

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 08.07.2025

Order pronounced on : 01.08.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.Nos.2101 & 2102 of 2025
& CMP.No.12243 of 2025

V.Pethaperumal

..Petitioner in both CRPs

Vs.

- 1.Chitrarsu
- 2.Veerappan
- 3.Ezhumalai
- 4.Subburayan
- 5.Kumaraguru
- 6.Jayalakshmi
- 7.Ilanjezhian
- 8.Ilakya
- 9.Ilamathi

[Minors represented by natural guardian mother 6th respondent]

- 10.Sundry
- 11.Thulasiammal
- 12.Priya
- 13.Oulgaret Municipality,
Rep by its Commissioner,
Jawahar Nagar,
Pondicherry – 5.
- 14.Vijaya
- 15.Agila
- 16.Ganga
- 17.Lakshmi
- 18.Ezhilarasi
- 19.Ezhilmaran
- 20.Ezhilvendhan



21.Thilagam

..Respondents in both CRPs

Common Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 08.04.2025 in I.A.Nos.6 & 7 of 2025 respectively in O.S.No.44 of 1998 on the file of the III Additional District Munsif, Puducherry.

For Petitioner : Mr.V.Raghavachari
Senior Counsel
for Mrs.V.Srimathi in both CRPs

For Respondents : Mr.K.S.V.Prasad in both CRPs

COMMON ORDER

These revisions are at the instance of the plaintiff in O.S.No.44 of 1998 on the file of the III Additional District Munsif, Puducherry.

2.I have heard Mr.V.Raghavachari, learned Senior Counsel for Mrs.V.Srimathi, learned counsel for the revision petitioner and Mr.K.S.V.Prasad, learned counsel for the respondents in both the revisions.

3.The interlocutory applications have been filed for reopening the plaintiff side for the purposes of filing an amendment application to include the survey number and extent in 'B' schedule property and for amendment of the plaint, by including the survey number and extent insofar as 'B' schedule



property was concerned.

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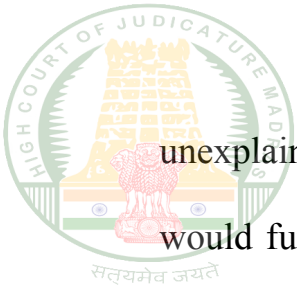
4.Mr.V.Raghavachari, learned Senior Counsel for the revision petitioner would submit that by seeking amendment as prayed for, the plaintiff was only clarifying Schedule 'B' property and neither new case has been set up nor the character of the suit was being altered. However, the Trial Court has erroneously dismissed the applications on the ground that the applications have been filed belatedly and are hit by delay and laches. The learned Senior Counsel would further submit that the only ground on which the Trial Court has dismissed the applications is that the petitioner has not shown due diligence and has not pleaded as to why the amendment was not sought for earlier. In support of his contentions, the learned Senior Counsel for the petitioner would place reliance on the following decisions:

1.Senkuttuvan Vs. Kirubanandham, in CRP.No.316 of 2023, dated 24.01.2025.

2.Peethani Suryanarayana and Another Vs. Repaka Venkata Ramana Kishore and Others (2009 SCC Online SC 322).

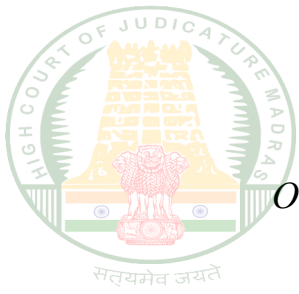
3.Sajjan Kumar Vs. Ram Kishan (2005 13 SCC 89).

5.Per contra, Mr.K.S.V.Prasad, learned counsel appearing for the respondents would first and foremost contend that the Trial Court has rightly dismissed the applications finding not only inordinate delay but also



unexplained delay on the part of the plaintiff in taking out the applications. He would further state that earlier the suit was already argued and even judgment was delivered, however, the First Appellate Court remanded the matter with liberty to the parties to lead further evidence and even at that stage, the applications were not taken out.

6.The learned counsel for the respondents would further point out to the averments in the written statement filed even in the year 1998 and contend that it was specifically pleaded that the description of 'B' schedule property was incorrect and improper and even during cross-examination of P.W.1, questions regarding the description of B schedule property were put to the witness. The learned counsel for the respondents would therefore state that despite all these, the petitioner has taken a risk in not seeking amendment diligently and claiming that in the course of arguments, a specific issue was raised and argued, would not entitle the petitioner to seek amendment. He would further state that the attempt to seek amendment was only to protract the proceedings and he would further contend that the valuable defence accrued to the defendants cannot be taken away by a belated attempt on the part of the plaintiff to amend the plaint. He would further contend that being a post trial amendment, the petitioner has not shown due diligence and the applications are highly belated. The learned counsel for the respondents would place reliance on the following decisions:



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1. *Bandhu Das Vs. Uttam Charan Pattanaik*, (CDJ 2006 Orissa HC 099).

2. *Chellam Vs. Gopal & Another* (CDJ 2018 MHC 3361).

3. *Venkatachalam and Others Vs. Sambayal and Others* (Second Appeal No.560 of 2010 dated 22.10.2020).

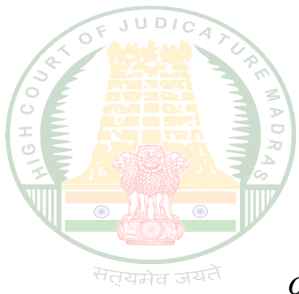
4. *H.Ashraf Ali Vs. Chitra and Another* (CDJ 2018 MHC 6650).

5. *Balasubramanian and Others Vs. T.Selvi and Another* (Second Appeal (MD).No.387 of 2017 dated 25.08.2023).

6. *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another* reported in ((2022) 16 SCC 1).

7.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the records, including the impugned order as well as the decisions on which reliance is placed on by the learned counsel on either side.

8.The revision petitioner is the plaintiff. The plaintiff has sought for the relief of declaration that he has easementary right over the 'B' schedule property for the beneficial enjoyment of 'A' schedule property and has also sought for a direction by way of mandatory injunction to direct the defendants to remove the thatched roofings and other obstructions from the B schedule property for enabling the plaintiff to enjoy the easementary right and also sought for a direction to the defendants to vacate and hand over vacant possession of the 'A' schedule property that has been encroached upon the defendants. In the suit, 'A' and 'B' schedule properties have been described as hereunder:



“ 'A' Schedule of Property

Wet land bearing Cad.No..486, R.S.No.61/6, measuring o H – 61 A-20 Centiares or 1 Kani 14 kuzhis 6 veesams, bounded North to Ousuteri canal, west to B schedule property of canal Street, East to pathway and south to Muthukrishnan's land with in the Oulgaret Revenue Village, Oulgaret Veli, Pichaiveeranpet, Ougaret Commune and Sub Registration and Pondicherry Registration District.

'B' Schedule of property

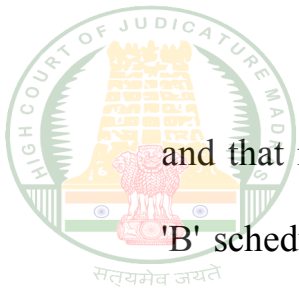
Canal street passing north to south on the eastern boundary of A schedule property at Pichaiveeranpet, Ougaret Commune.”

9.Now, the plaintiff, in and by way the amendment application along with the application to reopen their side evidence, has chosen to amend the above B schedule of property. The particulars of amendment that have been sought for are as follows:

“Amendment prayed

1.In the B schedule property column of the plaint after the existing word commune the following words have to be added as “comprised in R.S.No.59/75, measuring 04 Ares and R.S.No.59/47 measuring 02.12 Ares, bounded East to property in R.S.No.61/6, North to Perambai Road, West to houses of Pitchaiveeranpet Canal Street, and South to property in R.S.No.59.”

10.In the application for reopening as well as seeking amendment to the plaint, the petitioner has stated that the defendants have filed a written statement

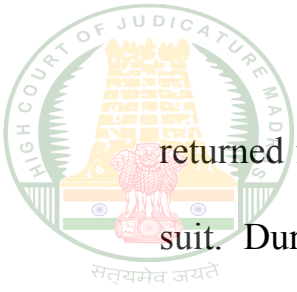


and that in the written statement, they have not pleaded that the description of 'B' schedule is not correct. However, when the suit was posted for arguments,

the learned counsel for the defendants has taken a technical plea that the description of 'B' schedule is not in terms of Order VII Rule 3 of CPC and further, according to the petitioner, even during trial, when the plaintiff was examined, no such technical objection was raised and in view of the point being argued, the petitioner has traced out the survey number and measurements and has come forward with the applications for reopening as well as amendment.

11.It is the specific contention of the learned counsel for the respondents that even in the year 1998, in the written statement, a specific plea has been taken with regard to the fact that schedule 'B' has not been properly described and further, P.W.1 was also confronted with regard to the same during his cross-examination in the year 2003. I have perused the written statement filed by the defendants.

12.On 16.09.1998 in paragraph No.5 in the written statement, specific contention has been taken by the defendants that the description of schedule 'B' property is obviously incorrect and improper and that the description that has been given in 'B' schedule is patently wrong since such description is not logically possible to exist and therefore, the plaint is liable to be rejected or



returned for compliance of correct and complete particulars of properties in the suit. During cross-examination of P.W.1 also, I find that P.W.1 has been confronted with the boundaries of the property with reference to A3 plan that has been filed along with the suit. A specific question has also been put to P.W.1 during cross-examination held on 13.03.2003 that even in the written statement, it has been specifically set out that the schedule property has not been described properly.

13.It is the contention of the learned Senior Counsel that the petitioner, by the amendment, only seeks to clarify the description of schedule 'B' property, though the amendment has not been sought for diligently, despite the specific contention taken in the written statement way back in the year 1998. The Trial Court has found that the amendment is post trial and the same cannot be entertained for the mere asking. The Trial Court has also noticed that the suit has been remanded by the First Appellate Court and the plaint was filed more than 25 years back and the belated attempt on the part of the plaintiff cannot be permitted.

14.Coming to the decisions that have been relied on by the learned Senior Counsel, in *Senkuttuvan's case*, noting that boundaries and extent of the suit



property were not denied by the defendant, this Court permitted the amendment.

In *Peethani Suryanarayana's case*, the Hon'ble Supreme Court held that an

application for amendment can always be entertained by the Court, however such power is circumscribed by two factors, namely (i) the application must be bona fide; (ii) the same should not cause injustice to the other side or it should not affect the rights already accrued to the defendants. On the facts of the said case, the Hon'ble Supreme Court finding that it was only a correction of typographical error and no prejudice is caused, upheld the amendment.

15. In *Sajjan Kumar's case*, the Hon'ble Supreme Court held that amendment of plaint in the final stages of the suit seeking to correct the description of suit property in the plaint would lead to needless complications at the stage of execution in the event of the plaintiff succeeding in the suit and holding that though the plaintiff ought to have been diligent in promptly seeking amendment at an earlier stage of the suit, more so, when the error had been pointed out in the written statement, still the Hon'ble Supreme Court allowed the amendment, as it was necessary for the purpose of bringing to the notice of the Court, the real question in controversy between the parties and the refusal would create needless complications at the stage of execution.

16. Coming to the decisions that have been relied on by the learned



counsel for the respondents in *Bandhu Das's case*, the Orissa High Court held that Order VII Rule 3 of CPC, the subject matter of the suit being immovable

property should be described sufficiently to identify it with boundaries, survey numbers, etc. This Court, in *Chellan's case*, finding that vague description of the suit property has been given in the plaint and no measures have been detailed, proceeded to disentitle the plaintiff to relief. In *Venkatachalam's case*, referred herein supra, this Court held that in a suit for mandatory injunction, there must be a specific identification of the property for the Court to act upon and make the decree executable and that vague description of the property would only invite dismissal of the suit. In *H.Ashraf Ali's case*, this Court held that the relief of mandatory injunction cannot be granted in favour of the plaintiff in the absence of proper description of the property. In *Balasubramanian's case*, again this Court reiterated the mandatory requirement of Order VII Rule 3 of CPC to describe the suit property properly. In *Life Insurance Corporation's case*, the Hon'ble Supreme Court laid down guidelines for amendments to be permitted.

17.Keeping in mind the ratio laid down in the above cases and applying them to the facts of the present case, what emerges is that the plaintiff would be disentitled to a decree, if the property being immovable property, not being properly described as required under Order VII Rule 3 of CPC. The Hon'ble



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Supreme Court in *Sajjan Kumar's case*, which was a suit for recovery of possession against the tenant, by the landlord, finding that though an application for amendment was moved at the final stage seeking to correct the description of the suit property and the application was not taken earlier, despite the plea taken in the written statement regarding improper description, set aside the order of the Trial Court as well as the High Court dismissing the amendment application on the ground that since the proposed amendment was necessarily for the purposes of bringing to the Court, the real question in controversy between the parties and the refusal to permit amendment would create needless complications at the stage of execution, in the event of the plaintiff succeeding in the suit and proceeded to set aside the concurrent findings of the Courts and allowed the amendment application. The facts of the present case are very similar to the facts of *Sajjan Kumar's case*.

18.No doubt, the defendants have taken the plea of improper description in the plaint in the written statement at the earliest instance and P.W.1 has also been cross-examined on this point during trial. However, in the facts of the present case, the application taken out by the petitioner itself is not bonafide for the simple reason that in the affidavit filed in the amendment application, there are categorical assertions that this plea was never raised in the written statement and further, it was also not brought out during the stage of trial. I have also



discussed the written statement as well as cross-examination of P.W.1 which clearly falsify the contentions that are raised and put across in the affidavit in support of the amendment application.

19.Having found that the plaintiff has not approached the Court with clean hands and has chosen to file a false and misleading affidavit, the Court cannot shut its eyes to such conduct of the plaintiff and allow the amendment application merely on the ground that the plaintiff only seeks to clarify schedule 'B' of the property by properly describing the same. It is also relevant to note that it is not as if the suit is being tried for the first time. Even on an earlier occasion, the suit was taken up for trial and the same was decreed and the matter was taken up on appeal and the Appellate Court has remanded the matter to the Trial Court.

20.In view of the above, the plaintiff should have been diligent in approaching the Court, seeking necessary amendments to correct the description of the property and as laid down by the Hon'ble Supreme Court in *Life Insurance Corporation's case*, though the amendment does not change the nature of the suit, the prayer for amendment being malafide and clearly attempting to take away the valuable defence that has accrued to the defendants by way of specific pleadings in the written statement as well as confronting



P.W.1 in cross-examination, I do not find any illegality or perversity in the findings arrived at by the Trial Court and I see no necessity to interfere with the same and I find no merit in these revisions.

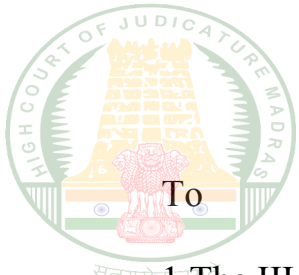
21.In fine, the Civil Revision Petitions are dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

01.08.2025

Speaking/Non-speaking order
Index : Yes/No
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P.B.BALAJI.J,

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To

1. The III Additional District Munsif, Puducherry.

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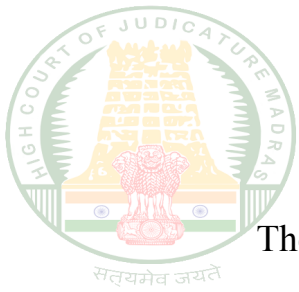
2. The Commissioner,
Oulgaret Municipality,
Puducherry.

Pre-delivery order made in
CRP.Nos.2101 & 2102 of 2025
& CMP.No.12243 of 2025

01.08.2025

CRP.Nos.2101 & 2102 of 2025

P.B.BALAJI,J



The matter has been taken up today under the caption “For Clarification”.

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2. Heard Mr.V.Raghavachari, learned Senior Counsel for the revision petitioner and Mr.K.S.V.Prasad, learned counsel for the respondent.

3. Learned Senior Counsel for the petitioner invited my attention to paragraph No.17 of the order dated 01.08.2025 and sought for clarification that the first sentence appears as if the reference is to the plaintiff on hand and there is a likelihood of the trial court misconstruing the same.

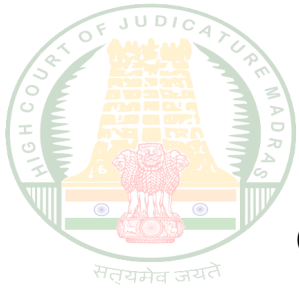
4. Mr.K.S.V.Prasad, learned counsel for the respondent, however, opposes the request for any modification since the order dated 01.08.2025 has been taken up to Hon'ble Supreme Court and the SLP has been dismissed at the admission stage.

5. However, considering that the first sentence in Paragraph No.17 is only indicative of the principles laid down by various Courts, I deem it necessary to clarify as follows:

- (i) “ In the first sentence of Paragraph No.17, instead of “
the plaintiff would be “ it shall be read as “ **a plaintiff would
be”**

P.B.BALAJI,J.

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and

(ii) at the end of Paragraph No.20, it shall be added that “**any observations that have been made in the present revision shall not prejudice the mind of the trial Judge, who shall independently decide the issues based on evidence.**”

Registry is directed to issue fresh order copy.

07.10.2025

Speaking/Non-speaking order
Index : Yes/No
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To

1.The III Additional District Munsif, Puducherry.

2.The Commissioner,
Oulgaret Municipality,
Puducherry.

CRP.Nos.2101 & 2102 of 2025