



WEB COPY



C.R.P.(PD)(MD) No.1341 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	21.01.2025
Pronounced on	23.01.2025

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No. 1341 of 2023 and
CMP(MD).No. 6664 of 2023

E.Subramanian

... Petitioner / Plaintiff

Vs.

1.A.Gopalan

2.D.Abirami

.. Respondents / defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records and set aside the fair and decreetal order, dated 02.11.2022 in I.A.No.1 of 2021 in O.S.No.974 of 2019 on the file of the District Munsif Cum Judicial Magistrate, Srirangam.

For Petitioner : Mr. H. Lakshmi Sankar

For respondent : Mr.T. Punithan

ORDER

This Civil Revision Petition is preferred against the fair and decreetal order, dated 02.11.2022 made in I.A.No.1 of 2021 in O.S.No.



C.R.P.(PD)(MD) No.1341 of 2023

974 of 2019 on the file of the District Munsif Cum Judicial Magistrate,
Srirangam.

2. The above suit is filed by the revision petitioner / plaintiff for bare injunction. It is submitted that after examination of the plaintiff side witnesses, the revision petitioner visited the suit property and found that the respondent / defendant has encroached a portion of the suit property to an extent of 510 Sq. Ft in the South-Eastern side of the suit property and constructed the toilet and bathroom. The said encroachment has to be demolished and therefore, he filed an application to amend the plaint by including the prayer for mandatory injunction. The said application was resisted on the side of the respondent / defendant stating that the proposed amendment would entirely change the nature of the suit. The trial Court dismissed the said application stating that the relief of mandatory injunction ought to have been claimed within a period of three years from the date of cause of action and the only remedy available to the petitioner is to file a fresh suit for the relief of recovery of possession. Aggrieved by the same, the present revision is preferred.

3. The learned counsel appearing for the revision petitioner submits



C.R.P.(PD)(MD) No.1341 of 2023

that only at the time of visiting the property, the revision petitioner found that the toilet and bathroom was constructed by the defendant by encroaching the property, pending suit. Hence, it has become necessary for the revision petitioner to seek the relief of mandatory injunction for demolishing the offending construction and for recovery of possession of the encroached portion. However, the trial Court without considering the above facts erroneously dismissed the said application which requires consideration.

4. The learned counsel appearing for respondent / defendant would submit that the said prayer for mandatory injunction is barred by limitation and therefore, the trial Court has rightly dismissed the said application for amendment which requires no interference by this Court.

5. Heard the learned counsel appearing for both sides and perused the materials available on record.

6. It is the specific case of the revision petitioner that during the pendency of the suit, the revision petitioner visited the suit property and found that the toilet and bath room was constructed by the defendant by



C.R.P.(PD)(MD) No.1341 of 2023

encroaching the suit property. Therefore, in order to avoid multiplicity of litigation and to arrive at a fair conclusion, the said amendment ought to have been allowed by the trial Court. Moreover, by the said proposed amendment the nature of the suit will not change and also no prejudice to be caused to the respondent / defendant.

7. Accordingly, this Civil Revision Petition is allowed setting aside the order, dated 02.11.2022 made in I.A.No.1 of 2021 in O.S.No.974 of 2019 on the file of the District Munsif Cum Judicial Magistrate, Srirangam. Liberty is granted to the respondent / defendant to raise his objections as to the alleged encroachment in the suit property. No costs. Consequently, the connected Miscellaneous Petition is closed.

23.01.2025

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

trp

Copy To:

The District Munsif Cum Judicial Magistrate, Srirangam.



WEB COPY



C.R.P.(PD)(MD) No.1341 of 2023

K.GOVINDARAJAN THILAKAVADI, J.

trp

Pre-Delivery Order made
in
C.R.P.(MD) No. 1341 of 2023 and
CMP(MD).No. 6664 of 2023

23.01.2025