



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.06.2025**

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP. No.747 of 2023

and CMP. No.5740 of 2023

1.E.Elango
2.P.Krishnan
3.P.Sankar

Petitioner(s)

Vs

1.Gurusamy
2.Jayalakshmi
3.Boopathy

Respondent(s)

PRAYER: This Civil Revision Petition under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 25.01.2023 passed in I.A. No.9 of 2022 in O.S. No.149 of 2016 on the file of the learned Principal District Munsif, Tiruchengode.

For Petitioner : Mr.R.Amizhdhu

For Respondents : Mr.D.Shivakumaran

ORDER

The plaintiffs are the revision petitioners, they have filed a suit in O.S. No.149 of 2016 for the relief of a permanent injunction restraining the defendants from using the B Schedule lane for the purposes of plastering and whitewashing the southern side wall of the suit A schedule building.

2. The suit was filed on 29.06.2016, the defendants have filed their



written statement on 08.01.2018 specifically denying the right of the plaintiffs. However, the plaintiffs did not choose to amend the plaint and proceed with the trial of the suit. Pending trial, at the stage of the evidence of the defendants, the plaintiffs have taken out an Application under Order VI Rule 17 of the Code of Civil Procedure, 1908 to amend the plaint by including of the prayer for declaration that the plaintiffs are entitled to suit land for the purposes of plastering and painting. The said Application was resisted by the defendants and the Trial Court has dismissed the Application prayed by the plaintiffs/petitioners. Aggrieved by the same, the plaintiffs have filed the present revision petition.

3. Heard Mr.R.Amizhdhu, learned counsel for the petitioners and Mr.D.Shivakumaran, learned counsel for the respondents.

4. The learned counsel for the petitioners would submit that after the written statement was filed on 08.01.2018, the trial commenced and the plaintiffs have also examined four witnesses who were also cross examined by the learned counsel for the defendants. At that stage, the defendants took out an Application for amendment of the written statement which came to be allowed and only in view of certain averments that have been set out in the additional written statement, the

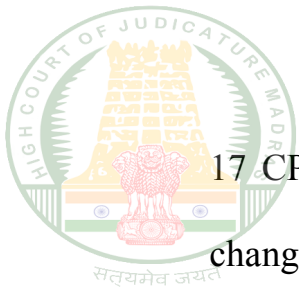


plaintiffs have been constrained to take out an Application for amendment to include the relief of declaration. He would therefore state that the Trial Court ought to have allowed the Application without holding the amendment was post trial and therefore not maintainable.

5. Per contra the learned counsel for the respondents Mr.D.Sivakuamran would submit that the relief that has been sought for is hopelessly barred by limitation and even if a fresh suit were to be instituted by the plaintiffs for that relief, the same would be time barred. Therefore, he would state that the relief cannot be introduced by way of an amendment to the plaint and thereby reopening a time barred relief, which was not available to the plaintiffs on the date of the amendment application.

6. I have considered the submissions advanced by the learned counsel on either side and also gone through the order passed by the Trial Court which is impugned in the present Civil Revision Petition.

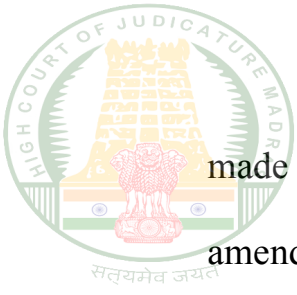
7. I find that the Trial Court has dismissed the Application holding it to be belated and having been filed after commencement of trial which is now non-permissible under the amended provisions of Order VI Rule



17 CPC. The plaintiffs want to introduce a new relief which does not change or alter the character of the suit for which the plaintiffs originally approached this suit. It is only the relief portion that is sought to be modified by the additional prayer. Moreover it is contended that the necessity to amend arose only because of the additional written statement filed by the defendants themselves.

8. Without going into the merits and demerits of the pleadings made in the plaint and the original written statement and amended written statement, considering the fact that by merely introducing the relief by way of amendment, it would not result in the plaintiffs automatically succeeding to such relief. The plaintiffs have to anyway adduce satisfactory oral and documentary evidence. In any event, the defendants would be entitled to file an additional written statement after amendment, to canvass the ground of limitation as well.

9. However in order to protect the interest of the defendants with regard to the issue of limitation, since a specific contention is raised Mr.Sivakuamaran that the Application for amendment has been taken out beyond the period of three years from the date on which date the defendants had denied the existence of the plaintiffs' entitlement, it is



made clear that though the amendment application is ordered, the amendment will not relate back to the date of plaint, but shall be prospective i.e., from the date of the order in I.A. No.9 of 2022 by the Trial Court and the Trial Court shall decide the issue of limitation as well, as one of the issues. The defendants shall be entitled to file an additional written statement after being served with a copy of the amended plaint.

10. In view of the above, this Civil Revision Petition is allowed with the direction regarding the amendment not relating back to the date of plaint. Consequently, connected Miscellaneous Petition is closed. No costs.

23.06.2025

rkp

Index : Yes / No

Internet : Yes / No

To:

The Principal District Munsif, Tiruchengode.

P.B.BALAJI, J.,

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