

C.R.P (PD) No.1533 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2025

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA

C.R.P (PD) No. 1533 of 2025

and

C.M.P.No. 8906 of 2025

1.N.V.Gunasekaran

2.N.V.Pattabiraman

... Petitioner

VS.

Divij Jain

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Final Order dated 18.02.2025 made in IA.No.1 of 2024 in OS.No.97 of 2015 on the file of the Sub Court, Udhagamandalam.



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For Petitioner : Mr. N.Damodaran

ORDER

Challenging the order passed in IA.No.1 of 2024 in OS.No.97 of 2015 in and by which the amendment petition filed by the plaintiff had been allowed the defendants are before this Court. The short facts are as follows. The parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff filed OS.No.97 of 2015 on the file of the Sub Court, Udhagamandalam, for recovery of possession of 1589 sq.ft., after removing temporary construction and for injunction restraining defendants from interfering with the peaceful possession and enjoyment of the suit property and for mandatory injunction to remove the structure put up in the suit property.



WEB COPY 3. The case of the plaintiff is that he is the absolute owner of an extent of 0.50.50 hectares of land together with building bearing Door No.286 & 287 situate at Grand Duff Road, in survey No.K/9/20 of Ootacamund Town, by virtue of a settlement deed dated 22.05.2013 executed by his grand father in his favour.

4. The plaintiff would submit that he has attained majority recently and is living with his parents. The property was under the management and care of the plaintiff's grand father during his minority. The lands have not been developed and therefore people in the neighborhood would use the property as grazing ground for their cattle. In July 2014 when the plaintiff's father had visited Ooty he noticed that taking advantage of the absence of the plaintiff cattles were grazing on the land and the defendants had illegally erected structures in the form of cow shed by encroaching into an extent of 1589 sq.ft.,



WEB COPY 5. He immediately made an objections about the same and had also called upon the defendants to remove the super structure. The defendant responded by stating that the lands are railway lands. Therefore they will not comply with the demand. In view of the above, the plaintiff had arranged for surveyor to conduct survey. When surveyor had come into the property the 2nd defendant left the place and the survey revealed that there is an encroachment.

6. A police complaint was lodged on 19.07.2014 by his father and the defendants had appeared for enquiry and they were unable to provide any proof as to how they are in occupation of the property. Despite the request of the plaintiff asking the defendants to demolish the temporary constructions, the defendants have not responded with the request. Therefore, the plaintiff has been constrained to file the above suit.



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WEB COPY 7. In the written statement the defendants apart from denying the various allegations contained in plaint would go to state that they have been cultivating oats in the suit property for over 3.5 decades. Recognising the same the property has been classified as Government Waste and the defendants have been paying B memo charges. The defendants would submit that they have put up construction and have been assessed the property tax. They would state that the plaintiff had no right to the property and there is no cause of action for filing the suit in question.

8. Pending the suit an Advocate Commissioner was appointed and the Advocate Commissioner had measured and noted down physical features. The Advocate Commissioner had revealed that an extent encroached by the defendants was much more than the extent which has been set out by the plaintiff in the suit property.



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WEB COPY 9. The Advocate Commissioner would state that the encroachment was to an extent of 1662 sq.ft., In the light of the above, the plaintiff had come forward with an application to amend the extent of the encroachment from 1589 to 1662 sq.ft., This application was resisted by the defendants by contending that they have been in possession and enjoyment of the property for over 50 years.

10. The learned Trial Judge on considering the records and hearing the parties allowed the application by stating that the amendment was necessary since the nature of the suit has not been changed, amendment did not introduce a new case and the amendment only sought to give exact area of encroachment and that no prejudice would be caused to the defendants.

11. Challenging the same the defendants / petitioners are before this court.



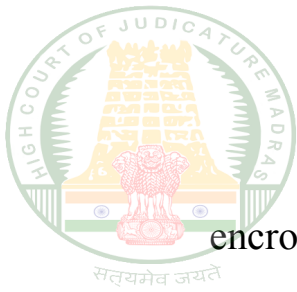
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WEB COPY 12. The impugned order is sought to be challenged on the ground of delay stating that the suit has been filed in the year 2015 whereas the application for amendment has been filed only in the year 2024.

13. Heard the learned counsel and perused the records.

14. A perusal of the Advocate Commissioner's report would clearly show that the Advocate Commissioner has visited the property only on 20.02.2024 and after this inspection the Commissioner has come to the conclusion that the extent of encroachment is much more than what has been shown in the plaint. The report was filed on 08.03.2024 and the application for amendment has been filed in September 2024.

15. Except for the change in the extent of encroachment no other changes have been made. Even the change in the extent of



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encroachment was only on account of the fact that the Advocate Commissioner after surveying and measuring the property has clearly come to the conclusion that the encroachment was to an extent of 1662 sq.ft., and not 1589 sq.ft., as set out in the plaint.

16. Therefore, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

15.04.2025

Index: Yes/No
Internet: yes/No

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The Sub Court,
Udhagamandalam.



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