



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-09-2026

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**CRP No. 501 of 2024
and CMP No.2348 of 2024**

Shanmugam

Petitioner(s)

Vs

P. Devi

Respondent(s)

PRAYER

Petition filed To set aside the fair and decreetal order dated 17.02.2023 passed in IA No.2 of 2022 in OS No.126 of 2021 on the file of the Additional District Judge at Dharmapuri.

For Petitioner(s): Mr.J.Pradeep

For Respondent(s): Mr.D.Ashok Kumar

ORDER

This Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in IA No.2 of 2022 in OS No.126 of 2021, on the file of the Additional District Judge, Dharmapuri. Dated 17.02.2023, wherein the application filed by the petitioner/15th defendant under Order VII Rule 11 of CPC, for rejecting the plaint, came to be dismissed by the Court below.



2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

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3. This Court carefully considered the materials available on record. This Court also went through the order passed by the Court below.

4. The respondent/plaintiff filed the suit in OS.No.134 of 2019, seeking for the relief of partition and for allotment of 1/8th share in the suit properties and for setting aside the decree passed in OS.No.8 of 2011 and to declare the sale deed dated 08.4.2021 as null and void.

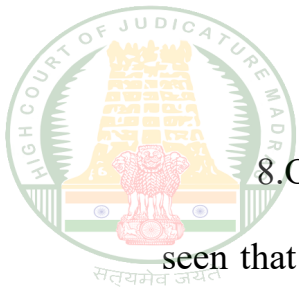
5. The petitioner who is the 15th defendant filed the application in IA.No. 2 of 22 under Order VII Rule 11 of CPC, for rejection of plaint mainly on the ground that the present suit is clearly barred under Order II Rule 2 of CPC, since the plaintiff had earlier filed two suits and in one of the suit, the plaintiff had sought for the relief of partition and in that suit filed in OS.No.134 of 2019, the petitioner along with the others had filed an application for rejection of plaint in IA.No.6 of 2021, and the plaint was rejected by an order dated 02.08.2021.

6. The Court below considered the application and found that only one of the property in the schedule is common with the earlier suit and that there are



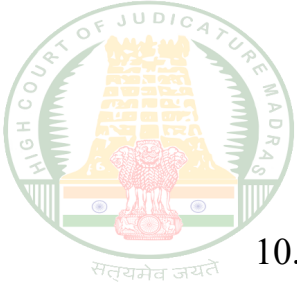
some new parties added as defendants in the present suit and the ground of *res judicata* can be decided only while considering the merits of the case and therefore, the Court below found that the plaint cannot be rejected at the threshold. Aggrieved by this order, the present Civil Revision Petition has been filed before this Court.

7. The main ground that was raised on the side of the petitioner is that the title regarding properties was declared in favour of the petitioner in the suit filed in OS.No.318 of 2000 by the District Munsif Court, Harur and in the appeal it was confirmed in AS.No.14 of 2009. Apart from that the respondent/plaintiff and her father filed OS.No.134 of 2019 for partition and the same was rejected by the Trial Court under Order VII Rule 11 of CPC, and it was further confirmed by this Court in AS.No.85 of 2022 by a judgment dated 10.6.2025. Hence, if the other properties were available, those properties should have been shown in the earlier partition suit and an independent suit will not lie for the same relief of partition and it is barred under Order II Rule 2 of CPC. It is submitted that the respondent/plaintiff has not even sought for the leave of the Court under Order II Rule 2(3) of CPC, for filing a fresh suit on the same cause of action. Hence, it is contended that the plaintiff was only creating an illusion as if, there is a cause of action for prosecuting the present suit and the present suit is clearly barred by law.



8. On carefully going through the order passed by the Court below it is seen that the Court below has taken into consideration the fact that except one property, all the other properties are different and the plaintiff claims that those properties are the ancestral properties of Angarchari. The Court below also found that defendants 13 and 16 were not parties in the earlier suit. The Court below further rendered a finding that the bar under Order II Rule 2 of CPC, cannot be considered at a preliminary stage and it can only be considered at a later point of time. Accordingly, the Court below refused to reject the plaint.

9. In the considered view of this Court, the Order passed by the Court below does not suffer from any perversity warranting the interference of this Court. Considering the nature of grounds that have been raised by the petitioner, it will be more appropriate if the Court below is directed to deal with the issue regarding the legal bar as a preliminary issue under Order XIV Rule 2(2) of CPC. The scope of enquiry while dealing with a preliminary issue is wider than the ground that is available under Order VII Rule 11 of CPC. Hence, the ground that has been raised by the petitioner is kept open and there shall be a direction to the Court below to deal with the issue of the legal bar pointed out by the petitioner as a preliminary issue under Order XIV Rule 2 (2) of CPC. Orders shall be passed in this preliminary issue within a period of three months from the date of receipt of a copy of the order.



10. In the result, this Civil Revision Petition is disposed of in the above terms. No costs. Consequently connected miscellaneous petition is closed.

09-09-2026

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
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To

Additional District Judge Dharmapuri.



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N.ANAND VENKATESH J.

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