

TNTH140001392024

**IN THE COURT OF DISTRICT MUNSIF, AUNDIPATTI.****PRESENT: Thiru. E. Suganthan, B.A., L.L.M.,****District Munsif, Aundipatti.****Monday, the 12th day of January 2026****IA. No : 02/2025****in****OS. No :03/2025**

Karuppan

...Petitioner /1st Defendant

..Vs..

1. Thangakodi
2. Alagumalai
3. Sekar
4. The District Registrar, Theni.
5. The District Collector, Theni.

... Respondents/ Plaintiffs

This Order came up on 15.12.2025 before this court for final hearing in the presence of Mr.A.Rajasekar Advocate for the Petitioner and Mr.S.Kamatchi pandiyan Advocate for the 1st to 3rd Respondents. Upon hearing the arguments on Both sides and having stood over till this day for my consideration, this court delivers the following...

ORDER

This petition is filed by the Petitioner/1st Defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908, seeking rejection of the plaint.

I. Gist of the Petition:

The Plaintiff has instituted the present suit seeking a declaration to declare

the proceedings of the 2nd Defendant/District Registrar, Periyakulam in Na.Ka. No. 2947/E2/2021 dated 27.12.2021 as null and void. The case of the Petitioner/1st Defendant, as set out in the affidavit filed in support of the application, is as follows:

i) According to the Petitioner, the suit property absolutely belongs to him. However, the Plaintiffs along with their father, Periyasamy Moopar, are stated to have executed a fraudulent settlement deed bearing Document No. 3763/2020 in respect of the suit property, without any right or title. Aggrieved by the said fraudulent registration, the Petitioner preferred a petition dated 08.07.2021 before the 2nd Defendant under Sections 68(1) and 68(2) of the Registration Act, 1908, seeking cancellation of the said settlement deed.

ii) While the said proceedings were pending, the Plaintiffs filed a suit in O.S. No. 191 of 2020 on the file of the Hon'ble Additional District Court, Theni, seeking declaration of their title over the suit property. Subsequently, the 2nd Defendant passed the impugned order in Na.Ka. No. 2947/E2/2021 dated 27.12.2021, cancelling the settlement deed. Challenging the said cancellation order, the Plaintiffs approached the Hon'ble Madurai Bench of Madras High Court in W.P. (MD) No. 2423 of 2022, which was disposed of with a direction that the parties shall work out their remedies before the civil court in O.S. No. 191 of 2020.

iii) In the above circumstances, the Plaintiffs have now filed the present

suit to declare the proceedings of the 2nd Defendant as null and void. The contention of the Petitioner is that the present suit is barred by Order II Rule 2 CPC, as the Plaintiffs ought to have claimed the relief sought herein in the earlier suit in O.S. No. 191 of 2020. It is therefore pleaded that the plaint does not disclose a cause of action and is barred by law, warranting rejection under Order VII Rule 11 CPC.

II. Gist of Counter filed the 1st Respondent:

i) The Respondents/Plaintiffs have filed a detailed counter denying all the averments made in the petition. Their specific contention is that the impugned order of the 2nd Defendant came to be passed only after the filing of O.S. No. 191 of 2020. Therefore, at the time of institution of the earlier suit, the cause of action for seeking declaration against the proceedings dated 27.12.2021 had not arisen at all.

ii) It is further contended that Order II Rule 2 CPC applies only when the earlier suit has been disposed of, and not when the earlier suit is still pending. In support of the said contention, reliance is placed on the judgment of the Hon'ble Supreme Court in M/s. Virgo Industries Private Limited v. M/s. Venturetech Solutions Private Limited, Civil Appeal No. 6372 of 2012. Hence, the Respondents pray for dismissal of the present application.

III. Now the point for consideration is whether this petition is to be allowed or

not ?

No oral evidence or documentary evidence was adduced on either side.

IV) Discussion and Reasoning:

This Court has carefully considered the rival submissions and perused the materials available on record.

i) At the outset, it is necessary to reiterate the well-settled legal position that while considering an application under Order VII Rule 11 CPC, the Court is required to confine its enquiry strictly to the averments made in the plaint and the documents relied upon therein, and the defence set up by the defendant, howsoever strong it may be, cannot be taken into consideration at this stage, and in this regard, useful reference can be made to the authoritative pronouncement of the Hon'ble Supreme Court in Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557, wherein it has been held that the pleas taken by the defendant are wholly irrelevant while deciding an application for rejection of plaint.

ii) The Hon'ble Supreme Court has further held in Popat and Kotecha Property v. State Bank of India Staff Association, (2005) 7 SCC 510, that the power under Order VII Rule 11 CPC is a drastic power and must be exercised sparingly, and only when the plaint on its face discloses that the suit is barred by any law.

iii) Keeping the above principles in mind, when the plaint averments in the present case are carefully examined, it is manifest that the cause of action

pleaded by the Plaintiffs in the present suit is founded primarily on the passing of the impugned proceedings by the 2nd Defendant on 27.12.2021, and it is specifically pleaded that the said proceedings were passed without jurisdiction and in violation of law, thereby giving rise to a fresh and distinct cause of action. It is not in dispute that O.S. No. 191 of 2020 came to be filed much earlier, and therefore, it cannot be said, by any stretch of imagination, that the relief now sought in the present suit was available to the Plaintiffs at the time of institution of the earlier suit.

iv) The scope and ambit of Order II Rule 2 CPC has been lucidly explained by the Hon'ble Supreme Court in *Gurbux Singh v. Bhooralal*, AIR 1964 SC 1810, wherein the Apex Court has held that unless the cause of action in both the suits is identical and unless the relief omitted in the earlier suit was available to the plaintiff at that point of time, the bar under Order II Rule 2 CPC would not be attracted.

v) Further, in *M/s. Virgo Industries Private Limited v. M/s. Venturetech Solutions Private Limited*, Civil Appeal No. 6372 of 2012, the Hon'ble Supreme Court has categorically held that the bar under Order II Rule 2 CPC cannot be invoked when the cause of action for the subsequent relief had not arisen on the date of filing of the earlier suit, and that the said provision would operate only when the earlier suit has been disposed of. In the present case, not only did the cause of action for challenging the Registrar's proceedings arise subsequent to

the filing of O.S. No. 191 of 2020, but it is also an admitted position that the said suit is still pending adjudication, and therefore, this Court has no hesitation in holding that the plea of bar under Order II Rule 2 CPC is wholly misconceived and untenable.

vi) As regards the contention that the plaint does not disclose a cause of action, this Court finds that the plaint contains clear and specific averments relating to the passing of the impugned proceedings, the alleged illegality and lack of jurisdiction in the action of the 2nd Defendant, and the consequent prejudice caused to the Plaintiffs, and such averments, if taken to be true, undoubtedly disclose a cause of action requiring adjudication, and the truth or otherwise of the same can be decided only after a full-fledged trial. The Hon'ble Supreme Court in catena of cases, held that rejection of plaint is impermissible so long as the plaint discloses some cause of action, and the Court cannot embark upon a roving enquiry into the merits of the claim at the threshold stage.

vii) Therefore, this Court is of the considered view that the objections raised by the Petitioner relate to disputed questions of fact and mixed questions of fact and law, which cannot be adjudicated in an application under Order VII Rule 11 CPC, and the same can be decided only during the course of trial.

viii) For all the aforesaid reasons, this Court holds that the plaint does not suffer from any of the infirmities contemplated under Order VII Rule 11 CPC, and accordingly, the petition is devoid of merits.

In the result, this Petition is dismissed. No Costs.

Directly typed by me in my laptop, formatted by steno, corrected and pronounced by me in the open court, on this 12th day of January 2026.

**District Munsif,
Aundipatti.**

List of Petitioner side witnesses and documents : Nil

List of Respondents side witnesses and documents : Nil

**District Munsif,
Aundipatti.**

**District Munsif Court,
Aundipatti.
IA. No : 02/2025
in
OS. No : 3/2025
Fair/ Draft Order
Dated: 12.01.2026**