WEB COPY

VIN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29-10-2026

Pronounced on : 24-11-2026

CORAM

THE HON'BLE MR.JUSTICE R.RAJESH VIVEKANANTHAN

CRP No. 4215 of 2023
and CMP.No.25647 of 2023
CNR: {HCMA011995502023}

Case QR

1. Kamalammal
   W/o. Munuswamy

2. Devaki
   D/o. Munuswamy

3. Easwari
   W/o. Venkatesan

4. Rajesh
   S/o. Venkatesan

5. Durga
   D/o. Venkatesan

6. Devi
   D/o. Venkatesan,

   All residing at Thazhavedu Village,
   Tiruttani Taluk, Tiruvallur District

..Petitioner(s)

Vs

1. Kannammal
   W/o. Kannaiyan

2. Venkatesan
   S/o. Kannaiyan
   Both residing at Thazhavedu Village,
   Tiruttani Taluk, Tiruvallur District

..Respondent(s)

https://www.mhc.tn.gov.in/judis

WEB COPY

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908 seeking to set aside the fair and final order order dated 25-07-2023 made in I.A.No.2 of 2020 in O.S.No.27 of 2020 on the file of the Sub-Court, Tiruttani.

For Petitioner(s): Ms.D.Sathya for M/s.Zeenath Begum

For Respondent(s): Ms.Gopika Nambiar for
Mr.Govind Chandrasekar

ORDER

This Civil Revision Petition has been filed challenging the order dated 25.07.2023 passed in I.A.No.2 of 2020 in O.S.No.27 of 2020 on the file of the Sub-Court, Tiruttani, dismissing the application filed by the petitioners under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, seeking rejection of the plaint.

2. The petitioners herein are the defendants in the suit. They filed the said application contending that the plaint does not disclose any cause of action and that the suit is barred by law, particularly on the ground that the present suit amounts to re-litigation of the issues already raised in the earlier suit in O.S.No.83 of 2012 on the file of the District Munsif Court, Tiruttani.

https://www.mhc.tn.gov.in/judis

Order QR

WEB COPY

3. The brief facts, as stated in the plaint, are as follows:

Originally, the suit schedule property belonged to one Muniyammal, who purchased the same from one Kanniayah Mandadi under a sale deed dated 30.06.1955, registered as Document No.1374 of 1955. The said P.Muniyammal had only one son, namely, Kannaiyan, who is the husband of the first plaintiff. The second plaintiff is the son born to the first plaintiff and the said Kannaiyan.

According to the plaintiffs, Muniyammal and Kannaiyan died, leaving behind the plaintiffs as their legal heirs. After their demise, the plaintiffs succeeded to the suit schedule properties and constructed a house therein. The defendants own property adjoining the western side of the suit schedule property. In the meantime, one Munusamy, with the help of the revenue authorities, managed to include his name in the patta relating to the property. Taking advantage of the changes made in Patta No.269, the defendants attempted to trespass into the suit schedule property. However, the plaintiffs prevented the said attempt.

4. The plaintiffs further stated that they had earlier filed a suit for bare injunction in O.S.No.83 of 2012 before the District Munsif Court, Tiruttani. Though they had instructed their counsel to institute a suit for declaration and injunction, the suit was filed only for the relief of permanent injunction. Therefore, they filed an application under Order XXIII Rule 1 CPC seeking permission to withdraw the said suit with liberty to institute a fresh suit on the

https://www.mhc.tn.gov.in/judis

WEB COPY

same subject matter. Meanwhile, the said Munusamy, who was the husband of the first defendant, died on 04.09.2019, leaving behind the defendants as his legal heirs. It is further alleged that during his lifetime, the said Munusamy executed a settlement deed dated 31.08.2017 in favour of his grandson, the fourth defendant herein, in respect of the suit schedule property. According to the plaintiffs, the said settlement deed was executed during the pendency of the earlier suit and is invalid and not binding upon them. Since the execution of the settlement deed created a cloud over their title, they were constrained to institute the present suit seeking declaration of their title and consequential permanent injunction.

5. The defendants filed the application under Order VII Rule 11(a) and (d) CPC contending that the present suit is nothing but re-litigation. According to them, the plaintiffs had already instituted the earlier suit in O.S.No.83 of 2012 for permanent injunction based on the very same sale deed dated 30.06.1955. The cause of action pleaded in both suits is one and the same and, therefore, the plaintiffs cannot maintain another suit on the same cause of action. The defendants further contended that they had also instituted a suit in O.S.No.136 of 2012 before the District Munsif Court, Tiruttani, seeking permanent injunction and mandatory injunction. In the said suit, they had filed an application for appointment of an Advocate Commissioner along with the

https://www.mhc.tn.gov.in/judis

WEB COPY

Taluk Surveyor. The Advocate Commissioner inspected the suit property along with the surveyor and filed a report along with a rough sketch and photographs. According to the defendants, the plaintiffs ought to have raised all their claims and sought appropriate reliefs in the earlier proceedings instead of instituting the present suit. Hence, the present suit is an abuse of process of law and does not disclose any fresh cause of action.

6. The plaintiffs filed a counter affidavit to the said petition disputing the contentions of the defendants. They admitted that their title is based on the sale deed dated 30.06.1955. However, they contended that the earlier suit was instituted on account of the defendants' attempt to interfere with their possession on 24.04.2012 and that the said suit was filed only for permanent injunction due to an omission on the part of their counsel. The plaintiffs further contended that they had already filed an application seeking permission to withdraw the earlier suit with liberty to institute a fresh suit. According to them, the subsequent execution of the settlement deed dated 31.08.2017 in favour of the fourth defendant created a serious cloud over their title and give a fresh cause of action for instituting the present suit. It was therefore contended that the plaint discloses a clear cause of action and that the question as to whether the present suit is barred by law cannot be decided at the stage of considering an application under Order VII Rule 11 CPC.

https://www.mhc.tn.gov.in/judis

Order QR

WEB COPY

7. The Trial Court, after considering the rival submissions, dismissed the application filed by the defendants. Aggrieved by the same, the present Civil Revision Petition has been filed.

8. The learned counsel appearing for the petitioners/defendants submitted that the earlier suit in O.S.No.83 of 2012 was instituted by the plaintiffs based on the very same sale deed dated 30.06.1955. The present suit is also founded upon the same title document and, therefore, the plaintiffs are attempting to re-agitate the same dispute by seeking an additional relief of declaration. The learned counsel further submitted that when the earlier suit was pending, the plaintiffs ought to have sought the relief of declaration in the same proceedings. Instead, they have instituted the present suit, which amounts to re-litigation and an abuse of process of law. It was also contended that the plaintiffs ought to have raised their claims by way of a counterclaim in O.S.No.136 of 2012 instituted by the defendants. In the absence of any independent cause of action, the plaint is liable to be rejected.

9. Per contra, the learned counsel appearing for the respondents/plaintiffs submitted that the earlier suit was instituted only for permanent injunction since the defendants had attempted to interfere with their possession on 24.04.2012. Subsequently, the plaintiffs came to know about the execution of the settlement

https://www.mhc.tn.gov.in/judis

WEB COPY

deed dated 31.08.2017 by Munusamy in favour of the fourth defendant. The learned counsel further submitted that the execution of the settlement deed created a cloud over the plaintiffs' title and necessitated the institution of a suit seeking declaration and injunction. It was also submitted that the plaintiffs had filed an application in I.A.No.680 of 2013 seeking permission to withdraw the earlier suit under Order XXIII Rule 1 CPC and that the said application was ultimately allowed by the Trial Court on 01.08.2024. According to the learned counsel, the cause of action for the earlier suit and the present suit are distinct and the defence of re-litigation or the bar under Order II Rule 2 CPC cannot be a ground for rejection of the plaint under Order VII Rule 11 CPC.

10. Heard the learned counsel appearing for the petitioners as well as the respondents and perused the materials available on record.

11. While deciding an application under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, the Court is required to consider only the averments made in the plaint and the documents filed along with the plaint. In order to ascertain whether the plaint discloses a cause of action, the plaint has to be read as a whole. In the present case, the plaintiffs initially instituted O.S.No.83 of 2012 seeking the relief of permanent injunction, relying upon the sale deed dated 30.06.1955, bearing Document No.2374 of 1955. The cause of

https://www.mhc.tn.gov.in/judis

WEB COPY

action for the said suit was stated to have arisen on 24.04.2012, when the defendants allegedly attempted to trespass into the suit schedule property. Since the plaintiffs had not sought the relief of declaration of title, they subsequently filed I.A.No.680 of 2018 seeking permission to withdraw the said suit. The further case of the plaintiffs is that, in the meantime, they came to know that the said Munusamy had died on 04.09.2019 and that, during his lifetime, he had executed a settlement deed in favour of the fourth defendant. According to the plaintiffs, the said subsequent development necessitated the institution of the present suit seeking the relief of declaration and permanent injunction. The main contention of the defendants is that the plaintiffs have instituted the present suit once again on the basis of the very same sale deed dated 30.06.1955, bearing Document No.2374 of 1955, and have relied upon the same cause of action as pleaded in the earlier suit in O.S.No.83 of 2012. Therefore, according to the defendants, when the earlier suit was instituted on the basis of the same title document and the same cause of action, the plaintiffs cannot maintain a subsequent suit on the same cause of action, and such institution amounts to re-litigation.

12. In support of his submissions, the learned counsel for the petitioners relied upon the following judgments:

https://www.mhc.tn.gov.in/judis

WEB COPY

(i) Ramisetty Venkatanna and Another v. Nasyam Jamal Saheb and Others, reported in (2024) 18 SCC 426;

(ii) Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) (Dead) through Legal Representatives and Others, reported in (2020) 7 SCC 366;

(iii) T. Arivandandam v. T.V. Satyapal and Another, reported in (1977) 4 SCC 467;

(iv) M/s. Chinmaya Garden Trust v. M/s. Karunya Educational Trust, reported in 2023-4-L.W.25; and

(v) Geetha v. Nanjundaswamy and Others, reported in 2023 INSC 967.

13. The learned counsel for the petitioners, relying upon the above judgments, submitted that the Court is required to examine the plaint meaningfully and, if it is found that the suit does not disclose a genuine cause of action or is an abuse of the process of Court, the plaint is liable to be rejected. There is no quarrel with the settled proposition of law laid down in the above judgments. However, the question is whether the pleadings in the present case satisfy the requirements for rejection of the plaint under Order VII Rule 11 CPC.

14. In ***Ramisetty Venkatanna's*** case, the Hon'ble Supreme Court reiterated that where the plaint, on a meaningful reading, is found to be manifestly vexatious and meritless and does not disclose a clear right to sue, the

https://www.mhc.tn.gov.in/judis

WEB COPY

Court should exercise its power under Order VII Rule 11 CPC. In the said case, the challenge to a partition deed dated 11.03.1953 was made in the year 2014, after an inordinate delay of 61 years. Therefore, the said judgment will not applied to the facts of the present case.

15. The learned counsel for the petitioners also relied upon the judgment of the Hon'ble Supreme Court in ***Geetha v. Nanjundaswamy and Others***, reported in ***2023 INSC 967***. In the said judgment, the Hon'ble Supreme Court reiterated that where the plaint does not disclose a cause of action or where the suit is barred by law, the Court is empowered to reject the plaint under Order VII Rule 11(a) and (d) CPC. However, in paragraph 9 of the said judgment, the Hon'ble Supreme Court observed as follows:

> *"9. If the statements in the plaint are taken to be true, the joint family properties may enure to the benefit of its members and they may well be available for partition. This is a matter of trial, the result of which would depend upon the evidence adduced by the plaintiff. At this stage, we are not concerned with the correctness of the averments, except to state that the plaintiffs have the carriage of the proceedings, and have to discharge the heavy burden of proving their case. In so far as the application under Order VII Rule 11 of CPC is concerned, this Court will proceed only that far, to examine whether the plaint discloses a cause of action, and no further."*

https://www.mhc.tn.gov.in/judis

WEB COPY

The above observation makes it clear that the correctness of the finding in the present case has to be tested during trial.

16. The learned counsel for the petitioners further relied upon the judgment of the Hon'ble Supreme Court in ***Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) (Dead) through Legal Representatives and Others***, reported in ***(2020) 7 SCC 366***, particularly paragraph 23.11, which reads as follows:

> *"23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success which reads as: (SCC p.562, para 139)*
>
> *'139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."*

17. The above order of the Supreme Court reiterates that the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their

https://www.mhc.tn.gov.in/judis

WEB COPY

entirety, a decree would be passed. Here, in this case, the respondent specifically stated that she came to know that the said Munusamy executed a settlement deed in respect of the suit schedule property and created a threat over the title of the suit property. That insisted for filing declaration in the present suit, even before getting withdrawal of the earlier suit.

18. The learned counsel for the petitioners also relied upon the judgment of this Court in ***M/s. Chinmaya Garden Trust, represented by its Trustee, Mr. D. Venkatraman v. M/s. Karunya Educational Trust, represented by its Trustee, Mr. C.S. Sundarraaraj and Others***, reported in ***2023-4-L.W.25***, particularly paragraph 22, wherein this Court observed as follows:

> *"22. ……. Furthermore, the plaintiff is entitled to take any number of defence in the earlier suit itself, inspite of that, he filed the present suit, as such is abuse of process of law and also there is no cause of action to file the present suit, since because his right could be decided only after the disposal of earlier suit. Therefore, there is no cause of action to file the present suit. Accordingly, the authorities relied on by the 1st respondent / plaintiff is not applicable to the facts of the case, thereby both the Civil Revision Petitions are allowed. The findings of the trial Judge in I.A.Nos.12 and 181 of 2014 is set aside and therefore, the suit in O.S.No.463 of 2013 is ordered to be rejected. No costs. Consequently, the connected miscellaneous petitions are closed."*

https://www.mhc.tn.gov.in/judis

WEB COPY

19. In the said case, the plaintiff had purchased the property during the pendency of the earlier suit and his title was subject to the outcome of the earlier proceedings. Further, the plaintiff had suppressed material facts relating to the construction of a school in the suit property and had described the property as agricultural land. Therefore, the factual circumstances in the said case is distinguishable from those of the present case. Here, the plaintiffs have specifically pleaded that the subsequent execution of the settlement deed created a cloud over their title, thereby necessitating the institution of the present suit.

20. The learned counsel for the petitioners also relied upon the judgment of the Hon'ble Supreme Court in ***T. Arivandandam v. T.V. Satyapal and Another,*** reported in ***(1977) 4 SCC 467***, wherein the Hon'ble Supreme Court held that if, on a meaningful reading of the plaint, it is found to be manifestly vexatious and meritless and does not disclose a clear right to sue, the Court should exercise its power under Order VII Rule 11 CPC and reject the plaint.

21. The learned counsel for the respondents placed considerable reliance upon the judgment of the Hon'ble Supreme Court in ***S. Valliammal and Others v. S. Ramanathan and Another***, reported in ***(2026) 7 SCC 482***, particularly paragraph 74, which reads as follows:

"74. A juxtaposition of the above discussion with the discussion for

https://www.mhc.tn.gov.in/judis

WEB COPY

rejection of a plaint under Order 7 Rule 11(d) of the Code must be made. On a conjoint reading of Order 2 Rule 2 with Order 7 Rule 11(d) of the Code, it emerges that the plea under Order 2 Rule 2 of the Code cannot be a basis or a ground for rejection of the plaint. In other words, it is for the defendant to establish by way of evidence, the bar of the subsequent suit under Order 2 Rule 2 of the Code filed by the very same plaintiff. In such an event, on a comparative analysis of the plaint filed in the first suit and the plaint filed in the second suit, if the Court comes to the conclusion that the second suit was filed on an identical cause of action which led to the filing of the first suit and there was an omission to make the claim or to reserve the reliefs to be claimed in the first suit in a subsequent suit, then the bar under Order 2 Rule 2 of the Code would apply to the subsequent suit or the second suit. Then the claims or reliefs not maintainable would be rejected as the plaintiff could not have sued for those reliefs by filing a second suit, although technically, the filing of such a suit was not barred by any law. On the other hand, if the cause of action for filing the second suit is totally distinct from the cause of action from filing the first suit and the reliefs claimed are distinct, subject-matter of the suits are different and if the parties to the suit are also different then in such a case, the plea under Order 2 Rule 2 of the Code would not arise at all. The above are, inter alia, the heads of distinction to be analysed while analysing the plaints in the first/former suit and a subsequent suit."

22. The above judgment makes it clear that a plea under Order II Rule 2 CPC cannot, by itself, be made the basis for rejection of a plaint under Order

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

VII Rule 11(d) CPC. The defendant, who raises such a plea, has to establish the the bar under Order II Rule 2 CPC by placing the evidence and materials before the Court. Therefore, the contention of the petitioners that the present suit is necessarily a case of re-litigation and the plaint can be rejected cannot be accepted.

23. The learned counsel for the respondents also relied upon the judgment of this Court in ***C.R.P.No.4174 of 2024*** dated 30.10.2024 in ***A. Muthumariappan v. P.R. Sundaram and Another***, particularly paragraphs 23, 28 and 34, wherein this Court, observed as follows:-

> *"23. I should recall the view of the Supreme Court in* ***Anathula Sudhakar v. P. Buchi Reddy, (2008) 4 SCC 594****. The Hon-ble Mr.Justice R.V.Raveendran, held that a prayer for declaration would be necessary only when the denial by the defendant of the plaintiff-s title, raises a cloud over his title, to the property. In order for a plea to be treated as a cloud over the title of the plaintiff, it should point out an apparent defect or a prima facie right of a third party over it. In other words, mere denial does not create a serious cloud over the title of the property. In this case, it is in the additional written statement dated 23.06.2006 that the first defendant had urged that the vendor of the plaintiff, namely, the second defendant has no title to the property. It is this plea, which taking it at its best, raises a cloud over the title of the plaintiff. This is because, the previous written statement filed in the year 2001 did not attack the title of the plaintiff, but it was a case*

https://www.mhc.tn.gov.in/judis

WEB COPY

of mere denial.

28. It is here, I have to deal with the aspect on when the right to sue arises in case of denial of title. Is a mere denial sufficient or something more is necessary? On this aspect, there are long line of judgments dealing with this issue. Article 58 of the Limitation Act deals with suits relating to declaratory reliefs. It is the next chapter in the Limitation Act which deals with suits relating to immovable properties. To clarify, Article 58 falls under Part-III and suits relating to immovable properties falls under Part-V.

34.The effect of the aforesaid discussion is that for a mere denial, a party need not resort to the highly expensive relief and sue for declaration. There must be in addition to the denial, a threat that effectively invades or jeopardizes the right of the plaintiff. This was the view of the Supreme Court in ***Rukhmabai Vs. Lala Laxmi Narayan, AIR 1960 SC 335.*** *Further, this view is in line with the dictum of R.V.Raveendran.J in Anathula Sudhakar-s case, referred to supra. His Lordship has specifically held that a mere denial would not give rise to a "right to sue" for a suit for declaration. In fact, he pointed out in paragraph No.14, it is always open to the plaintiff to withdraw a suit for bare injunction, with the permission of the Court, or to file a comprehensive suit for declaration and injunction if a "cloud over title" is created. He further pointed out in paragraph No.16, that in case of vacant land, as in the case, I am currently dealing with, possession follows title.*

As held by this Court, for a mere denial, a party need not resort to the relief and sue for declaration.

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

24. In this case, the plaintiff sought for declaration after knowing the execution of settlement deed by the said Munusamy in favour of the 4th defendant in respect of the suit schedule property. The encumbrance created in respect of the suit schedule property definitely considered as a threat to the title of the property. Rightly, the plaintiff filed a suit for declaration by showing the cause of action that she came to know that execution of settlement deed in favour of the 4th defendant. The plaint averments shall be read as a whole. The plaintiff has *prima facie* established cause of action to file the present suit. The grounds raised by the defendants has to be decided before the Trial Court by let in evidence as held in the case the ***S.Valliamal*** cited supra.

25. In view of the foregoing discussion, this Court finds no illegality or infirmity in the order passed by the Trial Court. Accordingly, this Civil Revision Petition is dismissed. The order dated 25.07.2023 passed in I.A.No.2 of 2020 in O.S.No.27 of 2020 on the file of the Subordinate Court, Tiruttani, is confirmed. The Trial Court is directed to proceed with the suit and dispose of the same in accordance with law, without being influenced by the observations made in this order. There shall be no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

24-11-2026

Index: Yes
Speaking
Neutral Citation: Yes
KKN

https://www.mhc.tn.gov.in/judis

WEB COPY

R.RAJESH VIVEKANANTHAN, J.

KKN

To

The Sub- Court,

Tiruttani.

CRP No. 4215 of 2023

24-11-2026

https://www.mhc.tn.gov.in/judis