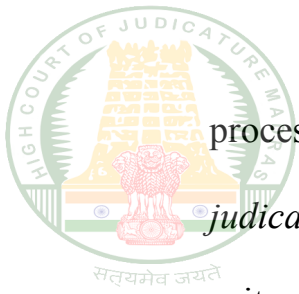


judicata cannot be determined at the stage of rejection of the plaint. In *Pandurangan's* case (referred herein supra), again the Hon'ble Supreme Court held that objection of *res judicata* cannot be taken as a bar under Order VII Rule 11 CPC.

23. In *Annadurai's* case (referred herein supra), this Court held that a litigant directly approaching the High Court under Article 227 of the Constitution of India for striking off the plaint is not proper and it would be appropriate for the defendant to approach the Trial Court under Order VII Rule 11 CPC.

24. In *Kandhasamy's* case (referred herein supra), this Court held that in revision, powers under Article 227 of the Constitution of India cannot be invoked to strike off the plaint and it would be appropriate for the parties to approach the Trial Court seeking relief.

25. The primordial argument as well as contention of the petitioner to seek striking off the plaint is that the very same pathway that has been subject matter of the earlier suit has attained finality before the First Appellate Court and it is sought to be re-agitated in the present suit. Therefore, even though it is contended that the plaint is a sheer abuse of



process, the backbone of the plaint is that the present suit is barred by *res judicata*. Unless the plaintiff is able to show that the issue in the earlier suit was substantially the same and is now sought to be re-agitated in the present suit, it would not be open to the Court to decide the Application of *res judicata*. Unless both the plaints, written statements as well as judgments of the Trial Court and the Appellate Court are placed for consideration of the Trial Court, the issue of *res judicata*, cannot be decided. Therefore, the Courts have consistently held that it is not a case for rejection of the plaint under Order VII Rule 11 CPC, when the plea of *res judicata* or Order II Rule 2 CPC bar is raised, while seeking rejection of the plaint. Therefore, to strike off a plaint which is an extraordinary relief, this Court cannot assume jurisdiction under Article 227 of the Constitution of India. The parties would have to necessarily be allowed to lead evidence oral and documentary and substantiate their respective contentions. The plaintiff should also be given an opportunity to explain as to how the present suit or cause of action is different from the earlier suit and the same is not hit by *res-judicata*.

26. Without undergoing such exercise, it would not be proper for the High Court to interfere, accepting the averments made in the revision petition for the first time, that the issue is re-litigation of an issue that has



already been adjudicated upon and also attained finality. The said conclusion cannot be arrived at by this Court in the absence of the evidence and reference to pleadings in the earlier suit as well as present suit. Therefore, on a reading of the plaint, when it is not discernable that the plaint is an abuse of process or an attempt or re-litigation, this Court should refrain from interfering and exercise power under Article 227 of the Constitution of India, by taking the extreme step of striking off the plaint, which would deprive the plaintiff's valuable right of appeal as well. In fact, the parties to the earlier suit in the present suit are also not the same and there have been alienations in the interregnum period and it is also yet another issue that would fall for consideration as to whether the parties to the present suit would be bound by the earlier decision in O.S. No.474 of 1996 and confirmed in A.S. No.22 of 2000. It is settled law that no amount of evidence can be looked into even for deciding an application for rejection of the plaint. Therefore, unless the plaint is shown to be exfacie, an abuse of process of law, then alone, this Court can interfere and strike off the plaint. I do not find such striking instance of abuse being made out from the reading of the plaint, warranting striking off the plaint.

27. In the cases on which reliance have been placed by the learned

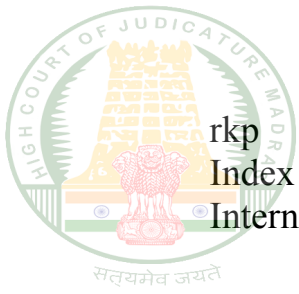


counsel for the petitioner in *Shanmugam's* case, (referred herein supra), this Court also held that mere suppression of facts would not afford a ground for rejection of the plaint and when aspect of limitation has also to be gone into, it would be appropriate for the revision petitioner to seek rejection of the plaint under Order VII Rule 11 CPC, instead of approaching the High Court under Article 227 of the Constitution of India.

28. In fact, in the plaint, I find that there is no suppression as well and the plaintiff has disclosed the fact that O.S.No.474 of 1996 came to be dismissed and appeal therefrom was also dismissed on 22.11.2005. However, the plaintiff has pleaded subsequent events in Paragraph No.9 to 11, besides also claiming relief of easement by prescription and therefore, it is not desirable for this Court to invoke the extraordinary jurisdiction available under Article 227 of the Constitution of India. Therefore, I do not find any grounds warranted striking off the plaint.

29. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

12.09.2025



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Index : Yes / No

Internet : Yes / No

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To:

The District Munsif,
District Munsif Court, Sendamangalam

P.B.BALAJI, J.,

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Pre-delivery order in
CRP. No.4785 of 2024
and CMP. No.26776 of 2024

12.09.2025