

C.R.P(MD)No.1457 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2026

CORAM

**THE HON'BLE MR. JUSTICE S.SOUNTHAR**

C.R.P.(MD)No.1457 of 2023

and

C.M.P(MD)No.7266 of 2023

Gomathi Sankar

.. Petitioner

Vs.

Mahendran

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated passed in I.A.No.3 of 2022 in A.S.No.101/2021 dated 18.04.2023 on the file of the Principal District Judge, Tirunelveli.

For Petitioners : Mr.T.Selvan

For Respondent : Mr.H.Arumugam

\* \* \* \* \*



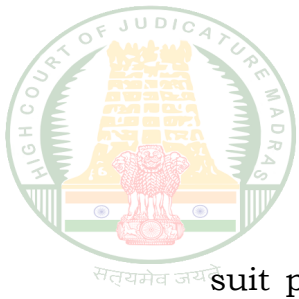
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## ORDER

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This Civil Revision Petition has been filed challenging the order passed by the first appellate Court dismissing the application filed by the petitioner/plaintiff seeking amendment of the plaint by substituting the relief of partition in the place of the reliefs of declaration of title and consequential permanent injunction.

2.The petitioner/plaintiff originally instituted the suit seeking declaration of title and consequential permanent injunction. According to the petitioner, the suit property originally belonged to one Perumal Reddiar. After his demise, his three daughters executed a release deed in favour of Perumal Reddiar's son, namely, the defendant herein, and his wife, Kamalammal. It was further stated that the defendant had settled at Chennai and had not been taking care of the suit property, whereas Kamalammal had been in open, continuous and uninterrupted possession and enjoyment of the suit property for more than the statutory period. Subsequently, Kamalammal executed a registered settlement deed dated 14.01.1982 in favour of her daughter, Subbulakshmi, settling the entire suit property in her favour. Thereafter, the said Subbulakshmi executed a Will dated 13.08.2007 in favour of the petitioner/plaintiff. On the strength of the said Will, the petitioner claimed absolute title over the



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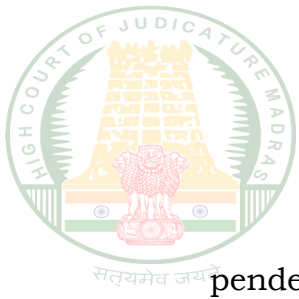
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suit property and instituted the suit seeking declaration of title and consequential permanent injunction.

3.The respondent/defendant resisted the suit by disputing the settlement deed relied upon by the petitioner. It was contended that the suit property was jointly owned and jointly enjoyed by Kamalammal and the defendant and hence, the plea of prescriptive title made by the plaintiff also denied in the written statement. According to the defendants, the settlement deed executed by Kamalammal was not valid and the defendant was entitled to a half share in the suit property.

4.During the course of trial, the plaintiff admitted that the defendant was entitled to a half share in the suit property and that the defendant's wife was in possession and enjoyment of the suit property and possessed a family card in respect thereof.

5.Upon appreciation of the oral and documentary evidence, the trial Court came to the conclusion that the petitioner/plaintiff had failed to establish his right over the suit property and accordingly dismissed the suit. Aggrieved thereby, the petitioner preferred A.S.No. 101 of 2021 before the Principal District Court, Tirunelveli. During the



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pendency of the appeal, the petitioner filed the present application seeking amendment of the plaint by substituting the relief of declaration and consequential injunction with a prayer for partition and separate possession of his alleged half share in the suit property. The first appellate Court dismissed the said application. Aggrieved by the same, the present Civil Revision Petition has been filed.

6.The learned counsel for the petitioner submitted that the defendant himself had pleaded in the written statement that the defendant was entitled to a half share in the suit property. Therefore, according to the learned counsel, the petitioner would necessarily be entitled to the remaining half share and the amendment would not alter the nature of the suit. It was further contended that the first appellate Court ought to have allowed the amendment application.

7.Per contra, the learned counsel appearing for the respondent submitted that the amendment sought for would completely alter the nature and character of the suit. Therefore, according to the counsel, the first appellate Court had rightly dismissed the amendment application.

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

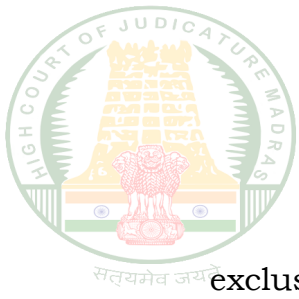


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9.It is seen from the pleadings that the plaintiff asserted absolute right over the suit property based on the adverse possession as if Kamalammal enjoyed the suit property jointly for more than a statutory period. After asserting the title by adverse possession, it is not open to the plaintiff to take a plea that the defendant is the co-owner and entitled to a half share in the suit property. The plea of adverse possession and co-ownership cannot be go together.

10.Further, the proviso to Order VI Rule 17 of the Code of Civil Procedure mandates that after the commencement of the trial, no amendment shall be allowed unless the Court is satisfied that, despite exercise of due diligence, the party could not have filed amendment petition before the commencement of the trial.

11.In the present case, the written statement itself specifically disclosed the defendant' claim that the defendant was entitled to a half share in the suit property. Therefore, if the petitioner had exercised due diligence, he could have sought the proposed amendment immediately after the filing of the written statement and well before the commencement of the trial. Instead, the petitioner consciously chose to proceed with the trial on the basis of his plea of



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exclusive title by adverse possession and failed to establish the same.

Only after suffering an adverse decree, the petitioner has decided to seek amendment by taking different stand. The petitioner failed to seek amendment immediately after the filing of the written statement and well before the commencement of the trial. Hence, mandate under proviso to Order VI Rule 17 of C.P.C has not been complied in this case. Therefore, this Court is of the considered view that the first appellate Court was fully justified in rejecting the amendment application. I do not find any illegality, irregularity or perversity in the order passed by the first appellate Court warranting interference of this Court.

12. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

30.06.2026

Index :Yes / No  
Internet :Yes / No  
NCC :Yes / No  
skn

To

1. The Principal District Court, Tirunelveli.

2. The Section Officer, V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SOUNTHAR, J.**

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