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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12-10-2026

CORAM

THE HON'BLE MS.JUSTICE R. POORNIMA

CRP(MD) No. 2737 of 2026

CNR:{HCMD011363252026}

Case QR

AND

CMP(MD) No. 14124 of 2026

A.Balakrishnan

..Petitioner(s)

Vs.

1. P. Jeyarani

2. Asuvathamma

3. AP. Venukaanan

(all respondents Through his power agent
Mr. Gunasekaran)
S/o. Ramasamy,
12, 3rd Street,
Vasanth Nagar,
Palangantham,
Madurai -625003.

..Respondent(s)

PRAYER: J-35. Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 10.08.2026 made in I.A. No. 2 of 2026 in C.O.S. No. 1 of 2026 on the file of Principal District and Sessions Court, Virudhunagar at Srivilliputtur to allow the above civil revision petition.

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For Petitioner(s): M/s M.Vijayarathinam
M/s B. Baskaran

For Respondent(s): Mr.S.Anvithkumar
for Mr.A. Sivaji

ORDER

This civil revision petition is filed against the order passed in IA.No.2 of 2026 in COS.No.1 of 2026 on the file of the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur.

2. The Petitioner is the defendant/tenant and the respondents are the plaintiffs/ Landlords.

3. The present Civil Revision Petition is directed against the order passed by the learned trial Court dismissing I.A.No.2 of 2026, filed by the revision petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC"), seeking rejection of the plaint on the grounds that the suit is barred under Order II Rule 2 CPC, that the principles of res judicata are attracted, and that the suit is otherwise not maintainable.

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4.Facts of the Case

According to the revision petitioner, an oral tenancy agreement was entered into in the year 1985 between his father and the grandfather of the respondents/plaintiffs. Subsequently, the revision petitioner approached the respondents to continue the tenancy, pursuant to which a tenancy agreement was entered into between the parties in the year 2012. Thereafter, the revision petitioner continued to be in possession and enjoyment of the suit premises, comprising a tin-sheet superstructure measuring 950 square feet, and paid rent through Indian Bank, Srivilliputhur Branch.

5.It is the further case of the revision petitioner that the respondents had originally leased out only a vacant site and that the building standing thereon was independently constructed by him. However, on 31.12.2021, an agreement was entered into between the respondents and the revision petitioner, under which the revision petitioner allegedly undertook to vacate and hand over possession of the suit premises within a period of two years, namely, on or before 31.12.2023.

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6.Subsequently, the revision petitioner instituted O.S.No.145 of 2023 on the file of the District Munsif Court, Srivilliputhur, seeking a decree of permanent injunction restraining the respondents from evicting him from the suit premises except by due process of law.

7.While the said suit was pending, the respondents instituted the present suit seeking eviction of the revision petitioner from the suit premises and recovery of damages. According to the respondents, the revision petitioner had failed to vacate the premises despite having undertaken to do so under the agreement dated 31.12.2021. They further contended that the building in question had been constructed by the father of the revision petitioner and that the revision petitioner had failed to hand over possession in accordance with the agreement.

8.Aggrieved by the institution of the subsequent suit, the revision petitioner filed I.A.No.2 of 2026 under Order VII Rule 11 CPC, seeking rejection of the plaint. The principal grounds raised in the application were that the suit was barred under Order II Rule 2 CPC, that the subject matter was already pending adjudication in O.S.No.145 of 2023 and that the present suit was barred by the principles of res judicata. The revision petitioner also contended that the suit was not maintainable

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for non-joinder of a necessary party and that the respondents had instituted the proceedings without a valid cause of action.

9. The learned trial Court dismissed the application, observing that the cause of action and pleadings in the earlier suit were different from those in the present suit. It was further held that the issues raised involved disputed questions of fact which could not be adjudicated upon in an application for rejection of the plaint and that the rights of the parties were matters to be determined during the trial. Challenging the said order, the present Civil Revision Petition has been filed.

10.The learned counsel for the revision petitioner submitted that the trial Court failed to appreciate that O.S.No.145 of 2023, instituted by the revision petitioner seeking permanent injunction against eviction except by due process of law, was already pending adjudication. According to the learned counsel, the respondents had instituted the present suit despite having knowledge of the pendency of the earlier proceedings, with the intention of evicting the revision petitioner from the suit premises.

11.The learned counsel further contended that the suit was

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barred under Order II Rule 2 CPC and the principles of res judicata. It was also argued that the son of the first respondent, who had allegedly entered into an agreement with the revision petitioner, was a necessary party to the proceedings and that the suit was therefore defective for non-joinder of a necessary party. The learned counsel accordingly prayed that the impugned order be set aside and the plaint be rejected.

12.Per contra, the learned counsel for the respondents submitted that the revision petitioner had raised two principal grounds, namely, the bar under Order II Rule 2 CPC and the applicability of the principles of res judicata. Both grounds were untenable, as the earlier suit had been instituted by the revision petitioner, whereas the present suit had been instituted by the respondents seeking eviction and recovery of damages.

13. In support of the above contention, the learned counsel for the revision petitioner relied upon the judgment in ***S.Valliammal and Others v. S. Ramanathan and Another***, reported in ***2026 (3) CTC 216***, particularly paragraph 7 thereof, wherein it was observed that a plea under Order II Rule 2 CPC ordinarily cannot, by itself, constitute a ground for rejection of the plaint under Order VII Rule 11(d) CPC. The

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issue requires comparison of the pleadings in the earlier and subsequent suits to determine whether they arise from an identical cause of action and whether any relief was omitted or relinquished in the earlier suit.

14.The learned counsel for the respondents further submitted that the earlier suit was confined to a prayer for permanent injunction restraining eviction except by due process of law, whereas the present suit had been instituted for eviction pursuant to the agreement dated 31.12.2021 and for recovery of damages. Therefore, the reliefs sought and the causes of action pleaded were distinct, and the pendency of the earlier suit would not, by itself, render the present suit unsustainable.

15.With regard to the maintainability of the suit as a commercial dispute, the learned counsel relied upon the judgment in C.R.P.No.684 of 2025, dated 20.02.2025, in ***M/s. Smart Training Resources India Pvt. Ltd. v. M/s. Manipal Sowbhagya Nidhi Ltd***., particularly paragraphs 3 to 6 thereof. In the said decision, the Court considered Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, which includes disputes arising out of agreements relating to immovable property used exclusively in trade or commerce.

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16. The learned counsel submitted that the revision petitioner had admitted that the suit premises was being used for carrying on business. Hence, according to the respondents, the dispute fell within the scope of a commercial dispute under the Commercial Courts Act, 2015. It was further contended that the revision petitioner had failed to vacate the premises despite his undertaking and had instituted the application for rejection of the plaint only to delay the proceedings. The respondents therefore prayed for dismissal of the Civil Revision Petition.

17. Heard the learned counsel appearing for both sides and perused the materials available on record.

18. Discussion and Findings

The principal questions that arise for consideration are whether the present suit is liable to be rejected under Order VII Rule 11 CPC on the grounds of Order II Rule 2 CPC and res judicata; whether the pendency of the earlier suit instituted by the revision petitioner would bar the subsequent suit instituted by the respondents; whether the alleged non-joinder of a necessary party warrants rejection of the plaint; and whether the contentions regarding the commercial nature of the dispute justify interference with the order of the trial Court.

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19.The first contention raised by the revision petitioner is that the present suit is barred under Order II Rule 2 CPC. In this regard, it is necessary to bear in mind that Order II Rule 2 CPC requires a plaintiff to include the whole claim arising from a cause of action in one suit and restricts the institution of a subsequent suit in respect of a portion of the claim or relief omitted or relinquished, subject to the conditions prescribed therein.

20.In the present case, O.S. No. 145 of 2023 was instituted by the revision petitioner seeking permanent injunction against eviction except by due process of law. The present suit, on the other hand, has been instituted by the respondents seeking eviction of the revision petitioner and recovery of damages. Thus, the parties have instituted the two suits in different capacities, and the present suit is not a subsequent suit instituted by the same plaintiff who instituted the earlier suit.

21.In such circumstances, the revision petitioner's reliance upon Order II Rule 2 CPC is misplaced. The bar contemplated under the said provision cannot be invoked merely because another suit concerning the same property is pending between the parties. The applicability of Order II Rule 2 CPC depends upon the identity of the plaintiff, the cause

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of action and the claims or reliefs available in the earlier proceedings, in accordance with the requirements of the provision

22. The decision relied upon in ***S. Valliammal and Others v. S. Ramanathan and Another***, reported in ***2026 (3) CTC 216***, also emphasises that the applicability of Order II Rule 2 CPC ordinarily requires a comparative examination of the pleadings in the earlier and subsequent suits. A defence based on the said provision cannot automatically be treated as a ground for rejection of the plaint under Order VII Rule 11(d) CPC without establishing that the statutory bar is attracted.

23. Therefore, having regard to the nature of the earlier suit and the identity of the parties who instituted the respective proceedings, the contention that the present suit is barred under Order II Rule 2 CPC does not merit acceptance at this stage.

24.The next contention of the revision petitioner is that the present suit is barred by the principles of res judicata, as O.S.No.145 of 2023 is already pending adjudication.

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25.Section 11 CPC embodies the principle of res judicata, which ordinarily precludes the re-adjudication of an issue directly and substantially in issue in a former suit between the same parties, or parties claiming under them, where such issue has been heard and finally decided by a competent Court, subject to the other requirements of the provision.

26.In the present case, the earlier suit instituted by the revision petitioner seeks a permanent injunction restraining the respondents from evicting him except by due process of law. The present suit has been instituted by the respondents seeking eviction and recovery of damages on the basis of the alleged agreement dated 31.12.2021 and the revision petitioner's alleged failure to vacate the premises within the stipulated period.

27. It is evident from the nature of the reliefs sought that the earlier suit concerns the revision petitioner's claim for protection against eviction otherwise than in accordance with law, whereas the present suit seeks substantive relief of eviction and recovery of damages. More importantly, the earlier suit is stated to be pending adjudication and no final adjudication of the issues therein has been demonstrated before this

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Court.

28. The mere pendency of an earlier suit between the parties does not, by itself, attract the bar of res judicata. Whether any issue directly and substantially in controversy in the present suit has already been finally decided in a former suit is a matter that must be examined with reference to the pleadings, issues and adjudication in the respective proceedings. In the absence of such a prior final adjudication, the plea of res judicata cannot be sustained merely on the ground that the earlier suit remains pending.

29. Consequently, the contention that the present suit is liable to be rejected on the ground of res judicata is not sustainable.

30. It is also relevant to note that an application under Order VII Rule 11 CPC has to be considered in accordance with the grounds specified therein. In determining whether a plaint is liable to be rejected, the Court is required to examine the plaint and the documents relied upon by the plaintiff, to the extent permissible under law. The defence raised by the defendant or disputed questions of fact cannot ordinarily be adjudicated upon as though the application were a trial of the suit.

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31.In the present case, the respective claims regarding the nature of the tenancy, the ownership and construction of the superstructure, the terms and effect of the agreement dated 31.12.2021, the alleged failure to vacate the premises and the entitlement to damages involve matters requiring consideration on the basis of the pleadings and evidence. Such disputed questions cannot be conclusively determined in the present proceedings merely on the basis of the revision petitioner's assertions.

32.The trial Court has observed that the causes of action and the reliefs sought in the two suits are different and that the disputed questions of fact require adjudication during trial. This Court finds no sufficient ground to interfere with that conclusion in the exercise of its revisional jurisdiction.

33. The revision petitioner has further contended that the son of the first respondent, who allegedly entered into an agreement with the revision petitioner, is a necessary party to the suit and that the proceedings are therefore not maintainable in his absence.

34. In this regard, it is to be observed that the question of

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non-joinder of a necessary party must be considered with reference to the nature of the relief claimed and the person's legal interest in the subject matter of the suit. Under Order I Rule 9 CPC, a suit is not ordinarily defeated by reason of misjoinder or non-joinder of parties, subject to the exception relating to the non-joinder of a necessary party

35. The mere assertion that the son of the first respondent ought to have been impleaded does not, by itself, establish that the plaint is liable to be rejected under Order VII Rule 11 CPC. If his presence is found necessary for the effective and complete adjudication of the questions involved, the appropriate course would be to consider the issue of impleadment in accordance with law. Therefore, the contention regarding non-joinder, as raised in the present revision, does not by itself warrant rejection of the plaint.

36. The respondents have also contended that the suit is maintainable as a commercial dispute, since the suit premises was taken on rent for the purpose of carrying on business. In support of this contention, reliance has been placed upon the decision in ***C.R.P. No. 684 of 2025, dated 20.02.2025***, in ***M/s. Smart Training Resources India Pvt. Ltd. v. M/s. Manipal Sowbhagya Nidhi Ltd***.

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37. Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, includes within the definition of a commercial dispute disputes arising out of agreements relating to immovable property used exclusively in trade or commerce. The Explanation to Section 2(1)(c) further clarifies that a commercial dispute does not cease to be such merely because it involves a claim for recovery of immovable property or other relief pertaining to immovable property.

38. The decision relied upon by the respondents emphasises the significance of the contractual terms and the commercial use of the property in determining whether a dispute falls within the statutory definition. In the present case, the respondents contend that the revision petitioner himself admitted that the suit premises was being used for carrying on business.

39. However, the mere fact that a property is used for business purposes must be considered in the context of the relevant statutory requirements and the terms of the agreement between the parties. The question of commercial jurisdiction must ultimately be determined with reference to the pleadings, the relevant contractual documents and the applicable provisions of law. In any event, the

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revision petitioner's objection, as presented in the present proceedings, does not establish that the plaint is liable to be rejected under Order VII Rule 11 CPC.

40. Having considered the rival submissions, this Court is of the view that the grounds raised by the revision petitioner do not disclose a sufficient basis for interfering with the order passed by the trial Court. The pendency of O.S. No. 145 of 2023 does not, by itself, bar the respondents from instituting a suit for eviction and recovery of damages. The applicability of the principles of Order II Rule 2 CPC and res judicata has not been established so as to warrant rejection of the plaint at this stage.

41. It is made clear that the observations made herein are confined to the limited question of the maintainability of the application under Order VII Rule 11 CPC and shall not be construed as an expression of opinion on the merits of the respective claims in the suit. The trial Court shall decide the suit independently, on the basis of the pleadings, evidence and applicable law.

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42. In the light of the foregoing discussion, this Court finds no merit in the Civil Revision Petition. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

12-10-2026

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

RM

To

The Principal District and Sessions Court,
Virudhunagar at Srivilliputtur.

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R.POORNIMA, J.
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CRP(MD) No. 2737 of 2026
AND
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