



C.R.P(MD)No.32 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 08.01.2025

DELIVERED ON : 29.01.2025

CORAM:

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.32 of 2025

and

C.M.P(MD)No.193 of 2025

1.V.Ramanathan

Represented through his power agent.

2.R.Gowthami

... Petitioners

Vs.

Backialakshmi

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.1 of 2022 in O.S.No.129 of 2022 on the file of the District Munsif Court, Theni, dated 19.09.2024 and direct the Trial Court to reopen the same and decide the petition on merits in accordance with law and pass such further or other orders as this Court.

For Petitioners : Mr.S.Chandrasekar



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ORDER

This Civil Revision Petition is preferred against the order passed by the Trial Court in I.A.No.1 of 2022 in O.S.No.129 of 2022 on the file of the District Munsif Court, Theni, dated 19.09.2021.

2. According to the revision petitioners, as plaintiffs the revision petitioners have filed the above suit in O.S.No.129 of 2022 for permanent injunction restraining the defendant from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. Along with the plaint, the petitioners filed an application in I.A.No.1 of 2022 under Order XXXIX, Rule 1 and 2 of the Civil Procedure Code, 1908 for interim injunction. However, the Trial Court without considering the necessity for the said application, closed the same and posted the suit for trial.

3. The learned Counsel appearing for the revision petitioners would submit that taking advantage of the closure of the interim application, the respondent / defendant is attempting to encroach upon the suit property and



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put up constructions. Hence, she was constrained to file the present application to reopen the interim injunction petition. However, the Trial Court dismissed the said application by stating that the suit is right for trial. Aggrieved by this, the present revision is preferred.

4. On perusal of the impugned order in I.A.No.1 of 2022, the Trial Court rendered a finding that since the relief sought in the interim application and in the suit are one and the same and therefore by stating so, closed the interim application filed by the petitioner herein.

5. Order XXXIX, Rule 1 of CPC., contemplates as hereunder:

"1. Cases in which temporary injunction may be granted.—

Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any



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property in dispute in the suit,]

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders."

6. In the impugned order, it is seen that the Trial Court has simply closed the interim application stating that the relief sought in the interim application and in the main suit is one and the same. By stating so, closed the said application.

7. Since it is submitted that the respondent / defendant is attempting to encroach upon the suit property and put up constructions during pendency of the suit, the revision petitioner urge for an interim relief till the disposal of this suit.

8. Considering the facts and circumstances of the case, this Court thinks it fit to exercise the power vested in this Court under Article 227 of



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the Constitution of India thereby directing the Trial Court to recall the closure order and take up the said interim application for enquiry and dispose the same on its own merits and in accordance with law after giving sufficient opportunities to the parties and dispose the same within a period of one (1) month from the date of receipt of a copy of this order.

9. Accordingly, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

29.01.2025

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

To

The District Munsif Court,
Theni.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Pre-delivery Order made in
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29.01.2025