

**IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, TENKASI.**

Present : **Thiru.K.N.Guru, B.A.B.L.,**  
Additional District Munsif,  
Tenkasi.

Tuesday, the 17<sup>th</sup> day of June 2025

**I.A.No.2/2025 in O.S.No.188/2024**

1. Mohammed Syek Mohaideen

2. Mohammed Hilaru

3. Kathar Mohideen

..Petitioners / Defendants

**/Vs/**

1. Abdul Kathar

2. Jamal

.. Respondents/ Plaintiffs

This petition is coming for hearing before me for final hearing on 10.06.2025 in the presence of Thiru.A.R.Ramasubramanian, learned counsel for the Petitioners and Thiru.N.Maridurai, Learned counsel for the respondents and after hearing the arguments on both sides and after perusing the material records and other documents and having stood over till this day for consideration, this court delivers the following:

**ORDERS**

This petition has been filed by the defendants 1 to 3 under Order 7 Rule 11 of CPC to reject the plaint.

## **2.Case of the Petitioners – In Brief:-**

i) The defendants are the petitioners in this case. The suit has been filed by the plaintiffs/respondents seeking a declaration that the second-schedule property is the absolute property of the plaintiffs, along with a consequential permanent injunction.

ii) The plaintiffs claim ownership based on a *patta* (title deed) issued in favor of their father. Following the father's death, the property was inherited by the plaintiffs, and a partition deed executed by the plaintiffs' sisters on December 26, 2012, further transferred the property to them.

iii) However, the defendants contest this claim. The defendants' paternal grandfather, Muhammad Mohideen Labbai, had previously filed a suit for permanent injunction in 1983 (Original Suit No. 690/1983) before the District Munsif Court, Ambasamudram. In that case, the plaintiffs' father, Muhammad Asan Tharaganar, was restrained from disturbing the defendants' father's peaceful possession of both the first and second-schedule properties. The schedule of property involved in this suit is identical to the one in the earlier suit.

iv) Dissatisfied with the outcome, the plaintiffs' father appealed the decision before the Sub-Court, Ambasamudram in Appeal Suit No. 108/1992. The appeal was allowed in favor of the plaintiffs' father. In turn, the defendants' grandfather filed a second appeal before the Hon'ble Madras High Court, which was numbered as Second Appeal No. 849/1993. The Madras High Court allowed the second appeal, once again favoring the defendants' grandfather.

v) Significantly, there has been no appeal filed against the second appeal's decision by the plaintiffs to date. Therefore, the rights regarding the suit schedule property were conclusively determined by the High Court's judgment, and this decision stands as final. By filing the present suit, the plaintiffs are effectively attempting to relitigate matters that were already settled in earlier proceedings. This constitutes an abuse of the judicial process and amounts to a rehashing of previously decided facts.

vi) In light of this, the defendants argue that the present suit should be rejected under Order 7, Rule 11(d) of the Civil Procedure Code (CPC), as the matter has already been conclusively settled by competent courts.

### **3. Case of the Respondents/Plaintiffs in Brief:**

i) The plaintiffs contend that the existence of previous litigation is not a valid ground to reject the plaint under Order 7, Rule 11 of the Civil Procedure Code (CPC). They assert that the matter at hand should be examined on its own merits rather than being dismissed solely based on prior proceedings.

ii) The plaintiffs further state that at the time of the judgment in the second appeal (Second Appeal No. 849/1993), the appellant (the defendants' grandfather) had already passed away on 29.04.2000. Hence, they claim that any order passed in favor of a deceased person is legally invalid and should not have binding effect. The plaintiffs have sought a review of the second appeal judgment, which was numbered as Review Appeal 77/2004, but this was dismissed for non-prosecution.

iii) However, the plaintiffs emphasize that they have filed a restoration petition (C.M.P. No. 3138/2023) to revive the review petition, which is still pending. The pendency of this restoration petition indicates that the issue is still under judicial consideration and is not yet concluded. Therefore, they assert that this procedural development does not provide any legitimate basis to reject the plaint at this stage.

iv) The plaintiffs maintain that the mere existence of previous litigation, and the procedural issues surrounding the second appeal's judgment, should not automatically result in the dismissal of their suit under Order 7, Rule 11 of the CPC. The plaintiffs believe the matter should proceed on its factual and legal merits, and any attempts to dismiss the plaint on these grounds would be premature and unjust.

#### **4.Point for determination:-**

##### **Whether the Petition is Liable to be Allowed?**

i) The learned counsel for the petitioners argues that the present suit constitutes *re-litigation* and is barred by *Section 11 of the Civil Procedure Code (CPC)*, i.e., *res judicata*, as the issues have already been adjudicated in previous proceedings. Therefore, the present suit is an abuse of the process of law.

ii). The learned counsel further submits that the plaintiffs have suppressed material facts, particularly about the earlier litigation. This suppression of relevant information is a ground for rejection of the plaint, as it undermines the integrity of the plaintiffs' claim and the legal process.

iii). Additionally, the petitioners argue that the plaintiffs have approached the court with "unclean hands." Since fraud is inimical to equity, the petitioners contend that the plaintiffs' attempt to conceal material facts and re-litigate already decided matters warrants the rejection of their plaint. In support of this argument, the learned counsel refers to the judgment of **the Hon'ble Madhya Pradesh High Court in *Brijendra Prasad vs Premsagar* (MP No. 2784/2024)**, where in para 12, the Court held:

*"It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands."*

iv) The plaintiffs argue that at the time of the judgment in the second appeal (Second Appeal No. 849/1993), the appellant (the plaintiffs' father) had already passed away on 29.04.2000. Hence, they claim that any order passed in favor of a deceased person is legally invalid and should not have binding effect. In countering this, the learned counsel for the petitioners refers to the judgment of the **Hon'ble**

**High Court of Andhra Pradesh in *Mangali Chinthala Chinna Nagamma vs Peddinti (Civil Revision Petition No. 4508/2011)***, where in para 18, the Court held:

*"Where the Court proceeds with the case in ignorance of the fact of death of a person and passes a decree, that decree cannot be treated as a nullity. It may, no doubt, be a wrong decree, but it will have to be set aside by taking appropriate proceedings like appeal, revision, or review. Generally speaking, a decree passed in favour of a dead person is not a nullity though a decree passed against a dead person can be construed as a nullity. Even if there is abatement of the suit, that would not make the decree passed in the suit as one without jurisdiction and the executing court is not entitled to refuse to execute the decree on the ground that the plaintiff was not alive on the date when the decree was passed in his favour. Abdul Azeez Sahib v. Dhanabagiammal and Ors."*

v) Thus, the petitioners argue that the plaint is liable to be rejected based on the principles of res judicata, suppression of material facts, and the plaintiffs' unclean hands. Additionally, they contend that the argument regarding the deceased party is without merit, as the decree passed in favor of the plaintiffs' father is not a nullity and remains valid unless set aside by appropriate legal procedures.

vi) The learned counsel for the respondents argued that the existence of previous litigation does not justify the rejection of the plaint under *Order 7, Rule 11* of the Civil Procedure Code (CPC). The plaintiffs maintain that each case should be examined on its own merits and not dismissed solely because of earlier proceedings.

They contend that the present suit is distinct and should be evaluated based on the facts and legal issues currently before the court.

vii) Further, the plaintiffs argued that at the time of the judgment in the second appeal (Second Appeal No. 849/1993), the appellant, their father, had already passed away on 29.04.2000. As such, any order passed in favor of a deceased person is legally invalid and should not be considered binding. To address this, the plaintiffs sought a review of the second appeal judgment through Review Appeal 77/2004, but it was dismissed for non-prosecution. In response, they filed a restoration petition (C.M.P. No. 3138/2023), which remains pending, indicating that the issue is still under judicial consideration. Therefore, the plaintiffs argue that this procedural development does not provide a legitimate basis to reject the plaint at this stage.

viii) Moreover, the plaintiffs requested that before passing any orders under the petition, the commissioner complete the spot inspection to provide a clearer understanding of the factual situation. They emphasize that this step is crucial for a fair and accurate resolution of the case, and any decision to reject the plaint at this point would be premature and unjust.

ix) This Court has carefully considered the arguments of both parties with regard to the plea of *res judicata*.

Following the law laid down in a catena of judicial precedents, including ***Kamala v. KT Eshwara Sa (2008) 12 SCC 661, Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust (2012) 8***

**SCC 706, and *Soumitra Kumar Sen v. Shyamal Kumar Sen* (2018) 5 SCC 644**, the Court has summarized the guiding principles for deciding an application under *Order 7 Rule 11(d)* of the CPC:

1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint must be referred to.
2. The defense made by the defendant in the suit must not be considered while deciding the merits of the application.
3. To determine whether a suit is barred by *res judicata*, it is necessary that:
  - The "previous suit" has been decided.
  - The issues in the subsequent suit were directly and substantially in issue in the former suit.
  - The former suit was between the same parties, or parties through whom they claim, litigating under the same title.
  - These issues were adjudicated and finally decided by a court competent to try the subsequent suit.
4. Since an adjudication of the plea of *res judicata* requires consideration of pleadings, issues, and decisions in the "previous suit", such a plea will be beyond the scope of *Order 7 Rule 11(d)*, where only the statements in the plaint are to be perused.

X) Applying the above principles to the present case, an application under *Order 7, Rule 11(d)* must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint alone, and it is not open to this Court to decide the issue on the basis of any other material, including the written statement filed by the defendant. The Court's hands are tied from perusing the records produced by the learned counsel for the defendant regarding the previous litigation. Even assuming that earlier litigation is solely in respect of the present suit schedule property, it cannot be decided at the time of the rejection of the plaint.

Xi) The Hon'ble Apex Court in its judgment reported in ***Mayar (H.K.) Limited and Others v. Owners & Partners of Vessel M.V. Fortune Express and Others (2006) 3 SCC 100***, held that the suppression of material facts alone cannot be a ground for rejecting the plaint under *Order 7, Rule 11 CPC*. Therefore, the Court cannot reject the plaint merely on the grounds of the alleged suppression of facts by the plaintiffs without first allowing a full examination of the pleadings and issues.

xii) In result, based on the guiding principles laid down by the Supreme Court, this Court finds that the plea of *res judicata* and the alleged suppression of material facts are not sufficient grounds to reject the plaint at this stage, as these issues require a deeper consideration of the pleadings and decisions in the previous suit, which is beyond the scope of *Order 7 Rule 11*.

Although the petition filed under Order VII Rule 11 of the Code of Civil Procedure has been dismissed, the plea of *res judicata* raised by the defendants shall be considered by this Court by framing an appropriate issue.

**In the result, the petition is dismissed. No costs.**

Dictated to the Steno-typist directly and typed by him in computer, corrected and pronounced by me in open court, this the **17<sup>th</sup> day of June 2025.**

Additional District Munsif,  
Tenkasi.

**Both side Witnesses and documents :**

Nil.

Additional District Munsif,  
Tenkasi.

ADM Court, Tenkasi.  
I.A.No.2/2025 in O.S.No.188/2024  
Draft/Fair Order  
Dt.: 17.06.2025