

**In the Court of the II Additional District Munsif, Nagercoil**

**Present: Thiru.R.Sundara Kamesh Marthandan, M.L.,**  
II Additional District Munsif, Nagercoil.

**Monday on this 29<sup>th</sup> day of August 2022.**

I.A. No.2 of 2021.

in

Original Suit No.11 of 2020

CNR No.TNKK04-000319 -2019

V.Edwin Greevin Rajan

... Petitioner /1<sup>st</sup> Defendant

-vs-

1. G.Michael Chandra Sekar Plaintiff

is rep.by his Power Holder M.Joseph Jaineus

... 1<sup>st</sup> Respondent/Plaintiff

2.M.Michael Vency Vijay

3.The Azhagappapuram Town Panchyat

Rep. by the Executive Officer

4. G.Julian Cyril.

... Respondents 2 to 4 /Defendants.

This Petition came up before this Court on 09.07.2022, in the presence of Thiru.D.Vijay Antony, P.RajaBagiyam Advocates for the Petitioner/1<sup>st</sup> defendant and Thiru.C.Ashokumar Advocate for the 1<sup>st</sup> Respondent/Plaintiff and Government Pleader Thiru.T.Santhoshkumar for the 3<sup>rd</sup> Respondent and Respondent 2 & 4 remained set exparte on hearing both sides arguments and upon perusing the case records and having stood over for consideration till this day, this Court delivered the following:

**ORDER**

1. This Petition filed under Order VII Rule 11 and section 151 of C.P.C., seeking to Reject the Plaint on the Ground of Res-Judicata. The 1<sup>st</sup> Defendant had filed above Petition seeking an order to Reject the Plaint on the Ground of Res judicata. The Petitioner had stated that the Petitioner is the owner of 7.5 cents of land in re survey No. 142 of 2011 Azhagapuram, Agastheeswaram Taluk, Kanyakumari District and that he is in possession and enjoyment of the same. To the east of Petitioner's property, the 1<sup>st</sup> Respondent/Plaintiff's property in Re survey No.148/1B is situated. The Petitioner is having joint patta No.1078 along with his brother Joseph. The Plaintiff is in possession and enjoyment of his property, by paying necessary revenue tax.

2. The 1<sup>st</sup> Respondent had filed O.S.No.379 of 2011 on the file of the Hon'ble Principal District Munsif Court, Nagecoil against the Petitioner herein seeking Permanent Injunction. The said suit was dismissed on 11.10.2013. Against which, the 1<sup>st</sup> Respondent filed A.S.No.134 of 2014 before the Hon'ble II Additional Sub Court. The said Appeal Suit came to dismissed on 13.01.2014.

3. Since the 1<sup>st</sup> Respondent had attempted to encroach upon the Petitioner's property in Re survey No.142/11 measuring 7.5 cents, the Petitioner filed O.S.No. 131 of 2012 against the 1<sup>st</sup> Respondent, on the file of Principal District Munsif Court, Nagercoil. The said suit in O.S. No.131 of 2012 was decreed in favour of the Petitioner herein on 11.10.2013. In O.S. No.379 of 2011, the 1<sup>st</sup> Respondent had filed I.A.No.1120 of 2011 seeking appointment of

an Advocate Commissioner, to inspect the suit schedule property and file Report and Plan. The said suit was disposed of by marking the Advocate Commissioner's Report as Ex.C1 and Plan as Ex.C2.

4. Against the Judgment in O.S.No.379 of 2011 the 1<sup>st</sup> Respondent had filed appeal along with condone delay Petition in I.A. No. 119 of 2014. The said I.A. came to be dismissed for default. Further the property in O.S. No. 379 of 2011 and in the above suit are one and the same.

5. The Petitioner had filed E.P.No.6 of 2019 in O.S. No. 131 of 2012, in order to execute the decree passed therein. The said execution petition is pending. In order to over come the same, the 1<sup>st</sup> Respondent had filed the above suit. The 1<sup>st</sup> Respondent's above suit is hit by Doctrine of res-judicata. Hence the suit has to be Rejected on the Ground of res-judicata.

6. The 1<sup>st</sup> Respondent in his counter had stated that the suit in O.S. No. 379 of 2011 and the above suit are different. The relief sought for in the above suit is for demarcation of that Plaint Schedule Property as per Sale Deed dated 29.09.2009 bearing Doc. No.3539 of 2009. The relief sought for in O.S. No.379 of 2011 is for permanent injunction. The cause of action in the above suit is entirely different. The parties in the above suit and in O.S. No. 379 of 2011 are different. The Petitioner's father was entitled to only 13. 1/3<sup>rd</sup> cents. However, by claiming that they have 15 cents of land, they have made partition amongst them and obtained the decree. The decree obtained by the Petitioner was by playing fraud on Court, hence the same is nullity.

7. Since in E.P. No.6 of 2019 in O.S. No. 131 of 2012, the Petitioner had stated as if the 1<sup>st</sup> Respondent/Plaintiff had trespassed, encroached and, carved out a strip of land and formed a pavement, in the suit schedule property in O.S. No. 131 of 2012, it has necessitated the 1<sup>st</sup> Respondent to file the above suit. As such it is false of claim that the above suit has been filed in order over come the Execution Proceedings.

8. The Petition to reject the Plaint on the ground of res-judicata is not maintainable. Res judicata could be ascertained only after appreciating oral and documentary evidence. The Plaint averments are true and genuine and not frivolous and vexatious. Hence the Petition has to be dismissed.

9. The point for consideration is whether the Plaint has to be rejected or not ?

10. The 1<sup>st</sup> Respondent had admitted that there were earlier litigations between the Petitioner and 1<sup>st</sup> Respondent in O.S. No. 379 of 2011 as well as in O.S. No.131 of 2012 in respect of Plaint schedule property. Further the 1<sup>st</sup> Respondent has contended that apart from the Petitioner herein there are other defendants in the present suit. That apart the relief sought for in the above suit is for demarcation, however the relief sought in the earlier suit was for permanent injunction.

11. The Petitioner had filed the Plaint in O.S. No. 379 of 2011 as Ex.P1, the Written statement in O.S. No.379 of 2011 has been marked as Ex. P2. The Judgment in O.S. No. 379 of 2011 and decree has been marked as Ex.P3. The

Judgment & Decree in A.S. No. 134 of 2011 has been marked as Ex. P4. The Plaintiff in O.S. No. 131 of 2012 has been marked as Ex. P5. The written statement in O.S. No.131 of 2012 has been marked as Ex. P6. The Judgment & Decree in O.S. No. 131 of 2012 has been marked as Ex. P7. The Commissioner Report in I.A. 1129 of 2011 in O.S. No. 379 of 2011 has been marked as Ex.P8.

12. On the side of the Respondent the Partition Deed has been marked as Ex. R1. Amended Plaintiff in O.S. No. 131 of 2012 has been marked as Ex. R2. Written Statement in O.S. No. 131 of 2012 has been marked as Ex.R3. Judgment in O.S. No. 131 of 2012 has been marked as Ex.R4. Patta No.10631 issued by the Agasteeswaram Taluk has been marked as Ex.R5. Property Tax Receipt related to Plaintiff schedule property has been marked as Ex. R6. Plaintiff in O.S No. 379 of 2011 has been marked as Ex.R7. Written statement in O.S No.379 of 2011 has been marked as Ex.R8. The Commissioner's Report and Plan in I.A.No.1120 of 2011 in O.S.No.379 of 2011 has been marked as Ex.R9. Judgment in O.S. No. 379 of 2011 has been marked as Ex.R10. Decree in O.S. No. 379 of 2011 has been marked as Ex.R11. Power of attorney dated 06.08.2019 has been marked as Ex.R12.

13. The Petitioner's counsel has relied upon the Judgment of the Hon'ble Supreme Court in M. Nagabhushana vs. State of Karnataka and others reported in (2011) 3 SCC 408 and the Judgment of the Hon'ble Madras High Court reported in Kuzhanthaiappa Gounder vs.Nachimuthu 2015 (1) CTC 623 and Saroja -vs- Chinnusamy(Dead) and another reported in 2007(8) SCC 329 and

argued that the parties should not be vexed twice. The learned Counsel for the 1<sup>st</sup> Respondent relied on the Judgment of the Hon'ble Supreme Court reported in Soumitra Kumar Sen -vs- Shyamal Kumar Sen & others CDJ 2018 SC 179 and Judgment of the Hon'ble Madras High Court reported in A. Mohammed Isaac -vs- K.Srineevasayya & Others CDJ 2021 MHC 2613 and argued that res judicata is a mixed question of fact and law and the same could be decided only after Trial.

14. In Soumitra Kumar Sen -vs- Shyamal Kumar Sen & others CDJ 2018 SC 179 it was held as follows: *“The Principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage”*. In A. Mohammed Isaac -vs- K.Srineevasayya & Others CDJ 2021 MHC 2613 it was held as follows: *“3.3.He further submitted that mere the fact that there was an earlier round of litigation, which went upto the Hon'ble Supreme Court of India, is not sufficient to reject the Plaint, unless the Petitioner categorically shows that the subject matter of the both Suits i.e. the parties and the property are one and the same”*.

15. In M. Nagabhushana vs. State of Karnataka and others reported in (2011) 3 SCC 408, it is held as follows: *“” 23. Thus, the attempt to re-argue the case which has been finally decided by the court of last resort is a clear abuse*

*of process of the court, regardless of the principles of res judicata, as has been held by this Court in K.K. Modi v. K.N. Modi. In SCC para 44 of the Report, this principle has been very lucidly discussed by this Court and the relevant portions whereof are extracted below: (SCC p.592) "44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata."*

*24. In coming to the afore mentioned finding, this Court relied on The Supreme Court Practice, 1995 published by Sweet & Maxwell (p.344). The relevant principles laid down in the aforesaid practice and which have been accepted by this Court are as follows: (K.K. Modi case, SCC p. 592, para 43) "43..... 'This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation ..... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."*

*25. On the premises aforesaid, it is clear that the attempt by the appellant to reagitate the same issues which were considered by this Court and were*

*rejected expressly in the previous judgment in AIMO case, is a clear instance of an abuse of process of this Court apart from the fact that such issues are barred by principles of res judicata or constructive res judicata and principles analogous thereto".*

16. In *Kuzhanthaiappa Gounder vs. Nachimuthu* 2015 (1) CTC 623, the Hon'ble Madras High Court had elaborately discussed the Doctrine of Res-Judicata from its origin. The relevant portion of the said judgment is extracted:

*"12. In the Judgment reported in **Coffee Board. v. Ramesh Exports Private Ltd.**, 2014 (3) CTC 728 (SC) : 2014 (6) SCC 424, the Apex Court while deciding the applicability of Order 2, Rule 2 of C.P.C. has held as follows: "The above Rules are offshoots of the ancient principle that there should be an end to litigation traced in the Full Bench decision of the Court in *Lachmi v. Bhulli*, AIR 1927 Lah 289 (FB) and approved by this Court in many of its decisions. The Principle which emerges from the above is that no one ought to be vexed twice for the same cause. In light of the above, from a plain reading of Order 2, Rule 2, it emerges that if different reliefs and claims arise out of the same cause of action then the Plaintiff must place all his claims before the Court in one Suit and cannot omit one of the reliefs or claims except without the leave of the Court. Order 2, Rule 2, bars a Plaintiff from omitting one part of claim and raising the same in a subsequent Suit. (See: *Deva Ram & anr. v. Ishwar Chand & anr.*, 1995 (6) SCC 733).*

10. Furthermore, this Court in *Alka Gupta v. Narender Kumar Gupta*, 2010 (3) MWN (Civil) 852 (SC), stated that:

*“The object of Order 2, Rule 2 of the Code is twofold. First is to ensure that no Defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a Plaintiff from splitting of claims and remedies based on the same cause of action. The effect of Order 2, Rule 2 of the Code is to bar a Plaintiff, who had earlier claimed certain remedies in regard to a cause of action, from filing a second Suit in regard to other reliefs based on the same cause of action. It does not however bar a second Suit based on a different and distinct cause of action”*

11. The bar of Order 2, Rule 2, comes into operation where the cause of action on which the previous Suit was filed, forms the foundation of the subsequent Suit; and when the Plaintiff could have claimed the relief sought in the subsequent Suit, in the earlier Suit; and both the Suits are between the same parties. Furthermore, the bar under Order 2, Rule 2, must be specifically pleaded by the Defendant in the Suit and the Trial Court should specifically frame a specific issues in that regard wherein the pleading in the earlier Suit must be examined and the Plaintiff is given an opportunity to demonstrate that the cause of action in the subsequent Suit is different. This was held by this Court in *Alka Gupta v. Narender Kumar Gupta* (supra), which referred to decision of this Court in *Gurbux Singh v. Bhooralal*, AIR 1964 SC 1810, wherein it was held that:

*“13. ....6. In order that a plea of a bar under Order 2, Rule 2 (3) of the Civil Procedure Code should succeed the Defendant, who raises the plea must make out:*

*“(1) That the second Suit was in respect of the same cause of action as that on which the previous Suit was based;*

*(2) That in respect of that cause of action the Plaintiff was entitled to more than one relief;*

*(3) That being thus entitled to more than one relief the Plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second Suit had been filed. From this analysis it would be seen that the Defendant would have to establish primarily and to start with, the precise cause of action upon which the previous Suit was filed, for unless there is identity between the cause of action on which the earlier Suit was filed and that on which the claim in the later Suit is based there would be no scope for the application of the bar”*

*12. The Courts in order to determine whether a Suit is barred by Order 2, Rule 2, must examine the cause of action pleaded by the Plaintiff in his Plaints filed in the relevant Suits (See: S. Nazeer Ahmed v. State Bank of Mysore & ors.). Considering the technicality of the plea of Order 2, Rule 2, Rule 2, both the Plaints must be read as a whole to identity the cause of action, which is necessary to establish a claim or necessary for the Plaintiff to prove if traversed. Therefore, after identifying the cause of action if it is found that the cause of action pleaded in both the Suits is identical and the relief claimed in*

*the subsequent Suit could have been pleaded in the earlier Suit, then the subsequent Suit is barred by Order 2, Rule 2.” .....*

*17. In the Judgement reported in Sulochana Amma V. Narayana Nair 1994 (2) SCC 14, the Apex Court has held as follows:*

*"5. Section 11 of C.P.C. embodies the Rule of conclusiveness as evidence or bars as a plea as issue tried in an earlier Suit founded on a Plaint in which the matter is directly and substantially in issue and became final. In a later Suit between the same parties or their privies in a Court competent to try such subsequent Suit in which the issue has been directly and substantially raised and decided in the Judgment and Decree in the former suit would operate as res judicata. Section 11, does not create any right or interest in the property, but merely operates as a bar to try the same issue once over. In other words, it aims to prevent multiplicity of the proceedings and accords finality to an issue, which directly and substantially had arisen in the former Suit between Nabin Majhi v. Tela Majhi and anr., AIR 1978 Cal 440 : 1978(2) Cal. LJ 150 : 82 CWN 1097; Promode Ranjan Banerjee v. Nirapada Mondal, AIR 1980 Cal 181 : 1980(1) Cal. LJ 203; Puthen Veetil Nolliyodan Devoki v. Puthen Veetil Nolliyodan Kunhi, AIR 1980 Ker 230 : 1980 KLT 690; Kumarmoni Sahu v. Himachal Sahu and ors; AIR 1981 Ori 177 : 1981 (52) Cut LT 242; C. Arumugathan v. S. Muthusami Naidu, 1991 LW 63(Mad): 1991 (2) MLJ 538, the same parties or their privies, been decided and became final, so that parties are not vexed twice over; vexatious litigation would be put an end and the valuable time of the*

*Court is saved. It is based on Public Policy, as well as private justice. They would apply, therefore, to all judicial proceedings whether Civil or otherwise. It equally applies to quasi judicial proceedings of the Tribunals other than the Civil Courts."*

*8.It is settled law that explanation to a Section is not a substantive provision by itself. it is entitled to explain the meaning of the words contained in the Section or clarify certain ambiguities or clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometimes it would be added to include something within it or to exclude from the ambit of the main provision or some condition or words occurring in it. Therefore, the explanation normally should be read as to harmonise with and to clear up any ambiguity in the same Section".*

*18. In the Judgment reported in **Aanaimuthu Thevar (Dead) by LR.V.Alagammal and others**, 2005 (4) CTC 20, the Apex Court has held as follows: "29. The former Suit in which Decree of Permanent Injunction was sought was clearly founded on the claim of Muthuswami as the owner of the Suit house to execute a Mortgage. The issue of title or ownership of the Suit house was thus directly or substantially involved in the former Suit.*

*30. We find sufficient force in the alternative contention advanced on behalf of Wife Alagammal and her children that Doctrine of Constructive res judicata, as contained in Explanation IV to Section 11 of the Code certainly, can be invoked against the present Appellant, who claims by a purchase from Muthuswami.*

*Explanation IV to Section 11 of the Code states:*

*"Explanation IV - Any matter which might and ought to have been made ground defence or attack in such former Suit shall be deemed to have been a matter directly and substantially in issue in such Suit. ...."*

*19. In the Judgment reported in V.Kandasamy v.C.Kandasamy and others, 2006 (1) CTC 197, this Court has held as follows: "7. Section 11, C.P.C. contains the Rule of conclusiveness of the Judgement which is based partly on the maxim "interest reipublicae at sit finis litum" (it concerns the state that there be an end to law Suits) and partly on the maxim "Nemo debet bis vexari pro una at eadem cause (no man should be vexed twice over for the same cause.)"*

*8.The Doctrine of res judicaa is principals of equity, good conscience and justice. It would neither be equitable nor fair in accordance with the Principles of Natural Justice that the issue concluded earlier ought to be permitted to be raised later in a different proceedings.*

*9. The Principles of res judicata is intended not only to prevent a new decision, but is also to prevent a new investigation so that the same person cannot be harassed again and again in various proceedings upon the same question of law. ....11. The Principles of res judicata is based on the need of giving finality to judicial decision. Section 11 of C.P.C. is not an exhaustive, it's underlying Doctrine is that none should be vexed twice on the same subject matter. Where Section 11, does not in terms apply, general Principles of res judic ata can be applied. ...."*

17. *A decision on an issue of law will operate as res judicata in a subsequent pleading between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has changed since earlier decision by a Competent Authority nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding not when the earlier decision declared valid the transaction which is prohibited by Law.* 20. *In the Judgement reported in Alka Gupta v. Narender Kumar Gupta, 2010 (3) MWN (Civil) 852, (SC) : 2010 (10) SCC 141, the Apex Court has held as follows:"21. Res judicata means a thing adjudicated that is an issue that is finally settled by judicial decision. The Code deals with res judicata in Section 11, relevant portion of which is extracted below (excluding Explanations I to VIII):*

*"11. Res Judicata. - No Court shall try any Suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former Suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent Suit or the Suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court".*

17. Guided by the laws pronounced by the Hon'ble Apex Court and the Hon'ble Madras High Court, the facts in the above case has to be appreciated. Though documents were exhibited on both sides. While deciding Petition to Reject the Pleint, the Pleint Pleadings are alone Germane. Pleint documents

could be appreciated to a limited extent. In the case on hand, the property in O.S. No. 379 of 2011 and in the above suit are one and the same. The parties in O.S. No. 379 of 2011 and the Petitioner and 1<sup>st</sup> Respondent are one of the same. Further in the present suit other three defendants namely, Michael Vency Vijay, Azhagappapuram Town Panchyat, & G.Julian Cyril were made as defendants 2 to 4, in addition to the Petitioner/1<sup>st</sup> Defendant.

18. The relief No. B in the above suit is identical to that of the prayer in O.S. No. 139 of 2011. In the above suit, the Plaintiff had made suit prayer A, seeking a decree for demarcation of the Plaintiff schedule property. On perusal of the entire pleadings, in the plaint, the Plaintiff had claimed that it was the Petitioner herein who had caused the cause of action, for the above suit i.e. the Petitioner's father was entitled to only 13.1/3<sup>rd</sup> cents of land, however claimed to have obtained 15 cents and that the said 15 Cents was partitioned into two plots of 7.5 cents each.

19. Further the 1<sup>st</sup> Respondent had contended that he had come to know, about the said fact only after obtaining the certified copy of the Partition Deed marked as Ex.R1. Such being the case the Plaintiff's pleadings would go to show that there is no grievance against the other defendants. They were made party to the suit, only for the purpose of differentiating the above suit from the previous suit. Further in O.S. No. 131 of 2012 filed by the Petitioner, the Plaintiff in the above suit namely O.S. No. 11 of 2020 and the 2<sup>nd</sup> defendant Michael Vency Vijay herein were also parties. Such being the case it cannot be said that the

parties are totally different from the earlier suit and that there is totally different cause of action.

20. The 1<sup>st</sup> Respondent's contention as to the extent of property acquired by the Petitioner's/1<sup>st</sup> Defendant's father under Ex.R1, the 1<sup>st</sup> Respondent/Plaintiff's contention is hit by Explanation No, IV to Section 11 Code of Civil Procedure, as elaborated by the Hon'ble Supreme Court in the citation extracted above.

21. As discussed, the property in O.S. No. 379 of 2011 and in the above suit are one of the same. The contesting parties in O.S. No.379 of 2011 and the Petitioner and 1<sup>st</sup> Respondent are one and the same. Further in the present suit other three defendants namely, Michael Vency Vijay, Azhagappapuram Town Panchyat, & G.Julian Cyril were made as defendants 2 to 4, in addition to the Petitioner/ 1<sup>st</sup> Defendant herein, however no substantial cause of action is raised against them and that no substantial relief is sought against them. Further the relief No. B in the above suit is identical to the prayer in O.S. No. 139 of 2011.

22. In the above suit, the Plaintiff have made suit prayer A seeking a decree for demarcation of the Plaint schedule property and contended that the earlier suit was for mere injunction. It is not out of place to mention that in a suit seeking injunctive relief, the condition precedent for obtaining decree would be proving possession. In case of immovable property, possession with Definite Boundaries and Measurements should be proved. By filing the above suit with Prayer for Demarcation, the Plaintiff had attempted to show that the cause of

action for the above suit is different from the earlier suit. Since the earlier suit is for injunction, the Plaintiff had the cause of action for suit seeking the relief of demarcation, even at the time of filing O.S. No. 379 of 2011. As such the 1<sup>st</sup> Respondent/Plaintiff's contention is hit by both Order II Rule 2 CPC and by Section 11, Explanation IV of CPC.

23. The Petitioner/1<sup>st</sup> defendant had categorically established the real contestant in the above Suit and in the earlier suit are one and the same. The earlier suit had reached finality, the issue in both suits are directly and substantially same and it was decided by the Court of competent jurisdiction and that the matter, which the 1<sup>st</sup> respondent/Plaintiff wants to canvass in the above suit ought to have been raised by him in the earlier suit. Further the 1<sup>st</sup> Respondent/Plaintiff's contention that the doctrine of res judicata is a mixed question of fact and law does not applies to the above case, for the aforesaid reasons.

24. Further the Petitioner had categorically established before this Court that subject matter of both the suits are the same. In view of the law laid of the Hon'ble Supreme Court and by the Hon'ble Madras High Court in *Saroja -vs- Chinnusamy (Dead) by LRS. Reported in (2007) 8 Supreme Court Cases 329, M.Nagabhushana -vs- State of Karnataka and Others reported in (2011) 3 Supreme Court Cases 408 & Kuzhanthaiappa Gounder -vs- Nachimuthu reported in 2015(1) CTC 623*, the above suit is liable to be rejected on the Ground of res judicata, and as per the bar envisaged under order II rule 2 CPC

and as the doctrine of Public policy, that there should be an end to litigation.

In the result, the Petition is allowed and the suit in O.S. No. 11 of 2020 is rejected. No Cost.

This order is dictated to the Steno-Typist transcribed and typed in computer by her and after making necessary corrections, pronounced by me in the open Court on this the Monday, the 29<sup>th</sup> day of August 2022.

II Additional District Munsif  
Nagercoil.

Petitioners side witness : Nil

Petitioner side Documents :

- |       |            |   |
|-------|------------|---|
| Ex.P1 | 04.08.2011 | Copy of Complaint in O.S No.379 of 2011.  |
| Ex.P2 | 23.12.2011 | Copy of Written statement in O.S No.379 of 2011   |
| Ex.P3 | 11.10.2013 | Certified copy of Decree & Judgment in O.S.No.379 of 2011 issued by the Principal District Munsif Court, Nagercoil.                                 |
| Ex.P4 | 11.01.2016 | Certified copy of Judgment & Decree in A.S.134 of 2014 issued by the II Additional Sub Court Nagercoil.   |
| Ex.P5 | 21.03.2012 | Copy of Complaint in O.S No.379 of 2011.  |
| Ex.P6 | 07.01.2013 | Copy of Written statement in O.S No.131 of 2012   |
| Ex.P7 | 11.10.2013 | Certified copy of Decree & Judgement in O.S.No.131 of 2012 issued by the Principal District Munsif Court, Nagercoil.                                |
| Ex.P8 | 01.09.2021 | Certified Copy of Commissioner's Report and sketch submitted to the Court by the Petitioner's counsel in O.S.No.379 of 2011 in I.A.No.1120 of 2011. |

Respondents side witness : Nil

Respondents side Documents :

- Ex.R1 21.02.1964 Certified copy of Partition Deed
- Ex.R2 22.01.2013 Certified copy of Amended Plaint in O.S.No.131 of 2012
- Ex.R3 07.01.2013 Certified copy of Written Statement in O.S.131 of 2012
- Ex.R4 11.01.2016 Certified copy of Judgment in O.S.No.131of 2012 issued by the Principal District Munsif Court, Nagercoil.
- Ex.R5 11.10.2019 Computer copy of Property Tax Receipt in Patta No.10631 issued by the Agasteeswaram Taluk.
- Ex.R6 14.08.2019 Property Tax Receipt related to Plaint schedule property.
- Ex.R7 11.10.2013 Copy of Plaint in O.S No.379 of 2011.
- Ex.R8 23.12.2011 Copy of Written statement in O.S No.379 of 2011
- Ex.R9 01.09.2021 Certified copy of Commissioner's Report and sketch submitted to the Court by the Petitioner's counsel in O.S.No.379 of 2011 in I.A.No.1120 of 2011.
- Ex.R10 11.10.2013 Certified copy of Judgment in O.S.No.379 of 2011 issued by the Principal District Munsif Court, Nagercoil.
- Ex.R11 11.10.2013 Certified copy of Decree in O.S.No.379 of 2011 issued by the Principal District Munsif Court, Nagercoil.
- Ex.R12 06.08.2019 Xerox copy of Power of attorney.

II Additional District Munsif  
Nagercoil.