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CRP No. 3674 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-07-2025

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

**CRP No. 3674 of 2023
AND CMP NO. 23044 OF 2023**

D. Velmurugan

Petitioner(s)

Vs

1. D. Varanshi

2.D. Pongiammal

3.Rogusamy

4.C. Thangaraj (Died)

5.S. Palanisamy

6.S. Ponnusamy

7.Selvanayagi

8.Ramesh

9.Punitha

Respondent-4 Died. Respondents 7 To 9 are brought on record as Lrs of the Deceased R-4 Viz.C.Thangaraj Vide Court order dated 11/07/2025 made in CMP. Nos.4907,4909 and 4911 Of 2024 In CRP. No.3674 of 2023 By PBBJ.



Respondent(s)

WEB PRAYER: This CRP is filed under Article 227 of the Constitution of India, to set aside the order dated 07.07.2023 in IA No.7 of 2022 in OS No.517 of 2019 on the file of the Principal District Munsif Court, Erode.

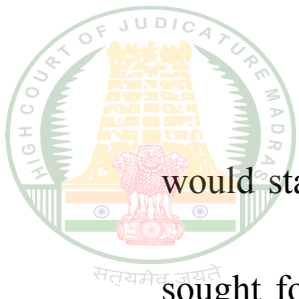
For Petitioner(s): Mr.D.Rajagopal
For Respondent(s): Ms.P.Vidhya shree
for M/s. P.T. Ramadevi
for RR1 to 3 & 5 to 9
R4 – Died steps taken

ORDER

Heard Mr.D.Rajagopal, learned counsel for the petitioner and Ms.P.Vidhyashree, learned counsel for respondents 1 to 3 & 5 to 9.

2. The revision petition is at the instance of the plaintiff in the application for amending the schedule to the plaint, by substituting the survey number originally mentioned in the plaint viz., S.Nos.279/11-15 with S.No.279/5. The said application was opposed by the defendants, and the trial Court had accepted the contention of the defendants and proceeded to dismiss the application.

3. Mr.D.Rajagopal, learned counsel appearing for the revision petitioner,



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would state that the trial Court has gone into the merits of the amendment, as sought for, and ought to have only decided whether the plaintiff is entitled to seek amendment of the schedule. He would further state that there is no change in the cause of action or the original character of the suit, since, admittedly, there is only one suit cart track, which is the subject matter of the dispute and the parties are at issue with regard to the said cart track. He would also rely on the judgment of the Hon'ble Supreme Court in the case of ***Usha Devi Vs. Rijwan Ahamd and others reported in (2008) 3 SCC 717***, where an amendment was sought for to correct the wrong description in the plaint schedule. The Hon'ble Supreme Court noticing that though there was a delay on the part of the plaintiff to seek the said amendment, proceeded to allow the amendment on the ground that if the amendment is not permitted, the suit itself will be rendered non- maintainable. The Hon'ble Supreme Court has also found that as long as there is no material change in the character of the suit and cause of action, prayer for amendment has to be entertained liberally.

4. Per contra, Ms.P.Vidhyashree, learned counsel for the respondents/defendants would state that the present attempt of the plaintiff is



only to get over the earlier decree passed in respect of the very same property in

S.No.279. She would refer to the concurrent findings in the earlier connected

proceeding, which came to be confirmed by this Court in the second appeal. She

would also point out to the refusal of grant of leave to file a fresh suit,

consequent to withdrawal request sought for by the plaintiff. The second appeal

was dismissed on 26.08.2019 and liberty was not granted to the appellant i.e,

the plaintiff herein.

5. The learned counsel for the respondent would further state that under the guise of amending the schedule, the plaintiff is re-agitating the issue that has already been settled and become final. There is no merit in the revision, and the order of the trial Court does not warrant any interference.

6. I have carefully considered the submissions advanced by the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

7. The earlier suit in O.S.No.269 of 1998 was no doubt filed by the

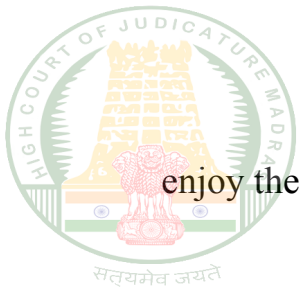


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present plaintiff/revision petitioner, in which also, there appears to be a dispute

with regard to a cart track. In the said suit, the property that has been described as cart track is mentioned as S.No.279, and the sub division is not mentioned.

The said suit was decreed and it has become final with the disposal of the second appeal, as discussed herein above. It is thereafter, the plaintiff alleging that there has been disturbance and interference in the use of the cart track comprised in S.No.279/11-15, has filed the present suit, on 11.12.2019. The cause of action of the present suit is only in the allegation that the defendants have interfered with the right of the plaintiff to use the cart track in S.No.279/11-15. Now the plaintiff wants to amend the schedule by substituting S.No.279/11-15 with 279/5. The learned counsel has also relied on the order passed by the Revenue Thasildar in Na.Ka.No.1652/2025/a2, dated 04.06.2025, wherein the Revenue Thasildar, pursuant to the directions issued by the writ Court in W.P.No.2940/2025, has passed an order holding that the plaintiff is entitled to use the Government cart track in S.No.279/5 and therefore, he would state that the plaint has to be necessarily amended, so that ultimately, the plaintiff, in the event of succeeding in the suit, would be in position to realise or



enjoy the fruits of the decree.

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8. The learned counsel for the respondents, however, would submit that in the order passed by the writ court in W.P.No.2940/2025, the reference was only to S.No.278/2 and not S.No.279/5. However, the Revenue Tahsildar has proceeded to adjudicate the alleged claim of the petitioner in respect of an entirely different survey number in S.No.279/5. Ultimately, when it comes to the question of title, the civil Court is not bound by the said order of the Revenue Thasildar. It is always open to the respondents/defendants to put-forth all objections legal and factual, to contend that the suit itself is not maintainable, having failed to obtain leave at the time of the withdrawal of the second appeals state/pray that the present suit is liable to be dismissed. It is always open to the respondents/defendants to contend that the order passed in W.P.No.2940 of 2025 was for a different property altogether and the order of the Tahsildar would not bind the respondents/defendants. All these matters can be decided only at the time of trial. The plaintiff seeks to substitute the survey numbers in respect of the cart track. The amendment application is also filed within three years from the date of filing of the suit and therefore, I do not see



any serious prejudice being caused to the respondents/defendants, if amendment is ordered, as in the event of the plaintiff ultimately being found by the trial Court to be entitled to decree, then the purpose of the decree should not be lost because of the misdescription of the property.

9. In the light of the above, I am inclined to set aside the order of the trial Court and allow the revision. Accordingly, the revision stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

10. The defendants are entitled to file an additional written statement putting forth all their objections including the maintainability of the suit on the ground that it is a case of re-litigation with regard to the same cart track.

31-07-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

The Judge, District Munsif Court, Erode.



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P.B.BALAJI J.
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