



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2017

CORAM :

**THE HONOURABLE MR. JUSTICE G. JAYACHANDRAN**

CRP (PD) (MD) No. 803 of 2017

and

CMP (MD) No. 3627 of 2017

Hairunisha

... Petitioner

**Vs**

1. Ayub Khan  
2. Mohammed Malik

... Respondents

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 18.11.2016 made in I.A.302/2016 in O.S.129 of 2012 on file of the Principal District Munsif, Thuraiyur.

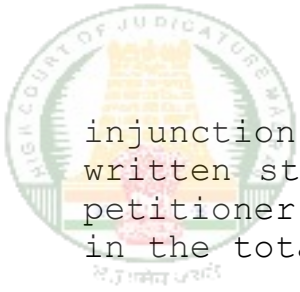
For Petitioner : Mr. K. Prabhakar

**ORDER**

In the suit for injunction, the defendants have made a counter-claim regarding the right about 1 foot 3 inches in the disputed lane. Pending suit, the plaintiff alleging that the defendants have encroached upon 3/4 feet in the disputed area and put up construction, sought for an amendment to include the relief of mandatory injunction in respect of the structure put up over the alleged encroached portion.

2. Since the Trial Court has allowed the amendment petition, the revision petitioner is before this Court, contending that even at the time of filing the counter claim, the alleged superstructure was in existence. Therefore, the plaintiff who ought and might have sought for the relief of mandatory injunction, has failed to seek that relief. Only after the report of the Advocate Commissioner, the present amendment is sought which is barred by limitation, even assuming if the defendants have encroached upon the alleged portion of the suit property.

3. Perusal of the pleadings filed before the Trial Court indicates that at the time of filing the suit, the plaintiff has apprehended encroachment by the defendants after demolishing the old structure. Hence, he has sought for relief of bare



injunction. Later on, the revision petitioner herein has filed written statement along with counter claim, wherein, the revision petitioner has asserted the title to an extent of 1 foot 3 inches in the total breadth of 3 feet lane which runs by 65 feet.

4. The apprehension of the revision petitioner is that by way of amendment, the plaintiff should not take advantage of reckoning the limitation from the date of filing the suit. If the limitation for seeking mandatory injunction is barred by limitation on the date of seeking amendment, the revision petitioner is at liberty to resort to that defence and any amendment regarding the prayer shall be from the date of filing the application and not from the original date of presenting the suit.

With this clarification, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

**To**

The Principal District Munsif,  
Thuraiyur.

+ 1 CC TO Mr.K.PRABHAKAR, ADVOCATE IN SR No. 52458

NBI  
TE/JC/SAR-IV : 27/04/2017 : 2P/3C

CRP (PD) (MD) No.803 of 2017  
and  
CMP (MD) No.3627 of 2017  
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