



C.R..P.(PD)(MD).No.250 of 2025

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 17.03.2025**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

C.R.P(PD)(MD)No.250 of 2025

and

C.M.P(MD) No.1500 of 2025

1. K.Sethuraman

2. K.Mahalakshmi

3. Nesakumar

... Petitioners/  
Respondents/Defendants

Vs.

M.Dinesh Babu

... Respondent/  
Petitioner/Plaintiff

**PRAYER:** Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order in I.A.No.5 of 2022 in O.S.No.126 of 2017 on the file of the District Munsif Court, Melur, dated 24.01.2024 by allowing the petition under Order 6 Rule 17 of C.P.C.

For Petitioners : Mr.K.P.Narayanakumar

For Respondent : Mr.S.Atham Ali



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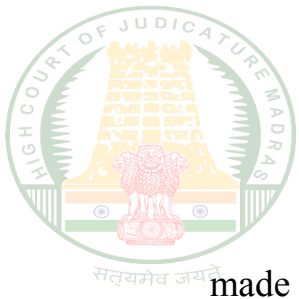
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## **ORDER**

The defendants in O.S.No.126 of 2017 on the file of the District Munsif Court, Melur, have filed the present Civil Revision Petition, challenging the allowing of an application filed under Order 6 Rule 17 of C.P.C, by the plaintiff to amend the plaint to incorporate the prayer for declaration of title.

2. A perusal of the records reveal that the respondent herein has filed a suit in O.S.No.126 of 2017 for the relief of recovery of possession and for permanent injunction. In paragraph No.16 of the written statement, the defendants have taken a specific stand that the suit is not maintainable without seeking a prayer for declaratory relief. This written statement was filed on 06.12.2017.

3. After the evidence on either side was closed and the suit was posted for the reply arguments on the side of the plaintiff, the plaintiff had filed I.A.No.2 of 2019 to incorporate the prayer for declaration of title. This application was not pressed by the plaintiff on 06.02.2020 with liberty to file a fresh application. The learned counsel appearing for the defendants has



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made an endorsement that he has no objection for withdrawal of the application.

4. Thereafter, the plaintiff had filed I.A.No.5 of 2022 on 03.03.2022 for amendment of the plaint to incorporate the prayer for declaration of title. In the said application, the plaintiff has contended that the defendants have disputed the title and unless the prayer in the plaint is amended they would be put to great hardship. The defendants have filed a counter contending that the prayer is barred by limitation and it would alter the character of the suit and any amendment would cause great prejudice to the defendants.

5. The trial Court has proceeded to allow I.A.No.5 of 2022 after imposing cost. Since the defendants had not received the cost, the cost was deposited before the Court. Now the suit is posted for filing of additional written statement on the side of the defendants. Challenging the order of allowing the amendment application, the defendants have filed the present Civil Revision Petition.



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6. The submissions of the learned counsel appearing for the revision petitioners are as follows:

a. The suit was filed in the year 2017, the defendants have filed a written statement on 06.12.2017 disputing the title of the plaintiff. However, the present application for amendment of plaint to incorporate the prayer for declaration of title has been filed only on 03.03.2022. Therefore, the plaintiff has not satisfied the proviso to Order 6 Rule 17 of C.P.C and there are no averments in the affidavit to the effect that, despite due diligence on the part of the plaintiff, such a prayer could not be sought for by him;

b. The learned counsel appearing for the revision petitioners further pointed out that the first application for amendment of plaint filed in I.A.No. 2 of 2019 was filed after the arguments on either side was closed and it was posted for the reply arguments on the side of the plaintiff. In such circumstances, the Court should have considered the fact that there was no due diligence on the part of the plaintiff in seeking a prayer for declaration of title; and



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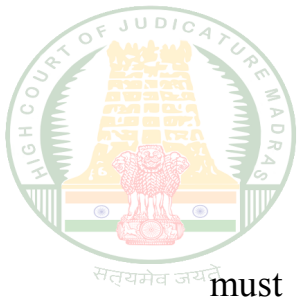


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c. The learned counsel appearing for the revision petitioners has further contended that when the title is disputed in the written statement filed on 06.01.2017, the present application having been filed on 03.03.2022 is clearly barred by limitation.

7. The learned counsel appearing for the revision petitioners further relied upon the judgment of the Hon'ble Supreme Court reported in **(2009) 2 SCC 409 (Vidyabai and others Vs. Padmalatha and another)** to contend that the discretion of the Court to allow the amendment of plaint is restricted to proviso to Order 6 Rule 17 of C.P.C. Even if the Court arrives at a finding that the amendment is necessary for adjudication of the case, when the application was not filed within the time limit or after the trial has begun the Court has no power to exercise discretion.

8. The learned counsel appearing for the revision petitioners has also relied upon the another judgment of the Hon'ble Supreme Court reported in **(2012) 2 SCC 300 (J.Samuel and others Vs. Gattu Mahesh and others)** to impress upon the Court that the Court's discretion to grant permission for the parties to amend their pleadings lies on two conditions, firstly, no injustice



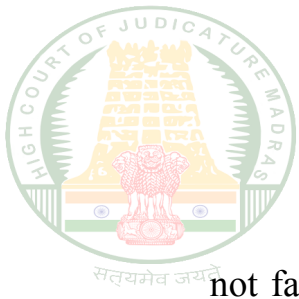
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must be done to the other side and secondly the amendment must be necessary for the purpose of determining the real question in controversy between the parties.

9. The learned counsel for the petitioners further contended that in the present case, the plaintiff has not established the fact that despite due diligence he was not in a position to file an amendment application. The learned counsel appearing for the revision petitioners had further contended that no reasons have been assigned for withdrawal of I.A.No.2 of 2019 seeking amendment of the plaint to incorporate the prayer for declaration of title. Merely because the said application was permitted to be withdrawn, it does not extend the period of limitation or it does not grant more powers to the Court to consider the application filed in I.A.No.5 of 2022.

10. Per contra, the learned counsel appearing for the respondent/ plaintiff had contended that the title was disputed in the written statement, which was filed on 06.12.2017, and within a period of three years ie., on 30.09.2019, I.A.No.2 of 2019 was filed. In such circumstances, the contention of the petitioners that there was no due diligence on the part of the plaintiff is



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not factually correct. He further contended that there was some dispute with regard to the valuation of the suit on payment of Court fee for incorporating the prayer for declaration of title along with a prayer for recovery of possession. In order to avoid any technical difficulties, the plaintiff had withdrawn I.A.No.2 of 2019 after obtaining prior permission from the Court. In fact, the learned counsel appearing for the defendants have also made an endorsement that he has no objection for permitting the plaintiff to withdraw I.A.No.2 of 2019.

11. The learned counsel appearing for the respondent/plaintiff had further contended that due to Covid, the second application for amendment of the plaint came to be filed only on 03.03.2022 in I.A.No.5 of 2022 for amending the plaint to incorporate the prayer for declaration of title. In such circumstances, the question of invoking the proviso to Order 6 Rule 17 of C.P.C would not arise. He further contended that the present application in I.A.No.5 of 2022 was allowed on payment of cost. When an attempt was made to pay the cost to the defendants, they have refused to receive the same and the cost was deposited before the Court. According to him, the suit is pending and posted for filing of additional written statement on the file of the



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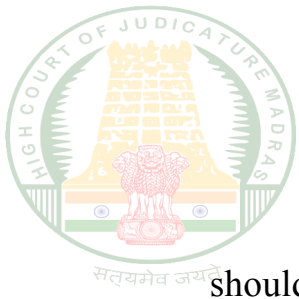
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defendants. In such circumstances, the plaintiff is ready for early disposal of the suit. Hence, he prayed for sustaining the order passed by the trial Court.

12. Heard the learned counsel on either side and perused the material on records.

13. A perusal of the plaint prayer reveals that the suit has been filed for recovery of possession and permanent injunction. The defendants have filed a written statement on 06.12.2017 specifically contending that the suit is not maintainable without a prayer for declaratory relief. Though the plaintiff has filed I.A.No.2 of 2019 on 30.09.2019 to incorporate the prayer for declaration of title, it has been withdrawn on 06.02.2020. The reasons for withdrawal are not reflected in the order passed in I.A.No.2 of 2019.

14. Three years thereafter, the plaintiff has filed I.A.No.5 of 2022 seeking amendment of the plaint to incorporate the prayer for declaration of title. A perusal of the affidavit in I.A.No.5 of 2022 clearly reveals that the affidavit filed in I.A.No.2 of 2019 has been copied and pasted without assigning any additional reasons whatsoever for filing I.A.No.5 of 2022. It



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should be noted that the first application for amendment in I.A.No.2 of 2019 was filed only when the suit was posted for reply arguments on the side of the plaintiff. Therefore, it is clear that the present application in I.A.No.5 of 2022 has also been filed only in the said stage. The suit is being adjourned from 2019 to 2022 due to Covid. The plaintiff has taken advantage of this and filed the present application in I.A.No.5 of 2022 with the same averments.

15. The dates and events narrated above will clearly indicate that despite the fact that the defendants has disputed the title and even contended that the suit is not maintainable for not including the prayer for declaration of title, the plaintiff has not assigned any reason whatsoever for filing the present application after a period of 5 years, namely, in the year 2022, that too, without assigning any special reasons for withdrawing the previous amendment application filed in I.A.No.2 of 2019.

16. In view of the above said deliberations, it is clear that the plaintiff has not satisfied the due diligence clause as found in proviso to Order 6 Rule 17 of C.P.C. The plaintiff has also not made out any extraordinary reasons for deviating from the said mandatory provision found in proviso Order 6 Rule



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17 of C.P.C. In such circumstances, the trial Court ought not to have allowed the application on payment of cost.

17. The order impugned in the Civil Revision Petition is set aside. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

**17.03.2025**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes / No  
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To

1. The District Munsif Court,  
Melur.
2. The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.VIJAYAKUMAR,J.**

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