



C.R.P.(MD)No. 2406 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.2406 of 2022

and

C.M.P.(MD)No.11638 of 2022

A.Navaneethakrishnan

...Petitioner

Vs.

1.S.Suruligounder

2.S.Pounraj

3.S.Jayaram

4.S.Chinraj

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 13.09.2022 passed in I.A.No.2 of 2022 in A.S.No.32 of 2015, on the file of Learned Sub-Court, Theni.



WEB COPY



C.R.P.(MD)No. 2406 of 2022

For Petitioner : Mr.M.P.Senthil

For Respondent Nos.1 & 3 : Died

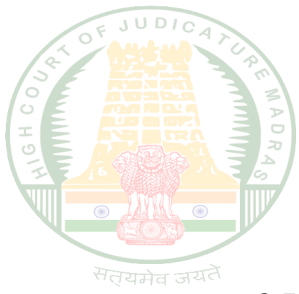
For Respondent No.2 : Mr.Ayyanar Prem Kumar

For Respondent No.4 : No appearance

ORDER

This petition has been filed seeking to set aside the fair and decreetal order dated 13.09.2022 passed in I.A.No.2 of 2022 in A.S.No.32 of 2015, on the file of Learned Sub-Court, Theni.

2.Learned Counsel for the petitioner would submit that the petitioner is the plaintiff in O.S.No.198 of 2010 on the file of the District Munsif Court, Theni. He filed a suit for mandatory injunction for removal of the encroachments made by the respondents / defendants to an extent of 10 x 10 in the South-West corner and the said suit was dismissed. Challenging the same, the petitioner filed appeal before the lower appellate Court in A.S.No.32 of 2015, on the file of the Sub Court, Theni. Pending appeal, the petitioner filed I.A.No.2 of 2022, under Order 6 Rule 17 & Section 151 of CPC, for amending the measurement in the plaint as 10 x 6 instead of 10 x 10 as well as for altering the court fees. The said I.A. was dismissed. Challenging the same, the present Civil Revision Petition has been filed.



WEB COPY

3.Learned Counsel for the petitioner would submit that the trial Court dismissed the suit mainly on the ground that the measurement was not properly mentioned in the plaint and in view of the above, the petitioner filed amendment petition in the appeal, for which no prejudice is caused to the respondents and amendment is only a with regard to measurement, which was allegedly encroached by the respondents / defendants. Earlier the petitioner has mentioned as 10 x 10 instead of 10 x 6. Thereby, the present amendment petition is filed praying for amending the plaint, which came to be dismissed. Accordingly, he prays for appropriate orders.

4.In support of the contention, learned Counsel for the petitioner relied on the following judgments:

1.Arulmighu Kothandaramasamy Koil, Thirupuvanam, represented by its Managing Director Vs. Vairam and others reported in 2012 (1) CTC 708.

2.Vasantha (Dead) through L.Rs Vs. Rajalakshmi @ Rajam (dead) through L.Rs. Reported in 2024 (3) CTC 209.

5.Learned Counsel for the petitioner further submits that the trial Court mainly dismissed the petition citing the delay in filing the amendment



C.R.P.(MD)No. 2406 of 2022

application and that it cannot be rectified in the appellate stage. Hence, prays for allowing this Civil Revision Petition, in terms of the judgment of this Court in the case reported in 2012 (1) CTC 708.

6.Per contra, learned Counsel for the respondents would submit that the petitioner / appellant filed a suit for mandatory injunction for removal of the encroachments allegedly made by the respondents / defendants and the trial Court dismissed the suit for non-payment of the proper court fee and the encroachment was not proved before the trial Court. In order to rectify the defects, the petitioner filed amendment petition. The suit is of the year 2010 whereas the appeal is filed in the year 2015 and the amendment petition came to be filed in the year 2022, after a lapse of 17 years. All these aspects were rightly gone into by the lower appellate Court and the lower appellate Court rightly dismissed the said I.A.

7.The facts in the present case are not in dispute. The petitioner / plaintiff filed a suit in O.S.No.198 of 2010 on the file of the District Munsif Court, Theni, for mandatory injunction for removal of the encroachments made by the respondents / defendants to an extent of 10 x 10 in the South-West corner and the said suit was dismissed. Challenging the same, the petitioner filed appeal



C.R.P.(MD)No. 2406 of 2022

before the lower appellate Court in A.S.No.32 of 2015, on the file of the Sub Court, Theni. Pending appeal, the petitioner filed I.A.No.2 of 2022, under Order 6 Rule 17 & Section 151 of CPC, for amending the measurement in the plaint as 10 x 6 instead of 10 x 10 as well as for altering the court fees. The said I.A. was dismissed. The suit came to be dismissed mainly on the ground that the encroachment has not been established properly and the measurement is not properly shown in the plaint. Hence, the petitioner has filed the impugned I.A. before the lower appellate Court. However, amending the plaint will not cause any prejudice to the respondents / defendants, since the amendment is only with regard to the measurement as 10 x 6 instead of 10 x 10. Further, in the present case, the respondents / defendants did not even object the amendment and file a counter. Even then, the trial Court dismissed the impugned I.A.No.2 of 2022 vide order dated 13.09.2022.

8. Accordingly, this Civil Revision Petition stands allowed and the order passed by the Sub Court, Theni in I.A.No.2 of 2022 in A.S.No.32 of 2015, dated 13.09.2022 is set aside and the amendment sought for is allowed. The lower appellate Court is directed to take up the appeal and consider the same in accordance with the amendment and pass orders in accordance with law. However, liberty is granted to the respondents / defendants to raise all the issues



C.R.P.(MD)No. 2406 of 2022

raised herein before the lower appellate Court. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

WEB COPY

08.08.2025

Internet: Yes/No

Index: Yes/No

MR



WEB COPY



C.R.P.(MD)No. 2406 of 2022

To

1.The Sub-Court,
Theni.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD)No. 2406 of 2022

M.DHANDAPANI, J.

MR

C.R.P.(MD)No.2406 of 2022

08.08.2025