



CRP.Nos.2233 & 2234 of 2025

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP.Nos.2233 & 2234 of 2025
and
CMP.Nos.12940 & 12943 of 2025

P.Shanmugam

...Petitioner in both CRPs.

Vs.

K.Kannan

...Respondent in both CRPs.

Common Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the fair and final orders both dated 11.12.2024 passed in I.A.No.1 & 2 of 2021 in O.S.No.423 of 2021 on the file of the 1st Additional Sub Court, Coimbatore.

in both CRP's.:

For Petitioner : Mr.T.Balaji

For Respondent : No Appearance



CRP.Nos.2233 & 2234 of 2025

COMMON ORDER

WEB COPY

Despite service on notice on the respondent, the respondent has neither chosen to appear in person nor through counsel. Hence, I have proceeded to hear the learned counsel for the petitioner.

2. Learned counsel for the petitioner submits that, the suit in O.S.No.423 of 2021 has been filed for recovery of possession from the defendant who is a tenant under the Plaintiff. An objection was taken out by the defendant/tenant that, the suit reliefs were not valued properly. Therefore, in order to cure the said defect complained of by the defendant, the plaintiff took out an application for amendment of the plaint, which came to be allowed and consequently, the plaintiff filed an application to make up/pay the deficit court fee. However, the said application has been dismissed by the trial court in and by way of the impugned orders, along with the interlocutory application in I.A.No.1 of 2021 which was filed seeking amendment of the plaint to include new paragraphs and additional reliefs, along with court fee payable thereon.



WEB COPY

3. It is the case of the plaintiff that, subsequent to the amendment ordered by the trial court with regard to the valuation, it was incumbent on the part of the plaintiff to pay deficit court fee. However, without even appreciating the said factual position, the trial court, without any reference to the earlier order permitting amendment, has proceeded to dismiss the said application by way of impugned order and there is absolutely no reference or discussion with regard to the said application seeking to amend the plaint and to incorporate the details regarding the additional/deficit court fee paid.

4. Insofar as other application in I.A.No.1 of 2021 is concerned, it is the case of the plaintiff that, the defendant, though a tenant in respect of a particular portion of the property, had trespassed and encroached into adjoining portions, which are not part of the original lease. In order to recover possession of those portions from the defendant, the plaintiff had sought amendment of the plaint to include relevant paragraphs in that regard and also sought new reliefs with regard to the property that has been subsequently encroached upon and trespassed by the defendant.



CRP.Nos.2233 & 2234 of 2025

WEB COPY

5. It is seen that, the plaintiff also undertook to pay necessary court fee for the additional relief that has been sought for. However, the trial court has erroneously found that, the plaintiff in order to avoid filing of a new suit and to get over limitation, has come up with the present applications.

6. Strangely, the trial court has given the very same reasons for dismissing the other interlocutory application in I.A.No.2 of 2021, which prayer had nothing to do with filing of different suit all together.

7. Be that as it may, admittedly it is a pre-trial amendment, and the Hon'ble Apex Court has repeatedly held that, all pre-trial amendments have to be liberally considered. The parties are the same and issues that are required to be adjudicated in the suit is pertaining to the possession of the property being with the defendant, one originally under the lease agreement and the other with regard to the allegation with regard to the encroachment of adjoining portions of the suit property.



CRP.Nos.2233 & 2234 of 2025

WEB COPY

8. Therefore, the parties being the same and the documents that are to be relied on by the parties also being one and the same, in order to avoid multiplicity of proceedings and conflicting orders, in the interest of justice, the amendment ought to have been ordered. However, the trial court has erroneously held that the plaintiff is avoiding filing of a fresh suit, which would be barred by limitation.

9. The trial court cannot test the issue of limitation, which is a mixed question of fact and law, at the time of ascertaining whether the plaint requires an amendment or not.

10. For the above reasons, I am inclined to set aside the orders of the trial court and accordingly, these Civil Revision Petitions stand allowed and the impugned orders both dated 11.12.2024 passed in I.A.No.1 & 2 of 2021 in O.S.No.423 of 2021 respectively on the file of the 1st Additional Sub Court, Coimbatore are set aside and consequently,

the interlocutory applications in I.A.No.1 & 2 of 2021 in O.S.No.423 of



CRP.Nos.2233 & 2234 of 2025

WEB COPY

2021 are allowed. No costs. Consequently, the connected Miscellaneous petitions are closed.

23.07.2025

skt

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

The I Additional Sub Court,
Coimbatore.



WEB COPY



CRP.Nos.2233 & 2234 of 2025

P.B. BALAJI, J.

skt

CRP.Nos.2233 & 2234 of 2025
and
CMP.Nos.12940 & 12943 of 2025

23.07.2025



CRP.Nos.2233 & 2234 of 2025

CRP.Nos.2233 & 2234 of 2025

WEB COPY

P.B.BALAJI.,J

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

2. It is brought to the notice of this Court that instead of I.A.No.2 of 2022, it has been wrongly mentioned as I.A.No.2 of 2021.

3. Registry is directed to make the necessary correction in the order dated 23.07.2025 as “I.A.Nos.1 of 2021 and 2 of 2022” in the place wherever it appears as “I.A.Nos.1&2 of 2021” and also make the correction as “I.A.No.2 of 2022” wherever it appears as “I.A.No.2 of 2021”.

4. Registry is directed to issue fresh order copy.

26.09.2025

sr

Index : Yes / No

Speaking order : Yes / No

NCC : Yes / No

To

The I Additional Sub Court,
Coimbatore.



WEB COPY



CRP.Nos.2233 & 2234 of 2025

P.B.BALAJI.,J

SI

CRP.Nos.2233 & 2234 of 2025

26.09.2025