



C.R.P(MD)No.59 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.02.2025**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.59 of 2023
and
C.M.P(MD)No.295 of 2023

K.Raju

... Petitioner/Petitioner/
Defendant

Vs.

O.Thanikodi

... Respondent/ Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 29.11.2022 made in I.A.No.812 of 2021 in O.S.No.21 of 2021 on the file of District Munsif Court, Uthamapalayam.

For Petitioner : Mr.H.Velavadhas

For Respondent : Mr.G.Vishnuram

ORDER

The defendant in O.S.No.21 of 2021 on the file of District Munsif Court, Uthamapalayam is the revision petitioner herein.



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2. The respondent herein as plaintiff has filed the above said suit for the relief of declaration of title, permanent injunction and mandatory injunction. The defendant has filed a written statement contending that he had already filed O.S.No.239 of 2018 for the relief of permanent injunction for the same schedule of property. In the said suit, the vendor of the plaintiff was arrayed as the 1st defendant. The suit was decreed in favour of the present revision petitioner on 21.03.2019. Thereafter, the 1st defendant, namely Natarajan in O.S.No.239 of 2018 has sold the property to the present plaintiff. Therefore, according to the defendant, the present suit is barred under Section 11 of Code of Civil Procedure. To the said effect, the defendant has filed I.A.No.812 of 2021 to reject the plaint on the ground that the suit is barred under Order VII Rule 11 (d) of Code of Civil Procedure.

3. The trial Court has dismissed the said application on the ground that the plea of res-judicata cannot be considered for rejecting a plaint under Order VII Rule 11. Challenging the same, the present revision petition has been filed.



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4. According to the learned counsel appearing for the revision petitioner, for the same property, the defendant in the present suit has obtained a decree as against the vendor of the plaintiff. In such circumstances, after being unsuccessful in O.S.No.239 of 2018, the 1st defendant in the suit has sold the property to the present plaintiff. Therefore, the suit has to be rejected on the ground of res-judicata.

5. The learned counsel appearing for the respondent herein contended that the suit schedule property in both the suits are completely different and therefore, Section 11 of Code of Civil Procedure cannot be invoked.

6. I have carefully considered the submissions made on either side and perused the material records.

7. The only ground on which the Order VII Rule 11 application has been filed is that, the present suit is barred under Section 11 of Code of Civil Procedure. The Hon'ble Supreme Court in a recent judgment



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reported in **2023 (6) MLJ 392 (Keshav Sood Vs.Kirti Pradeep Sood &**

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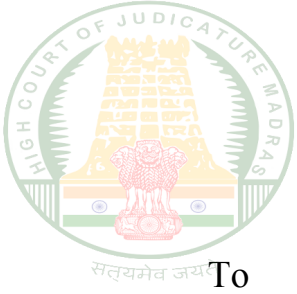
Others) has categorically held that the issue of res-judicata cannot be decided on an application filed under Order VII Rule 11 of C.P.C. In view of the above said decision, the trial Court has rightly dismissed the said application. However, the defendant would be entitled to raise the same issue at the time of trial. Considering the fact that the suit is of the year 2021, the learned District Munsif, Uthamapalayam is directed to dispose of the suit on or before 30.11.2025.

8. With the above observation, this Civil Revision Petition stands disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To
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1. The District Munsif Court,
Uthamapalayam.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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