

CRP(MD). No. 3155 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 20.07.2026

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

**CRP(MD). No.3155 of 2023
and
C.M.P.(MD) No.16198 of 2023**

Kannan

... Petitioner

Vs

Dhakshanamoorthy

... Respondent

PRAYER :- Civil Revision Petition filed under Article 227 of The Constitution of India to set aside the Order and Decreetal Orders made in IA No.4 of 2023 in OS No.73 of 2018 dated 05.09.2023, on the file of Sub Court, Muthukulathur, and thus render justice.

For Petitioner : Mr. S.Premkumar

For Respondents : Mr.Sonai Muthu
for
M/s.S.Ramesh



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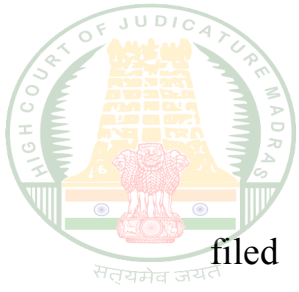
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ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court allowing the application filed by the petitioner/plaintiff seeking amendment of the plaint.

2. The petitioner herein filed a suit seeking partition. He also sought for permanent injunction restraining the defendant from putting up any construction in the Suit Property on the ground that the defendant was attempting to put up construction in the joint property without the permission of the plaintiff.

3. The suit was resisted by the respondent by filing Written Statement, wherein it was stated that the plaintiff made a false averment in the affidavit as if the defendant was attempting to put up construction. It was a specific case of the defendant that construction in the Suit Property was completed as seen from the Advocate Commissioner's report submitted before the Court. After completion of the trial, when the matter was posted for arguments, the petitioner/ plaintiff filed instant amendment application seeking amendment of the plaint. In the affidavit



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filed in support of the amendment application, it was stated by the petitioner that the defendant put up construction in the suit property, pending suit, taking advantage of dismissal of the petition for interim injunction. Though the petitioner in the affidavit asserted that construction was put up pending disposal of the suit, in the amendment petition, he wanted to introduce a plea as if the building was constructed even at the time of filing of the plaint. Therefore the amendment sought for in the petition, is not in consonance with the averments made by the petitioner in his affidavit. If it is the case of the petitioner, the construction was put up, pending suit, the petitioner should make necessary amendment in the plaint to that effect. However, now the petitioner wants to make amendment, as if construction was completed even at the time of filing of the suit. The amendment sought for in the petition changes the very nature of the suit and the amendment sought for is not in consonance with the averment found in the affidavit.

4. The amendment application was filed when the suit was posted for arguments. It is seen from the Written Statement filed by the defendant that there was a specific plea in the written statement that



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construction in the suit property was already completed and the same was also mentioned in the Advocate Commissioner's report. Immediately after filing of the Written Statement or the Advocate Commissioner's report, the plaintiff could have filed the amendment application. However, he waited for completion of the trial and filed the instant application after the matter is posted for arguments. It is also pertinent to mention that even while describing the plaint documents in the schedule of documents filed along with the plaint, the petitioner had stated that building was under construction at the time of filing of the plaint, as seen from the description of the documents in Serial No.7 in the schedule of documents of the plaint.

5. Therefore, it is clear that the plaintiff ought to have filed a petition seeking amendment earlier even prior to the commencement of the Trial. However, he filed it belatedly at the time of arguments. In the absence of any plausible explanation to show that the petitioner exercised due diligence and in spite of exercise of due diligence, he was prevented from seeking amendment of the plaint prior to the commencement of the Trial, in view of the newly amended proviso under Order VI Rule 17 of CPC, the present application cannot be entertained.



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6. In the light of the discussions made earlier, this Civil Revision Petition stands allowed by setting aside of the Fair and Decreetal order made in I.A.No.4 of 2023 in O.S.No.73 of 2018 dated 05.09.2023 on the file of Sub Court, Muthukulathur. Consequently, connected miscellaneous petition is closed.

NCC : Yes/No
Index : Yes / No
Internet :Yes / No
gvn

20.07.2026

To

The Sub Court, Muthukulathur.



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S.SOUNTHAR, J.

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