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CRP No.1661 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2025

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRP NO.1661 OF 2022

AND

CMP NO.8268 OF 2022

Sasikumar

... Petitioner / Petitioner /
Plaintiff

Versus

1.Sivalingam
2.Murugesan
3.Kamalam
4.Savitha
5.Janaranjani @ Janani
6.Sinnappan
7.Sathya
8.Munusamy
9.Venkatachalam

... Respondents / Respondents /
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal Order dated December 1, 2021 passed in I.A.No.770 of 2018 in O.S.No.56 of 2017 on the file of District Munsif Court, Pappireddipatti.



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For Petitioner	:	Mr.C.Prabakaran
For Respondents 1&2	:	Not ready in notice
For Respondent – 3	:	Mr.J.Pradeep
For Respondents – 4 & 5:	:	Mr.R.Ezhilarasan
For Respondents – 6 to 9:	:	Served – No appearance

ORDER

Feeling aggrieved by the Order dated December 1, 2021 passed by 'District Munsif Court, Pappireddipatti' ['Trial Court' for short] in I.A.No.770 of 2018 in O.S.No.56 of 2017, the Revision Petitioner / petitioner / plaintiff has preferred this Civil Revision Petition under Article 227 of the Constitution of India.

2.The Revision Petitioner herein is the Plaintiff and the Respondents herein are the Defendants in the Original Suit in O.S.No.56 of 2017. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3.The Plaintiff filed the Suit in O.S.No.56 of 2017 seeking declaration that second item of the Suit Property is a Cart Track to access the first item of the Suit Property along with consequential relief of injunction and other reliefs. Pending the Suit, the Plaintiff filed an



Interlocutory Application in I.A.No.709 of 2017 under Order XXVI Rule 9

of the Code of Civil Procedure, 1908 seeking appointment of Advocate Commissioner to inspect the Suit Property. The said Interlocutory Application was allowed. Accordingly, the Advocate-Commissioner inspected the Suit Property along with a Surveyor and filed his / her report and sketch. In the said report, the Advocate-Commissioner has mentioned about the encroachment made in the Suit Item No.(2) viz., Cart Pathway. Hence, the Plaintiff filed an Interlocutory Application in I.A.No.770 of 2018 in O.S.No.56 of 2017 under Order VI Rule 17 of CPC to amend the plaint seeking mandatory injunction incorporating the encroachment made by the defendants.

4.After hearing both sides, the Trial Court dismissed the Interlocutory Application in I.A.No.770 of 2018 in O.S.No.56 of 2017 on December 1, 2021 stating that the Plaintiff did not properly value the encroached portion, did not pay the necessary court fee and did not state the measurement of the alleged encroachment. Feeling aggrieved by this Order, the Plaintiff / petitioner therein has filed this instant Civil Revision Petition.



5.Mr.C.Prabakaran, learned Counsel for the Revision

Petitioner draws attention of this Court to the details of amendment stated in the plaint and submits that the Plaintiff has clearly mentioned the exact measurement of the encroached portion and also properly valued the same. The Trial Court without properly appreciating the details of amendment, dismissed the Interlocutory Application which is erroneous. The amendment sought for by the plaintiff does not alter the nature and character of the Suit. The amendment sought for is consequential to the Advocate-Commissioner's sketch and report. Therefore, the Order passed by the Trial Court is liable to be set aside and accordingly, he prays to allow this Civil Revision Petition and to set aside the dismissal Order allow the amendment sought for in the Interlocutory Application.

6.Per contra, Mr.J.Pradeep, learned Counsel for the third Respondent and Mr.R.Ezhilarasan, learned Counsel for the fourth and fifth respondents would submit that the Suit is filed in the year 2017 and therefore, it is barred by limitation. Further, the proposed amendment sought for would alter the nature and character of the Suit. The Trial Court after appreciating the materials available on record, rightly dismissed the Interlocutory Application seeking amendment in the plaint. There is no



need to interfere with it. Accordingly, they pray to dismiss the Civil Revision Petition and to sustain the Trial Court's Order.

7.This Court has considered both sides' submissions and perused the Advocate Commissioner's report and sketch as well as the affidavit filed in support of the Interlocutory Application seeking amendment, annexed in the typed set of papers.

8.At the instance of the petitioner, an Advocate-Commissioner was appointed and the Advocate Commissioner along with a qualified Surveyor inspected the Suit Property. The Advocate-Commissioner filed his/her report and sketch on October 5, 2017. In the said report, in Para No. 4 it has been stated thus:

'4.இரண்டாம் அயிட்ட சர்வே எண் 212/2A இதன் புதிய உட்பிரிவு சர்வே எண் 212/2A1A-ல் தென்வடலாக செல்லும் வண்டிப்பாதையில் 13 அடி அகலம் பூமியில் உள்ளது போக மேற்கு புறம் சுமார் 15 அடி அகலத்திலும் 145 அடி நீளத்திலும் 3, 4, 5 எதிர்மனுதாரர்களால் ஆக்கிரமிப்பு செய்யப்பட்டுள்ளது. இந்த ஆக்கிரமிப்பு பகுதி கரம்பாகவும், சிறிய மின் மோட்டார் அறை ஒன்றும் கிணற்று கடக்கால் பகுதியும் இருந்தது.



ஆக்கிரமிப்பு பகுதிகள் மாதிரி வரைபடத்தில்
ரோஸ் நிறத்தில் தனியாக காட்டப்பட்டுள்ளது.'

9.As it could be seen from the above, the Advocate-Commissioner has noted some encroachment on Suit Item No.(2). Advocate-Commissioner has set out the measurement of encroachment as well as its nature. Perusal of the above said records show that the plaintiff has stated the measurement of encroachment correctly. Thus, there arose the necessity for the Plaintiff to amend the plaint incorporating the details of the encroachment and to seek a mandatory injunction to remove the encroachment. Further, this Court is of the view that the Plaintiff valued the Suit Property under Section 27(c) of the Tamil Nadu Court- Fees and Suits Valuation Act, 1955 for mandatory injunction. Hence, this Court does not find any illegality or irregularity in the Interlocutory Application seeking amendment in the plaint. Moreover, the amendment sought for does not alter the nature and character of the Suit. Since the plaintiff came to know about the encroachment only after the inspection by the Advocate-Commissioner, this Court is of the *prima facie* view that the relief of mandatory injunction sought for vide the proposed amendment is within limitation.



10.To be noted, the above view is recorded only for the purpose of deciding this Civil Revision Petition. Needless to mention that after allowing the Interlocutory Application seeking amendment, an opportunity shall be granted to the defendants to file additional written statement. In such a course, the defendants can raise all their pleas including the plea of limitation, which can be decided at the time of final disposal of the Original Suit. Hence, the dismissal Order passed in the Interlocutory Application is liable to be set aside.

11.Resultantly, this Civil Revision Petition is allowed and the dismissal Order dated December 1, 2021 passed by the Trial Court in I.A.No.770 of 2018 in O.S.No.56 of 2017 is set aside and I.A.No.770 of 2018 in O.S.No.56 of 2017 is allowed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

24.10.2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
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R.SAKTHIVEL, J.

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To

The District Munsif Court
Pappireddipatti.

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