



C.R.P.(PD)(MD) No.2299 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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|               |            |
|---------------|------------|
| Reserved on   | 18.12.2024 |
| Pronounced on | 29.01.2025 |

CORAM

**THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**C.R.P.(MD) No. 2299 of 2022 and**  
**CMP(MD).No.11033 of 2022**

P.Rajendran

... Petitioner / 5<sup>th</sup> respondent  
5<sup>th</sup> defendant

Vs.

C.M.Muhtusaamy(died)

1.M.Muthusaamy

2.M.Perumal

3.M.Lakshmanan

S.Lakshmi (died)

4.M.Rajendran

5.M.Balasubramanian

6.M.Natarajan

7.M.Ramaraj

.. Respondents 1 to 3 / plaintiffs

8.Branch Manager,  
Tamil Nadu Mercantile Bank,  
Rajapaalayam.

9.Regional Manager,  
Tamil Nadu Mercantile Bank,  
Regional Office,  
Tirunelveli.

Respondents / defendants



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(memo dated 12.11.2024 presented before the Court on 12.11.2024 is recorded to the effect that notice to the respondents 4, 6 and 7 is dispensed with, as they are given up dated 12.11.2024 made in CRP(MD).No.2299 of 2022 by KGTJ)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 12.08.2022 made in I.A.No.1 of 2022 in O.S.No.237 of 2010 on the file of the Principal Sub Court, Srivilliputur.

For Petitioner : Mr.M.Mohammed Ibrahim Saibu

For respondent No.1 : Mr.M. Thirunavukkarasu

For respondents 2, 3, 8, 9 : No appearance  
respondents 4, 6 and 7 given up  
5<sup>th</sup> respondent died

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### **ORDER**

This Civil Revision Petition is preferred against the fair and decreetal order, dated 12.08.2022 made in I.A.No.1 of 2022 in O.S.No. 237 of 2010 on the file of the Principal Sub Court, Srivilliputur.

2. The revision petitioner is the 5<sup>th</sup> defendant in the above said suit. The respondents 1 to 3 as plaintiffs filed the said suit in O.S.No.237



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of 2010 on the file of the Principal Sub Court, Srivilliputur to demarcate the boundary line of the suit properties and for permanent injunction restraining the defendants from interfering with plaintiffs peaceful possession and enjoyment of the suit property. According to the revision petitioner, pending suit, the plaintiffs filed various amendment applications and the same were allowed. While so, when the suit was posted for cross examination of the plaintiffs, they have filed this amendment petition to include the prayers for declaration and for recovery of possession stating that the revision petitioner / 5<sup>th</sup> defendant has encroached upon the suit property. The detailed counter was filed by the revision petitioner stating that the amendment petition is not maintainable since the same has been filed after commencement of trial and the same is also barred by limitation. However, the trial Court without appreciating the facts allowed the said application. Aggrieved by the same, the present revision is preferred.

3. The learned counsel appearing for the revision petitioner / 5<sup>th</sup> defendant would submit that PW.1 was examined on 18.04.2022 and only thereafter, the present application for amendment was filed to fill up the lacuna of the said amendment petition is allowed and the said amendment



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is barred by limitation, since the same is filed after a lapse of 10 years from the date of filing of the suit. He would further submit that even in the written statement it is alleged that the respondents / plaintiffs have no right whatsoever in the suit property. Therefore, the doctrine of relation back would not apply to the facts of the case. For the reasons that if the said amendment petition is allowed the legal right accrued in favour of the defendants will be taken away. In support of his contention he has relied on the Judgment reported in **2016(1) SCC 332** in the case of **(L.C.Hanumanthappa, rep. by his legal representatives Vs. H.B.Shivakumar)**

4. On the other hand, the learned counsel appearing for the respondents / plaintiffs would submit that the plaintiffs have filed a suit for demarcation of boundaries and for permanent and mandatory injunction. On 18.04.2022, the suit was posted for cross examination of PW.1. It is submitted that on the date of filing of the suit, the plaintiffs were in exclusive possession and enjoyment of the suit property. Therefore, the relief of permanent injunction was alone sought for in the plaint. Subsequent to the granting of relief of temporary injunction in the suit, the 5<sup>th</sup> defendant unlawfully encroached upon the suit properties and



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raised construction. Hence, the contempt petition was filed. At that time, the wife of the 5<sup>th</sup> defendant made an endorsement that they will not make any further construction. Despite of the said endorsement, the construction was completed. Hence, the plaintiffs filed an amendment petition to include the relief of mandatory injunction with regard to the encroachments made by the 5<sup>th</sup> defendant. However, the plaintiffs have failed to seek the relief of recovery of possession in respect of the encroached portions. Since the relief of mandatory injunction is not sufficient without the prayer of recovery of possession and since there is change of title in the suit property, the plaintiffs were constrained to file an application to include the relief of declaration of title and for recovery of possession. It is further submitted that the nature and character of the suit will not be changed by the said amendment and no prejudice will be caused to the defendants by amending the plaint. His further contention is that as per Section 64 of the Limitation Act, the suit for recovery of possession can be filed within a period of 12 years from the date of dis possession. Therefore, the order passed by the trial Court calls for no interference by this Court. In support of his contentions he has relied on the following Judgments:



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1.2016(2) TNLJ 383(Civil) (K.Parthasarathy Vs. S. Kannan)

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2. 2024 (1) MWN (Civil) 410 (Singarajan and others Vs. Jesudruai and another)

3. 2001(2) SCC 472 (Ragu Thilak D.John Vs. s. Rayappan and others)

5. Heard on both sides and perused the records.

6. Originally, the suit was filed by the plaintiffs / respondents 1 to 3 herein for demarcating the boundary line of the suit property and for permanent injunction. Thereafter, the respondents filed an application to amend the plaint for including the prayer for mandatory injunction stating that pending suit, the 5<sup>th</sup> defendant encroached upon the suit property and put up construction and the said amendment petition was allowed. Again the respondents 1 to 3 / plaintiffs filed the present amendment petition to include the prayer for declaration of title and for recovery of possession. The limitation for suit for declaration is provided under Part III of the schedule to the Limitation Act, 1963. It is governed by Articles 56-58 of the Schedule to the Limitation Act. Under all the aforesaid three Articles, the limitation for a suit for declaration is three years. For recovery of



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possession, based upon the title, limitation is 12 years in terms of Article 65 of the Schedule to the Limitation Act. In the present case, the respondents / plaintiffs sought for the relief of declaration of title and for recovery of possession by way of amendments. Since the relief for recovery of possession was not actually barred, the trial Court has rightly allowed the amendment petition. The respondents / plaintiffs have filed the amendment petition to include the relief of declaration and for recovery of possession. Therefore, the limitation is governed by the Article governing the suit for further statutory relief, i.e., the relief of recovery of possession. Moreover, in the suit for declaration of title to immovable property would not be barred by limitation so long as the right of such property continues and subsists. When such right is a continuous substance the relief of declaration would be a continuous right and there would be no limitation for such suit. (Ref: MANU/SC/1153/2024). Moreover, the merits of the amendment cannot be judged at the stage of allowing the petition. To have an effective adjudication and to avoid multiplicity of proceedings, the trial Court has rightly allowed the said application. Hence, I do not find any infirmity or irregularity in the order passed by the trial Court.



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7. Accordingly, this Civil Revision Petition is dismissed confirming the order, dated 12.08.2022 made in I.A.No.1 of 2022 in O.S.No.237 of 2010 on the file of the Principal Sub Court, Srivilliputtur. The trial Court is directed to dispose the said suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

29.01.2025

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

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Copy To:

The Additional Subordinate Judge, Palani.



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**K.GOVINDARAJAN THILAKAVADI, J.**

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Pre-Delivery Order made in  
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**CMP(MD).No.11033 of 2022**

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