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CRP No.3393 of 2



DATED: 19-11-2025

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THE HONOURABLE MR.JUSTICE S. SOUNTHAR

**CRP No.3393 of 2025 and
CMP No.18567 of 2025**

D.Parasakthi

... Petitioner(s)

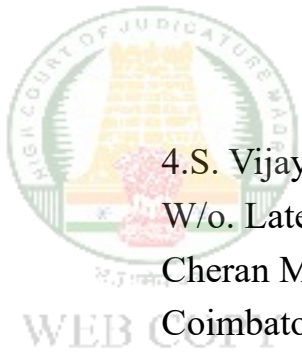
Vs.

Paramasivam (died)

1.M. Jagadeesh
S/o. late. S. Mahadevan,
O.D.No.5/13D, N.D.No.23, Ramkutty
Lay-out, Kouvundampalayam Post,
Coimbatore 641 030. Paramasivam
(Died) M. Ganesh (Died)

2.S. Vimala
W/o. Late. Chandran, O.No.8,
N.D.No.26, Bajanimada Street,
Pettavaithalai, Sirugamani, Srirangam
Taluk, Tiruchirapalli 620 017.

3.S. Easwari
W/o. Ravi, D/o. Late. Chandran,
D.No.27B, Bajanimada Street,
Sirugamani, Srirangam Taluk,
Tiruchirapalli 620 017.



4.S. Vijayalakshmi
W/o. Late. Sundaram, D.No.C-121,
Cheran Managa, Vilankurichi Post,
Coimbatore 641 009.

5.S. Meenakshi
D/o. Late. Sundaram, D.No.C-121,
Cheran Managar, Vilankurichi Post,
Coimbatore 641 009.

6.S. Annapoorani
D/o. Late. Sundaram, D.No.C-121,
Cheran Managar, Vilankurichi Post,
Coimbatore 641 009.

7.R. Amudha
W/o. S. Ragunathan, D.No.95,
Kalappan St, Kattoor, Ramnagar Post,
Coimbatore 641 009.

8.The Commissioner
Coimbatore City Municipal
Corporation, Coimbatore Corporation
Office, Coimbatore 641 001.

9.Vanaja
W/o. Late. P. Paramasivam,
O.D.No.2/468, Durairaj Nagar,
Teachers Colony, NGGO Colony,
Coimbatore.

10.P. Senthilkumar



S/o. P. Paramasivam, D.No.60, P.V.
Krishna St, K.K. Pudur, Coimbatore
641 038.

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11.P. Praveen Kumar

S/o. P. Paramasivam, O.D.No.2/468,
Durairaj Nagar, Teachers Colony,
NGGO Colony, Coimbatore.

12.P. Priyadharshini

D/o. Paramasivam, O.D.No.2/468,
Durairaj Nagar, Teachers Colony,
NGGO Colony, Coimbatore.

13.G. Prema

W/o. Late. M. Ganesh, D.No.50-34-C,
M.G.R. Nagar, Kuruchi,
Coimbatore 641 021.

14.G. Gajalakshmi

D/o. late. M. Ganesh, D.No.50-34C,
M.G.R. Nagart, Kuruchi,
Coimbatore 641 021.

Respondent(s)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and final order dated 24.02.2025 passed by the learned III Additional District Munsiff, Coimbatore in I.A.No.5 of 2024 in O.S.No.1914 of 2014.



For Petitioner(s): Mr.L.Mouli

For Respondent(s) : Mr.C.Deivasigamani for R7

Mr.N.Muthuvel, Government Advocate
for R8

ORDER

This civil revision petition is filed challenging the order passed by the Trial Court, dismissing the application filed by the petitioner/plaintiff seeking amendment of the plaint.

2.The petitioner/plaintiff herein filed a suit for declaration that sale deeds dated 19.01.1999, 11.01.2011 and 11.05.2012 were null and void and for consequential mandatory injunction directing the 9th defendant to remove illegal and unlawful construction made over the common passage, described in Schedule D in the Will and described as as Item No.I of the suit schedule property and also to remove the construction of ventilators, pipes in the eastern side and balcony above the common passage, described as Schedule C in the Will and described as as Item No.II of the Schedule of property.



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3. It appears that Trial in the suit is not yet commenced. The petitioner filed an application seeking to amend the plaint, mentioning the exact measurement of the alleged encroachment made by the 9th defendant in the description of the property, based on the Advocate Commissioner's Report. The said application was dismissed by the Trial Court. Aggrieved by the same, the petitioner has come before this court.

4. The learned counsel for the petitioner would submit that at the time of filing plaint, the petitioner has given approximate measurement of the encroachment made by the 9th defendant and now, the Trial Court appointed an Advocate Commissioner and he filed a report. In the said report, the Advocate Commissioner mentioned the exact measurements of encroachments made by the 9th defendant and therefore, the instant application has been filed by the petitioner to give correct measurement of the encroachment as found by the Advocate Commissioner. The learned counsel further submitted that if the exact measurement of the encroachment is not allowed to be mentioned in the



plaint, it will cause great prejudice at the time of execution of decree for mandatory injunction.

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5. The learned counsel for the 7th respondent vehemently contended that the measurement is not final and in fact, the 7th respondent has filed an objection to the Advocate Commissioner's report and the same is pending consideration by the Trial Court. In such circumstances, according to him, seeking amendment, based on the measurement given by the Advocate Commissioner cannot be acceptable.

6. As mentioned earlier, the petitioner herein seeks decree for mandatory injunction, directing the 9th defendant to remove the construction made in Item No.1 and 2 of the suit schedule properties. In the description of the property, the petitioner has given the extent of the encroachment made by the 9th defendant as 270 sq.ft. in Item No.1 and 130 sq.ft. in Item No.2 of the suit schedule properties. The said extent is approximate only. Now, the Advocate Commissioner appointed by the Trial Court has filed a report, giving correct



measurement of the alleged encroachment made by the 9th defendant. Based on the said report, the instant application has been filed by the petitioner seeking amendment, so as to give exact measurement in the description of the property.

7 .It is settled law that in case of Mandatory Injunction, the plaintiff is expected to give correct measurement of the offending construction. In the absence of correct measurement of the encroachment, even assuming that decree is passed by the Trial Court, it may not be possible to execute the same for want of correct measurements. Therefore, by way of amendment, the petitioner has not introduced any new facts. The amendment as to the measurement of all alleged encroachment is only clarificatory in nature. Allowing the application would not cause any serious prejudice to the respondents.

8. The learned counsel for the 7th respondent would submit that the 7th respondent has filed objection to the report of the Advocate Commissioner and

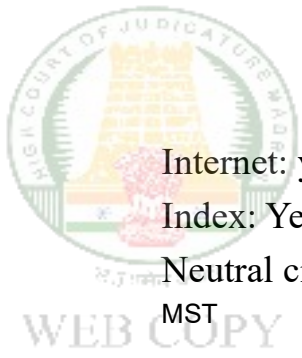


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the same is pending consideration by trial court and hence, the amendment cannot be considered. The objection filed by the respondent would be considered by the Trial Court only at the time of final disposal and it is always open to the respondent to advance his arguments as to the correctness of the measurement mentioned by the Advocate Commissioner. If ultimately the Trial Court finds that the measurement given by the Advocate Commissioner is not correct, necessary consequence shall be faced by the petitioner. In such circumstances, I do not find any merits in the submission made by the learned counsel for the 7th respondent. Therefore, this court is inclined to interfere with the order passed by the Trial Court.

9. Accordingly, this civil revision petition is allowed and the impugned order passed by the Trial Court is set aside. Consequently I.A.No.5 of 2024 in O.S.No.1914 of 2014 stands allowed. It is open to the 7th respondent to file additional written statement after amendment of plaint.

19.11.2025



Internet: yes

Index: Yes/No

Neutral citation: Yes/No

MST

To

The III Additional District Munsif,
Coimbatore.

S.SOUNTHAR, J.

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