



WEB COPY

C.R.P.(PD)(MD)No.994 of
and C.M.P.(MD)No.3944 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.994 of 2022

and

C.M.P.(MD)No.3944 of 2022

S.P.Sivasami Nadar

... Petitioner/Respondent/Defendant

Vs.

T.Paulraj Koilpillai(Died)

1.Annal

2.Daniel Sargunaraj

3.Samuvel

4.Jebaseelan

5.Mesitha Jebamalar

... Respondents/Petitioners/Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the decreetal and fair order made in I.A.No.04 of 2022 in O.S.No. 117 of 2017 on the file of District Munsif, Srivaikundam, dated 10.03.2022.

For Petitioner : Mr.R.Sundar

ORDER

The instant revision petition has been filed by the defendant in O.S.No. 117 of 2017 on the file of the District Munsif Court, Srivaikundam, challenging the order of the trial Court, wherein, the trial Court has allowed an application under Order VI Rule 17 of the Civil Procedure Code.



2.The first respondent herein had filed O.S.No.117 of 2017 for the relief of declaration that the third schedule property is a pathway and for permanent injunction not to disturb the usage as pathway.

3.The defendant in his written statement had contended that there is no such property as third schedule property and he had put up a house in the suit schedule property in the year 2012 itself. The defendant has further pointed out that the suit for declaration and permanent injunction without prayer for recover of possession is barred by limitation.

4.Pending suit, an Advocate Commissioner was appointed in I.A.No.3 of 2019 to note down the physical features and measurement of the property with the help of Taluk Surveyor. Accordingly, the Advocate Commissioner has filed his report on 27.09.2021, wherein the Advocate Commissioner has found that the first schedule property is a vacant land. There is a house property in the second schedule and the third schedule was not found on land. Thereafter, the plaintiff had chosen to file I.A.No.4 of 2022 seeking to amend the prayer in the plaint to incorporate the prayer for mandatory injunction for removal of the construction put up by the defendant, pending suit.



5.A perusal of the affidavit in I.A.No.4 of 2022 reveals that the plaintiff had contended that as per the Commissioner's report, the construction were put up, pending suit. The said application was resisted by the defendant on the ground that the construction were put up in the year 2012 itself and therefore, the prayer for mandatory injunction sought for in the year 2022 is clearly barred by limitation.

6.The trial Court after considering the submissions made on either side, has allowed the application on the ground that whether the construction was put up in the year 2012 or not has to be decided only at the time of trial. The existence of the pathway has also to be decided only in the trial. Challenging the same, the present revision petition has been filed.

7.According to the learned Counsel appearing for the petitioner, when an amendment sought for is clearly barred by limitation, the said issue cannot be relegated to the trial and it has to be rejected at the time of filing of the application itself.

8.Though the respondents have been served in March 2024 and their names are printed in the cause list, they have not chosen to appear either in person or through Counsel.



9.The only ground on which the application for amendment of plaint has been filed is that, in the Commissioner's report, there is a finding that the construction has been put up, pending suit. However, a perusal of the Commissioner's report reveals that no such opinion or a statement has been recorded by the learned Advocate Commissioner. The plaintiff has specifically contended that the third schedule property is a pathway and the defendant is attempting to disturb his usage of the pathway. The defendant had filed the written statement in the year 2018 itself contending that there is no such property as third schedule property and they have put up construction in the year 2012 itself. The said fact was not disputed by the plaintiff by filing any reply statement.

10.Without disputing the fact that the construction were not put up in the year 2012 or able to make out the *prima facie* case that the constructions were put up pending suit, the plaintiff would not be entitled to amend the plaint so as to incorporate the prayer for mandatory injunction. When the prayer is clearly barred by limitation and there is no dispute with regard to the facts, the said issue cannot be relegated to the trial. The trial Court has erroneously relegated the issue of limitation to trial.



11. With the above said deliberations, the order impugned in the revision petition is hereby set aside. Accordingly, this Civil Revision Petition is allowed.

No costs. Consequently, connected miscellaneous petition is also closed.

03.02.2025

Internet: Yes/No
Index: Yes/No
RJR

To

The District Munsif, Srivaikundam.



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R.VIJAYAKUMAR, J.

RJR

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