



C.M.S.A.(MD)No.23 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.04.2026

PRONOUNCED ON:25.06.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.S.A.(MD)No.23 of 2025

and

C.M.P.(MD)No.14248 of 2025

1.Abraham Nelson Asir @ William(Died)

: Appellant/Petitioner/ ---- / -----

2.M.Elizabeth Lalithakumari

: Appellant/L.R of the sole appellant

(Cause title is accepted vide
order dated 13.06.2025 made in
C.M.P.(MD)No.9058 of 2025 in
C.M.A.(MD)SR No.59228 of
2021)

Vs.

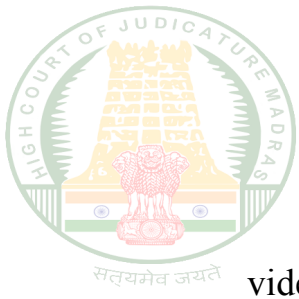
1.Vivekananda Kendra Rock Memorial and

Vivekananda Kendra,
through its Joint General Manager,
Vivekananda Kendra,
Vivekanandapuram,
Kanyakumari Village,
Agastheeswaram Taluk,
Kanyakumar District.

: 1st Respondent/1st Respondent /
1st Respondent /Petitioner/Plaintiff

2. K.Sivaramaperumal Nadar(died0

(Memo dated 08.09.2025 is recorded
to the effect that R.2 died withou any issues



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vide order dated 08.09.2025)

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3. K.Chellathurai
4. K.Saraswathi
5. K.Raja(died)
6. K.Chellaswami
7. K.Radhakrishnan
8. S.Periya Muthuswamy(died)

(Memo dated 02.09.2025 presented before the Court on 08.09.2025 is recorded to the effect that R.8/tenant died and issuance of notice is dispensed with since he is not a contesting party, vide order dated 08.09.2025)

... Respondents 2 to 8/Respondents 2 to 8
Respondents 3 to 9/Defendant 2 to 8

9.A.Pravin Asir

10.A.Prathab Asir ... Respondents 9 &10/L.Rs of sole appellant

11.R.Selvakani

12.Selva Vinitha ... Respondents 11 and 12

(Respondents 11 and 12 are brought on record as LR's of the deceased 5th respondent vide court order dated 25.10.2025 made in C.M.P.(MD)Nos. 15414, 15415 and 15418 of 2025 in C.M.S.A.(MD)No.23 of 2025)

PRAYER:- Civil Miscellaneous Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 22.01.2020 passed in C.M.A.No.3 of 2014, on the file of I Additional



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Subordinate Court, Nagercoil, confirming the judgment and decree dated 28.03.2014, passed in E.A.No.80 of 2003, in E.P.No.246 of 2004 in O.S.No.280 of 1994, on the file of I Additional District Munsif Court, Nagercoil.

For Appellant : Mr.S.Meenakshi Sundaram
for Mr.M.P.Senthil

For Respondents :Mr.S.Pon Senthil Kumaran
for Mr.A.Nagarajan
for R.1

: Mr.A.Karthigaivel
for R.6

: Mr.R.Balakrishnan
for R.9 and R.10

: No Appearance
for R.3, R.4, R.7, R.11, R.12

: R.8 – dispensed with

: R.2 and R.5 died – steps taken

JUDGMENT

This Civil Miscellaneous Second Appeal is directed against the Judgment and decree passed in C.M.A.No.3 of 2014, dated 22.01.2020,



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on the file of the I Additional Subordinate Court, Nagercoil, confirming the order made in E.A.No.80 of 2004 in E.P.No.246 of 2004, dated 28.03.2014, on the file of I Additional District Munsif Court, Nagercoil, dismissing the petition filed under XXI Rule 97 C.P.C.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking before the trial Court

3. Originally, one Abraham Nelson Asir @ William filed the petition in E.A.No.80 of 2004 under Order XXI Rule 97 C.P.C. After the dismissal of C.M.A.3 of 2014, the said Abraham Nelson Asir died and his wife M.Elizabeth Lalithakumari filed the present second appeal.

4. The case of the original claimant is that the petition mentioned property and other properties originally belonged to one Kodikatti Nadar and he mortgaged 21 items of properties in favour of one Abraham Nadar – grandfather of the claimant on 16.10.1123 M.E.(1948), that the said Kodikatti Nadar redeemed 20 items of the properties, except the 21st item, which is the property now in dispute and after the demise of Abraham Nadar, his son Deva Asirvatham was in possession and



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enjoyment of the suit property and thereafter the claimant was in possession and enjoyment of the suit property and after his demise, the second appellant and her children have been in possession and enjoyment of the same, that the said Kodikatti Nadar and one Nallasivan had interfered with the peaceful possession and enjoyment of Abraham Nadar and hence, he was forced to file a suit in O.S.No.8 of 1957, on the file of the District Munsif Court, Nagercoil for the relief of injunction and the same was decreed and that the said Kodikatti Nadar did not take possession of the suit property at any point of time.

5. It is the further case of the claimant that the first respondent filed a suit in O.S.No.280 of 1984, on the file of the Subordinate Court, Dindigul against the legal heirs of the Kodikatti Nadar seeking the relief of mandatory injunction to remove the shed put up in “B” schedule property and other construction put up in “A” schedule property and the decree of eviction against the 8th defendant as well as for recovery of possession from the defendants and for other reliefs, that the suit was decreed on 17.04.2002 and thereafter the first respondent filed an execution petition in E.P.No.246 of 2004, that the said Abraham Nelson Asir filed an application in E.A.No.80 of 2004 during the pendency of

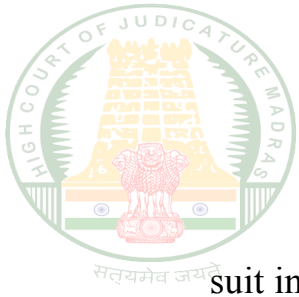


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the execution petition, seeking to adjudicate upon his claim and set aside the order passed in E.P.No.122 of 2002, which was subsequently taken on file in E.P.No.246 of 2004, on the file of I Additional District Munsif Court, Nagercol, that the claimant was not arrayed as a party in the suit in O.S.NO.280 of 1994 and the first respondent by concealing all the crucial facts, has obtained a decree which is void and the execution proceedings are illegal and that therefore, the claimant Abraham Nelson Asir was constrained to file the above claim petition.

6. The defence of the first respondent is that the said Abraham Nelson Asir @ William was arrayed as a party in the counter suit in O.S.No.166 of 1997, which was jointly tried together along with suit in O.S.No.280 of 1994, on the file of I Additional Subordinate Court, Nagercoil and a common judgment and decrees came to be passed on 17.04.2002, that the Said Abraham Nelson Asir @ Wilson was well aware of the suit in O.S.No.280 of 1994, that the claimant had raised the very same contentions in the written statement filed in O.S.No.166 of 1997 filed by Kodikatti Nadar, that the trial Court upon due consideration of the rival pleadings and evidence, passed a common judgment dated 17.04.2002, dismissing the suit in O.S.No.166 of 1997 and decreeing the



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suit in O.S.No.280 of 1994, that if the claimant had any grievance against the said judgment, he ought to have challenged the same in the manner known to law, but no such challenge was made and as such, the said common judgment had attained finality and is binding on the claimant and that the claimant who suffered on adverse judgment, cannot be permitted to re-agitate the very same issues in the execution proceedings and that therefore, the present claim petition is barred by res judicata and the claim petition is liable to be dismissed.

7. It is not in dispute that Kodikatti Nadar had again mortgaged the properties in favour of one Maria Luis Martin Fernando and three others and the said mortgagees filed a suit in O.S.No.8 of 1962 against Kodikatti Nadar before the Subordinate Court, Nagercoil claiming the mortgage money and the said suit was decreed on 10.02.1964, that since the decree was not satisfied, the decree holders maria Luis Martin Fernando and three others laid an execution petition in E.P.No.106 of 1965 and the property now in dispute was sold in Court auction on 17.02.1996.

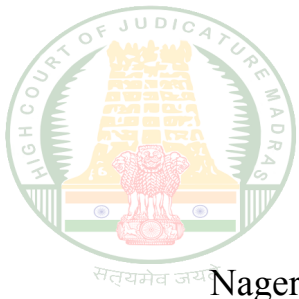


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8. It is pertinent to note that the said Kodikatti Nadar – judgment debtor filed an application in E.A.No.137 of 1966 in E.P.No.106 of 1965 for setting aside the sale on the grounds that the property was sold for under value and that there was a outstanding mortgage to one Abraham Nadar, the present appellant's predecessor and the said petition was dismissed on 15.10.1966, that the said Kodikatti Nadar preferred an appeal before this Court and the same was dismissed and thereafter filed an appeal in L.P.A.No.1 of 1970 before the Hon'ble Supreme Court and the same was also dismissed on 06.01.1970 and that the property was delivered to the Court auction purchaser through Court on 16.03.1970. It is also not in dispute that the said Kodikatti Nadar again filed an application in E.A.No.110 of 1970 in E.P.No.106 of 1965 seeking re-delivery of the property delivered to the Court auction purchaser and the same was also dismissed and that Kodikatti Nadar then filed an appeal in C.M.A.No.118 of 1972 and the same was also dismissed on 06.04.1973.

9. It is further evident from the records that the Court auction purchaser alleging that Kodikatti Nadar along with his aide T.Rajajony Nadar removed the boundary stones in the petition mentioned property, filed a suit in O.S.No.113 of 1973, before the Subordinate Court,



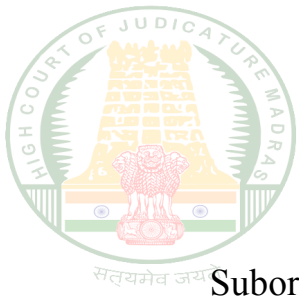
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Nagercoil claiming injunction and for removal of encroachments against Kodikatti Nadar and the said suit was decreed on 26.07.1975, that Kodikatti Nadar, who was the first defendant in the suit in O.S.No.113 of 1973, preferred an appeal in A.S.No.275 of 1975 before the District Court, Nagercoil and the same was dismissed and that thereafter Kodikatti Nadar preferred the Second Appeal in S.A.No.841 of 1978 and the same was also dismissed.

10. It is the specific case of the first respondent that the first respondent – Vivekananda Kendra Rock Memorial and Vivekananda Kendra purchased the petition mentioned property on 04.03.1978 from the Court auction purchaser and since then they have been in possession and enjoyment of the suit property, that Kodikatti Nadar has filed a suit in O.S.No.391 of 1982 before the Principal District Court, Nagercoil (subsequently transferred to the Subordinate Court, Nagercoil, and renumbered as O.S.No.116 of 1997) seeking declaration that the delivery of the property effected in O.S.No.8 of 1962 was invalid, that after the demise of Kodikatti Nadar, his legal heirs removed the fence forcibly and illegally from some portion of the petition mentioned property and hence the first respondent filed a suit in O.S.No.280 of 1994 before the

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Subordinate Court, Nagercoil for removal of encroachments and for other reliefs, that the claimant was the first defendant and the first respondent - Vivekananda Kendra Rock Memorial and Vivekananda Kendra was the sixth defendant in the suit in O.S.No.166 of 1997, that both the suits were jointly tried and a common judgment came to be pronounced on 17.04.2002, decreeing the suit in O.S.No.280 of 1994 filed by the first respondent and dismissed the suit in O.S.No.166 of 197, dated 17.04.2002.

11. As already pointed out, the first respondent laid the execution petition for executing the decree passed in O.S.No.280 of 1994 and pending E.P., the above claim petition came to be filed in E.A.No.80 of 2004. After enquiry, the executing Court dismissed the said petition on 28.03.2014. Aggrieved by the order of dismissal, the claimant preferred an appeal in C.M.A.No.3 of 2014 and the learned I Additional Subordinate Judge, considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment dated 22.01.2020, dismissing the appeal and thereby confirming the fair and decretal order of the executing Court. Challenging the dismissal of the appeal, the present Civil Miscellaneous Second Appeal came to be

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12. Though the above Civil Miscellaneous Second Appeal has been pending since 2025, the same has not yet been admitted and hence, no Substantial Question of Law came to be formulated.

13. The learned Senior Counsel appearing for the appellant would contend that the mortgage in favour of Abraham Nelson Asir was the first mortgage and the same is still in force, that either Kodikatti Nadar or his legal heirs had not redeemed the mortgaged property, that the right of redemption over the subject matter of the property has already been extinguished and as such, either Kodikatti Nadar or his legal heirs or the first respondent cannot redeem the property, that the first respondent cannot deny the right of the claimant over the mortgaged property, that the claimant was not a party to the suit in O.S.No.280 of 1994 and hence, the said decree is not binding on the claimant and that since the claimant and after his demise, his legal heirs have been in possession and enjoyment of the suit property, their application under Oder XXI Rule 97 C.P.C., is liable to be allowed.



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14. The learned Counsel for the first respondent would submit that the claimant has not preferred any appeal challenging the common judgment and decrees in O.S.No.166 of 1997 and O.S.No.280 of 1984 and therefore, the same had attained finality, that the first respondent purchased the property on 04.03.1978 and filed the suit in the year 1994 and the suit was decreed on 17.04.2002 and that the claimant without challenging the same, filed E.A.No.80 of 2004 in the year 2004 wilfully prolonging the litigation, that the first respondent – decree holder has been compelled to engage in protracted litigation spanning several decades and has been unjustly deprived of the fruits of the decree even after more than 24 years, that the prior proceedings would reveal that Kodikatti Nadar and those claiming under him have consistently resorted to filing frivolous and vexatious proceedings with the sole intent of obstructing the first respondent from obtaining possession of the property, that the appellant having unsuccessfully contested the suit in O.S.No.166 of 1997, is barred by res judicata from raising identical contentions in the execution proceedings and that the executing Court as well as the appellate Court have rightly dismissed the petition filed under Order XXI Rule 97 C.P.C.

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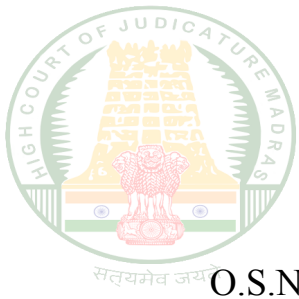


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15. It is pertinent to note that the claimant traces his claim solely through the alleged usufructuary mortgage said to have been obtained by his grandfather through the original owner Kodikatti Nadar. The present claim is not an independent title acquired subsequent to the decree and the claimant's entire claim is founded upon the alleged usufructuary mortgage and the alleged continuous possession thereunder. As already pointed out, the original owner Kodikatti Nadar in the execution proceedings in E.P.No.106 of 1965 taken in O.S.No.8 of 1962 filed an application for setting aside the sale, mainly on the ground that there was an outstanding mortgage to one Abraham Nadar – grandfather of the claimant, but the said petition came to be dismissed and the appeal filed before this Court and the Letter patent appeal before the Hon'ble Supreme Court came to be dismissed, confirming the Court auction sale.

16. It is pertinent to note that after the property was delivered to the Court auction purchaser, the said Kodikatti Nadar again filed an application seeking re-delivery of the property and that application came to be dismissed and also the first appeal came to be dismissed. As already pointed out, in the suit filed by the Court auction purchaser in

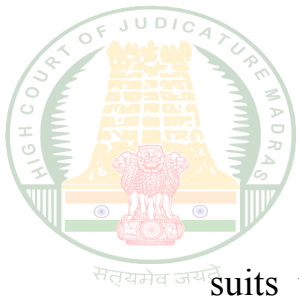


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O.S.No.113 of 1973 for removal of encroachments filed against Kodikatti Nadar and others, before the Subordinate Court, Nagercoil, Kodikatti Nadar had raised the same defence, but the suit came to be decreed holding that the Court auction sale and the delivery of the property were perfectly valid. The said Kodikatti Nadar has already preferred an appeal before the District Court and the Second Appeal before this Court and the same came to be dismissed. Subsequently, since Kodikatti Nadra and his legal heirs removed the fence from some portion of the properties, the first respondent who purchased the property from the Court auction purchaser filed the suit in O.S.No.280 of 1994, seeking mandatory injunction for removal of encroachments and for permanent injunction and for recovery of possession against the legal heirs of Kodikatti Nadar.

17. Before filing of the said suit, Kodikatti Nadar himself filed another suit in O.S.No.391 of 1982 to declare that the delivery of the property effected in O.S.No.8 of 1962 was invalid and the same is not binding on him and for permanent injunction and that the said suit was subsequently transferred to the file of the Subordinate Court, Nagercoil and renumbered as O.S.No.166 of 1997. As already pointed out, both the



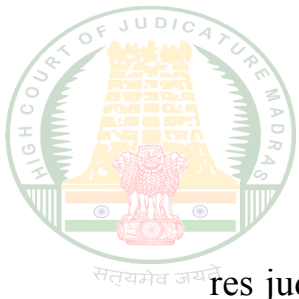
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suits were tried jointly and I Additional Subordinate Court passed a common judgment dated 17.04.2002, dismissing the suit filed by Kodikatti Nadar and decreeing the suit filed by the first respondent.

18. It is pertinent to note mention that the present claimant was the first defendant and the first respondent was the sixth defendant in the suit in O.S.No.166 of 1997 filed by Kodikatti Nadar and the claimant had seriously contested the said suit. No doubt, the claimant was not a party to the suit in O.S.No.280 of 1994 filed by the first respondent and he has not raised any objection while taking part in the joint trial. As rightly contended by the learned Counsel for the first respondent, all the contentions raised by the claimant were already raised by Kodikatti Nadar in the earlier proceedings and the same came to be rejected. Moreover, the claimant himself had taken the same pleas in O.S.No.166 of 1997 and the same came to be rejected.

19. The learned Counsel for the first respondent placed reliance on the judgment of the Hon'ble Supreme Court in ***S.Ramachandra Rao Vs. S.Nagabhushana Rao and Others*** reported in ***2022 LiveLaw (SC) 861***, wherein the Hon'ble Apex Court has specifically held that the doctrine of



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res judicata is attracted not only in separate subsequent proceedings, but also at the subsequent stage of the same proceedings and the relevant passage is extracted hereunder:

“10. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata.”

20. The above decision squarely applies to the facts of the present case. In the case on hand also, the claimant had already raised the very same pleas in O.S. No.166 of 1997. The said suit was adjudicated on



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merits and the findings rendered therein have attained finality, as the claimant has not chosen to challenge the same before the competent appellate forum. Consequently, the findings recorded in the said suit are binding on the claimant, who cannot be permitted to re-agitate the very same issues in the present proceedings. This Court, therefore, has no hesitation in holding that the present claim is clearly barred by the doctrine of res judicata, as contemplated under Section 11 of the Code of Civil Procedure.

21. The learned counsel appearing for the first respondent also placed reliance on the decision of the Hon'ble Supreme Court in ***Kazi Akeel Ahmed Vs. Ibrahim*** reported in **(1996) 8 SCC 372**, wherein the Hon'ble Apex Court has held that though an application under Order XXI Rule 97 C.P.C. ordinarily requires an adjudication in accordance with Rules 98 and the succeeding provisions, such an enquiry would be wholly unnecessary where the very same claim had already been adjudicated and rejected by a competent Civil Court. The Hon'ble Supreme Court held that, in such circumstances, conducting a fresh enquiry would be a futile exercise and rejected the objection raised under Order XXI Rule 97 C.P.C. The relevant passages are extracted hereunder;

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“8. We have given serious consideration to the facts of the present case and the submissions made by the learned Counsel for the appellant. It is true that when an application under **Order 21 Rule 97** of the Code is made, it contemplates an investigation into the claim made in the application, in accordance with the provisions contained in **Rule 98** and the **rules** following thereafter. But in the special facts and circumstances of the present case, we see no reason to hold such an enquiry or investigation as the same would be a futile exercise in view of the fact that Civil Suit instituted by the respondent No. 2 Girraj making the same claim as has been made by him in his application under **Order 21 Rule 97** has been dismissed by the Civil Court on November 2, 1995. A perusal of the said judgment goes to show that the respondent No. 2 Girraj was unable to produce any evidence, oral or documentary, to prove that he was holding the shop in question as tenant in his own rights. These facts clearly go to show that the claim of the respondent No. 2 that he is a tenant is wholly fictitious and without any foundation and it was for this reason that the suit had been dismissed with cost to the tune of Rs. 2,000/-. Having regard to these facts and circumstances, we find absolutely no merit in the application of respondent No. 2 resisting the execution of the decree validly passed by a competent Court of Law.

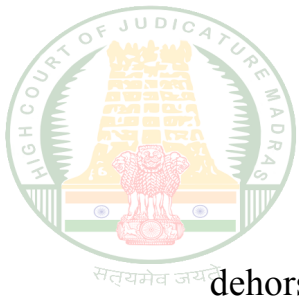


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*9. For the reasons stated above, tin's appeal succeeds and is hereby allowed. The application of respondent No. 2 Girraj filed in the Executing Court under **Order 21 Rule 97** resisting the execution of the decree in favour of the appellant is rejected and the **orders** of the Executing Court dated August 24, 1990 and the High Court dated November 24, 1992 are set aside. It is directed that the Executing Court shall deliver possession of the disputed shop to the appellant without any further delay. There will be no **order** as to costs."*

22. The above decision is clearly applicable to the present case. As already pointed out, the very case now put forward by the claimant had earlier been raised in O.S. No.166 of 1997 and was rejected by the trial Court. Once the said findings have attained finality, the claimant cannot be permitted to reopen or re-agitate the very same issues by filing an application under Order XXI Rule 97 C.P.C. Though the Executing Court is empowered to adjudicate questions relating to the right, title or interest of an objector, such jurisdiction cannot be invoked to unsettle issues that have already been finally adjudicated by a competent Civil Court. The claimant has not established any independent right, title or interest



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dehors the claim that had already been considered and rejected in the earlier proceedings. On the contrary, the present application is nothing but an attempt to re-agitate issues that have already attained finality. The decision of the Executing Court, in dismissing the application cannot be found fault with. The first appellate Court, upon an independent re-appreciation of the entire evidence and materials available on record, has concurred with the findings of the Executing Court and hence, this Court finds no infirmity, illegality or perversity in the concurrent findings recorded by the Courts below warranting interference in this Civil Miscellaneous Second Appeal.

23. It is settled law that concurrent findings of fact by the trial court and the first appellate court cannot be interfered with by the High Court under Section 100 CPC, unless there are exceptional grounds. The High Court's role in a Second Appeal is limited to addressing substantial questions of law, not re-appreciating evidence to replace the findings of the courts below. Even if another view is possible, the High Court should not interfere unless the findings are unsupported by evidence or raise a substantial question of law.



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24. Upon examining the judgments of the courts below, this Court is in agreement with the learned counsel for the respondents that no substantial question of law arises. Consequently, this Court concludes that the Civil Miscellaneous Second Appeal is devoid of merits and the same is liable to be dismissed. Considering the entire facts and circumstances, this Court is constrained to say that Kodikatti Nadar and his legal heirs and the present claimant have successfully prevented the decree holder – first respondent from realising the fruits of the decree till now. Hence, this Court holds that the first respondent is entitled to get costs through out from the appellant.

25. In the result, the Civil Miscellaneous Second Appeal is dismissed. Consequently, the connected Civil Miscellaneous Appeal is also dismissed. The first respondent is entitled to get costs through out from the appellant.

25.06.2026

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

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- To
1. I Additional Subordinate Court, Nagercoil.
 2. I Additional District Munsif Court, Nagercoil.
 3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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