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CRP.No.5796 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.5796 of 2025 and
CMP.No.28788 of 2025

1.Roshan Dominic Jude Rayen
2. Mrs.Lourdes Joavani

... Petitioners

Vs.

1.Mrs.Bala Rajeswari
2.Dr.V.Alexander
3. Dr.S.Vincent
4.A.Rajkumar
5.Ravindaran Jacob

...Respondents

PRAYER :Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the impugned order dated 29.10.2025 in IA No.6 of 2025 in OS No.6721 of 2023 on the file of the VII Assistant Judge, City Civil Court, Chennai and the plaint in OS.No.6721 of 2023 is liable to be rejected under Order VII Rule 11 (d) of CPC as being barred by law, devoid of cause of action and abuse of process of court.

For Petitioners : Mr.S.Haja Mohideen Gisthi

For Respondents : Mr.Paul Bennett
for M/s.T.K.S.Gandhi
(Vakalat Sr.No.45915/2025)



ORDER

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The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioners/ defendants 1 and 2 seeking rejection of the plaint.

2. The respondents/plaintiffs filed a suit seeking permanent injunction restraining the petitioners from any manner using Flat Nos. 1 and 2 of the apartment complex described in the suit “A” schedule for commercial use either for running a dental clinic or for other commercial purpose. The respondents also sought for mandatory injunction directing the petitioners to remove X-Ray and other medical apparatus kept in the suit “B” Schedule property. They also sought for mandatory injunction directing the petitioners to remove all kinds of encroachment over common passage in suit “A” Schedule property. Further, a mandatory injunction was sought for directing the official defendants 3 and 4 to take necessary steps against the petitioners in putting suit property for commercial use by running a dental clinic.

3. It was the case of the respondents that the petitioners are owners of flat Nos. 1 and 2 described in the plaint schedule and they converted the same for commercial use by running a dental clinic thereon. It was their specific case

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that building was a residential complex and the petitioners had no right to convert the same for commercial use. It was also stated that petitioners illegally encroached the common area described in the plaint.

4. The petitioners herein filed an application under Order VII Rule 11(d) of CPC seeking rejection of the plaint. It was the case of the petitioners that the respondents admitted that they were the owners of the flats described in the plaint and hence, the relief of injunction as sought for was barred by Specific Relief Act. It was also stated that the subject property stands in a locality classified as a mixed zone for residential and commercial purpose. Therefore, the petitioners are entitled to run a dental clinic. It was also stated that Civil Court had no jurisdiction to try issues which have to be considered under the provisions of Tamil Nadu Town and Country Planning Act, 1971. It was further stated by the petitioners that by creating illusory cause of action, the plaintiffs have filed a suit with bald allegations and therefore, the same shall be rejected.

5. The respondents filed a counter-affidavit and resisted the said application. The trial court, by impugned order, dismissed the petition for rejection of the plaint filed by the petitioners. Aggrieved by the same, the petitioners have come before this court.



6. The learned counsel for the petitioners vehemently contended that the suit property is lying in a zone which was earmarked as a mixed zone for residential and commercial purpose and therefore, the prayer sought for by the respondents restraining the petitioners from running a dental clinic in the said property is not at all maintainable. He further submitted that running a dental clinic in a flat meant for residential use will not amount to utilizing the same for commercial purpose. In this regard, he relied upon the judgment of the Allahabad High Court in the case of **Satya Prakash Singh and another Vs The State of U.P. through Secretary(Finance and Revenue), U.P. Lucknow and others** reported in **2012 SCC OnLine All 1025**. He further submitted that issue in the suit was already litigated in W.P.No.21469 of 2025 and hence, the present suit would amount to re-litigation.

7. As far as the contention raised by the learned counsel for the petitioners that the suit property is situated in a mixed zone meant for residential as well as commercial purpose is concerned, merely because particular land area is classified as a mixed zone by the appropriate planning authority, we cannot readily come to the conclusion that all building constructed in that land area shall be treated as hybrid building meant for residential as well as commercial use. In an earmarked mixed land area, there



can be a residential complex or there can be a commercial complex. If a building is constructed as a residential complex, merely because it is situated in a mixed zone, it cannot be used for commercial purpose. In the plaint, it was asserted by the plaintiffs that the flats described in the suit property are residential buildings and the same were converted by the petitioners for commercial use by utilizing the same as a dental clinic by installing X-Ray and other hazardous machineries. Whether the suit building is a residential building or hybrid building meant for commercial and residential use is a matter to be decided based on the evidence to be let in. On the basis of the averments found in the plaint and the plaint documents, we cannot come to the conclusion that the suit building is a hybrid building as claimed by the defendants. Further, at the time of considering the petition for rejection of the plaint, the Court cannot refer to the documents filed by the defendants. Hence, the first contention raised by the learned counsel for the petitioners is rejected.

8. By relying the Allahabad High Court judgment cited supra, it was vehemently contended by the learned counsel for the petitioners that a Doctor residing in a residential building is entitled to use a portion of the same as clinic. However, in the case on hand, it was asserted by the respondents that petitioners were not living in the property but using it for commercial purpose



by converting the same as a clinic. If the entire residential flat is converted as a dental clinic, we cannot say the same is permitted. The citation relied on by the learned counsel for the petitioners is applicable only to the cases where a portion of the residential building is converted as a clinic. Further, it also depends on the area by conversion. Therefore, the second submission made by the learned counsel for the petitioners is also not acceptable to this court.

9. A perusal of the order passed by this court in WP.No.21469 of 2025 would indicate that the petitioners herein filed a writ petition seeking disposal of their representation dated 30.05.2025. It is seen that the petitioners filed a representation before the appropriate authority seeking permission to change the usage to a residential-cum-clinic usage. The same was not considered by the officials. Hence, the writ petition was filed seeking direction to the officials to dispose of the representation. This Court, in the said writ petition, directed the officials to consider the representation and pass appropriate orders on merits. Therefore, this Court, in the said order, has not given any findings on the merits of the matter. In such circumstances, citing the order passed by this court in the above writ petition, the petitioners cannot contend that the present suit filed by the respondents would amount to re-litigation.



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10. The trial court, in the impugned order, rightly observed that the contention raised by the petitioners would not come within the parameters of Order VII Rule 11 of CPC and the plea raised by the petitioners that they have been running the clinic for the past 15 years is a matter for evidence and therefore, based on the claim made by the petitioners, the plaint cannot be rejected. I do not find any error in the impugned order passed by the trial court. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

16.12.2025

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To
The VII Assistant Judge, City Civil Court, Chennai



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S.SOUNTHAR, J.

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