

C.R.P(MD)Nos.337 & 338 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.04.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)Nos.337 & 338 of 2025

and

C.M.P(MD)No.1890 of 2025

Sankaralingam

... Petitioner
(In Both Cases)

Vs.

1.Selvaraj

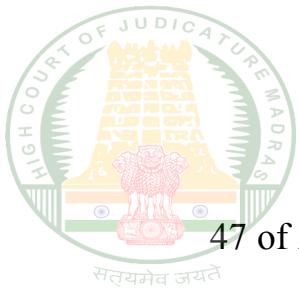
2.Madamuthu

3.Murugan

... Respondents
(In Both Cases)

PRAYER in C.R.P(MD)No.337 of 2025: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 13.12.2024 passed in I.A.No.6 of 2023 in O.S.No. 47 of 2017 on the file of the Sub Court, Ambasamudram.

PRAYER in C.R.P(MD)No.338 of 2025: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 13.12.2024 passed in I.A.No.7 of 2024 in O.S.No.



C.R.P(MD)Nos.337 & 338 of 2025

47 of 2017 on the file of the Sub Court, Ambasamudram.

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In Both Cases:

For Petitioner : Mr.A.Sankararamasubramanian

For R-1 : No appearance

For R-2 & R-3 : Mr.P.P.Alwin Balan

COMMON ORDER

The plaintiff in O.S.No.47 of 2017 on the file of the Sub Court, Ambasamudram has filed these revision petitions wherein, the Trial Court has rejected the prayer of the petitioner for amendment of plaint and for amendment of the schedule of property in the Commissioner application.

2. A perusal of the records reveal that, suit has been filed for the relief of declaration of title, permanent injunction and mandatory injunction. According to the plaintiff, the suit second schedule and third schedule properties are part of the first schedule property. The plaintiff has contended that the defendants had encroached the second and third schedule properties in the year 2016. The suit has been filed in the year



C.R.P(MD)Nos.337 & 338 of 2025

2017. Before the Trial began, the present application in I.A.No.6 of 2023

has been filed to amend the body of the plaint as well as the schedule of the property.

3. A perusal of the affidavit in I.A.No.6 of 2023 reveals that the Serial Nos.1 to 4 therein indicate that the plaintiff wants to amend the owners found in the four boundaries of the property. In fact he wants to show the present owners, who are in the boundaries. Therefore, there cannot be any dispute with regard to the prayer sought for by the plaintiff. However, as far as the prayer in Serial No.5 is concerned, the petitioner as the plaintiff has enlarged the extent of encroachment with regard to the third schedule of property.

4. The Trial Court after considering the submissions made on either side has proceeded to dismiss the application for amendment of plaint, primarily on the ground that, the plaintiff is attempting to increase the extent of encroachment and therefore, it would result in introducing a new cause of action. The Trial Court has further found that the prayer



C.R.P(MD)Nos.337 & 338 of 2025

relating to third schedule is mandatory injunction and when the extent is extended, it will be clearly barred by limitation.

5. In view of the amendment sought for in the plaint, the plaintiff has also filed I.A.No.7 of 2024 seeking similar amendment in the application for appointment of Advocate Commissioner. Both these applications came to be dismissed. Challenging the same, these revision petitions have been filed.

6. According to the learned Counsel appearing for the revision petitioner, at the time of filing of the suit, wrong measurements were given. Now, correct measurements are sought to be introduced by way of amendment. Therefore, it would not change the cause of action. Further, he contended that the prayer for mandatory injunction has already been sought for at the time of filing of the suit. Merely, because some additional buildings are sought to be demolished, the same would not result in the suit being barred by limitation.



C.R.P(MD)Nos.337 & 338 of 2025

7. Per contra, the learned Counsel appearing for the respondents / defendants had pointed out that the petitioner is introducing an asbestos sheeted shop and house bearing Door No.104A in the first item of the suit schedule property. These two items were not shown in the original plaint. He further contended that as far as the prayer sought for in Serial No.5 of the amendment application is concerned, the prayer is clearly barred by limitation. He further pointed out that when the north-south measurement is changed from 18 to 33 feet, that would clearly alter the character of the suit. The prayer with regard to third schedule property is for a mandatory injunction to remove the alleged encroachments. In such circumstances, altering the measurements of the suit schedule property would be clearly barred by limitation.

8. The learned Counsel appearing for the respondents herein further contended that the alleged encroachments have been made in the year 2016. The present applications having been filed in June 2023 is clearly barred by limitation.



C.R.P(MD)Nos.337 & 338 of 2025

9. Heard both sides and perused the materials available on record.

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10. The application for amendment of the body of the plaint and the schedule of property has been dismissed by the Trial Court primarily on the ground that these amendments introduce a new cause of action and one of the amendments is clearly barred by limitation.

11. As far as the amendment with regard to the body of the plaint is concerned, a shop and a house are sought to be introduced. As far as Serial No.5 is concerned, the extent is altered from 3 X 18 as 3 X 33. Similar amendments are sought for in the application seeking appointment of Advocate Commissioner.

12. As far as the introduction of shop and the house in first item are concerned, they would not alter the cause of action. Because the suit is for declaration of title, injunction and mandatory injunction. Serial No. 5 in the amendment application changes the extent of encroachment. The main objection raised by the defendants is that in prayer cannot be sought



C.R.P(MD)Nos.337 & 338 of 2025

for, in view of the fact the such a prayer is barred by limitation. Whether the alteration of extent of encroachment would be barred by limitation can only be decided after Trial. Therefore, this Court is leaving the said issue open to be decided in trial.

13. In view of the above said discussion, the orders impugned in these revision petitions are set aside and both the revision petitions stand allowed. Considering the fact that suit is of the year 2017, the Trial Court is directed to dispose of the suit on or before **31.12.2025**. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

15.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Sub Court,
Ambasamudram.

7/8



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C.R.P(MD)Nos.337 & 338 of 2025

R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)Nos.337 & 338 of 2025

15.04.2025