



C.R.P(MD)No.2549 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 09.12.2024**  
**DELIVERED ON : 06.01.2025**

CORAM:

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

C.R.P(MD)No.2549 of 2024  
and  
C.M.P(MD)No.14775 of 2024

V.Senthilkumar

... Petitioner

Vs.

S.Raman

... Respondent

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order passed in I.A.No.100 of 2020 in O.S.No.02 of 2020, dated 23.08.2024 on the file of the learned I Additional District Judge, Madurai and set aside the same.

For Petitioner : Mr.D.Srinivasa Ragavan

For Respondent : Mr.K.Muraleedharan



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### **ORDER**

This Civil Revision Petition is preferred against the order passed in I.A.No.100 of 2020 in O.S.No.02 of 2020, dated 23.08.2024 on the file of the I Additional District Court, Madurai.

2. According to the learned Counsel appearing for the revision petitioner, the respondent as plaintiff filed a suit in O.S.No.372 of 2017 on the file of the Additional District Munsif Court, Madurai for mandatory injunction against the revision petitioner to vacate and hand over possession of the suit property. In the said suit, the respondent / plaintiff contended that he purchased the property from the revision petitioner on 27.10.2014 through a sale deed bearing Document No.3346/2014 registered before the Sub Registrar Office, Arasaradi, Madurai. After the said purchase, according to the respondent / plaintiff, he permitted the revision petitioner to reside in the suit property. The respondent / plaintiff further stated that on 21.02.2017 issued a legal notice to the revision petitioner. But the said notice was not received by the revision petitioner. The respondent / plaintiff further averred in the plaint that he met the revision petitioner personally and cancelled the



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permission given to him. Hence, the revision petitioner lodged a complaint before the City Crime Branch on 19.05.2017 and also filed the above suit in O.S.No.372 of 2017.

3. The further contention of the revision petitioner is that the respondent / plaintiff has shown the house property along with vacant land and shop as suit property in the above suit. Thereafter, the respondent / plaintiff filed a petition in R.C.O.P.No.112 of 2017 before the Rent Controller, Madurai Town on 14.07.2017 seeking to evict one R.Ramachandran from the shop situated at Door No.56 on the ground that the tenant committed willful default in payment of rent. The said tenant is the relative of the respondent / plaintiff and he was never in possession of the suit property as tenant under the respondent / plaintiff. The said R.C.O.P was filed intentionally and obtained an *ex parte* order for eviction against a stranger and also filed E.P.No.467 of 2017 and got delivery forcibly. Since the revision petitioner was in possession of the property and delivery was taken from him forcibly, he filed an application in E.A.No.165 of 2018 under Section 144 under Order XXI, Rule 99, Section 151 of the Civil Procedure Code, 1908 read with Rule 101 of CPC. The further submission



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of the revision petitioner is that he was not aware of the Rent Control proceedings initiated by the respondent / plaintiff. Only after receipt of notice in O.S.No.372 of 2017 and after going through the pleadings, the revision petitioner filed a suit in O.S.No.199 of 2018 on the file of the Principal District Court, Madurai against the respondent herein as well as three other Government authorities seeking for declaration declaring that the revision petitioner is the absolute owner of the suit property, declaring the formal sale agreement, dated 04.08.2014 as null and void, seeking declaration declaring the sale deed, dated 27.10.2014 as null and void and for permanent injunction, mandatory injunction against the defendants 2 and 3 to cancel the property tax assessment; to cancel the E.B. service connection and to restrain the fourth defendant from registering any document in respect of the suit property. In the said suit, the revision petitioner contended that the sale agreement and the sale deed in question is a sham and nominal document and it was only given as a security for the loan obtained from the respondent herein. However, with an ulterior motive, the respondent / plaintiff claimed right over the property based on the above documents. Since the respondent tried to take advantage of the documents, which were given as security for loan, the revision petitioner lodged a



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complaint before the Deputy Commissioner of Police, Madurai City on 19.05.2017. The said complaint was forwarded to the City Crime Police, Madurai. Since no action was taken, the revision petitioner filed an application under Section 156(3) of the Criminal Procedure Code, 1973, before the jurisdictional Magistrate for registration of FIR. Thereafter, a case in Crime No.82 of 2017 was registered against the respondent. Even prior to all these events, the respondent filed the suit in O.S.No.372 of 2017 knowing well that the revision petitioner has questioned his right over the suit property. However, without seeking declaration of title over the suit property, the respondent has simply filed a suit for mandatory injunction for eviction. Even after filing the above suit, the revision petitioner filed a suit in O.S.No.199 of 2018, questioning the alleged sale deed stood in the name of the respondent in the month of October, 2017. However, the respondent did not take any steps for amendment of the pleadings immediately. Whereas, now at the verge of commencement of trial, has filed the present I.A.No.100 of 2020 seeking for amendment of pleadings. In the proposed amendment, the respondent is trying to change the original plaint completely. The proposed amendment would completely change the entire pleadings, prayer and the schedule of property. By the proposed amendment,



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the respondent is trying to institute a fresh suit which is impermissible in law. In the said amendment petition, the respondent has averred that since his prayer under Order XXIII, Rule 1 of CPC was denied, he was constrained to file the present amendment petition. The learned Counsel appearing for the revision petitioner would further submit that the proposed amendment would introduce new cause of action, change in the suit property and prayer. Hence, he opposed the said application by filing a counter affidavit. It is further submitted that if the shop property is deleted from the schedule of plaint, it would defeat the defence taken by the revision petitioner in E.A.No.165 of 2018. However, the Trial Court without considering the above facts, erroneously allowed the said application which calls for interference by this Court.

4. The learned Counsel appearing for the petitioner would submit that if the respondent / plaintiff is permitted to amend the plaint including a prayer clause, the nature of the suit is likely to be changed. In that case, the Trial Court is not justified in allowing the amendment petition as it would result in mis-genre of causes of action.



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5. To support his contention, he relied the following judgment:

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***i) Asian Hotels (North) Limited Vs. Alok Kumar Lodha and Others reported in 2022 Live Law (SC)585.***

6. On the other hand, the learned Counsel appearing for the respondent would submit that the respondent as plaintiff filed the above suit for mandatory injunction against the revision petitioner to direct the revision petitioner to vacate the suit property and to hand over the same to the respondent / plaintiff. The respondent / plaintiff has purchased the suit property from the revision petitioner / defendant. However, the respondent / plaintiff has permitted the revision petitioner to enjoy the suit property. Subsequently, the respondent cancelled the said permission and filed the suit. Since the respondent / plaintiff omitted to state how the respondent / plaintiff derives title to the suit property in the plaint. Since the revision petitioner had already handed over the shop to the respondent but in the description of the suit property, the shop was included. It was wrongly typed as it was available in the sale deed, dated 27.10.2014. Whereas, only the house property excluding the shop the suit property relates. The revision petitioner during the pendency of the suit agreed to hand over the



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possession of the suit property but cleverly filed the suit in O.S.No.199 of 2019. Hence, it has become necessary for the respondent / plaintiff to pray for declaration of title and for recovery of possession and to state certain additional particulars in the plaint. Hence, it has become necessary to amend the plaint as detailed in the petition. The Trial Court considering the above facts rightly allowed the said amendment petition which calls for no interference.

7. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent and perused the materials available on record.

8. Since it is the specific contention of the respondent / plaintiff in the amendment petition that in order to establish his title and to recover possession of the suit property from the revision petitioner, it has become necessary for the respondent / plaintiff to amend the plaint by including the prayer for declaration of title and for recovery of possession and also to state certain additional particulars in the plaint to establish the case of the respondent / plaintiff. Therefore, the said proposed amendment does not introduce a new case. It only elaborates the circumstances which has to be



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established by sufficient evidence. Moreover, pre-trial amendments can be liberally viewed. Apart from that, the merits of the amendment cannot be judged at the stage of allowing the prayer for amendment. Furthermore, pre-trial amendments are to be allowed more liberally as it can generally assumed that the other side is not prejudiced because he will have full opportunity of meeting the case. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing the amendment. When the plaintiff is not de-barred from instituting the new suit seeking relief of declaration, it would be a sound exercise of discretion to permit the amendment by adding the relief of declaration in order to avoid multiplicity of suits.

9. Adverting to the facts of the present case, it is clear that the amendment is for declaring the title of the plaintiff and for recovery of possession. It is obvious the said proposed amendment does not introduce a new case, it only elaborates the circumstances which has to be established by sufficient evidence. Therefore, it is obvious that there could be no change in the nature of the suit, no alteration in the nature, character and the cause of action of the suit. Therefore, the amendment sought for in the present



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case by the respondent / plaintiff deserved to be allowed by means of which no hardship would be caused to the revision petitioner and that they have got every opportunity to file additional written statement containing objections to the amendments. In such view of this matter, this Court does not find any illegality or infirmity in the order passed by the Trial Court which dissolves to be confirmed and accordingly, confirmed.

**10.** In fine, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

**06.01.2025**

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

To

The I Additional District Judge,  
Madurai.



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**K.GOVINDARAJAN THILAKAVADI, J.**

BTR

Order made in  
**C.R.P(MD)No.2549 of 2024**

**06.01.2025**