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CRP.No.934 of 2025

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON :24.02.2026**

**PRONOUNCED ON :27.02.2026**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**CRP.No.934 of 2026 and**

**CMP.No. 4988 of 2026**

Muniyandi

... Petitioner

Vs.

K.Dinesh Raja

...Respondent

**PRAYER** :Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order of the XV Assistant City Civil Court, Chennai, dated 26.11.2025 in I.A.No.9 of 2025 in O.S.No.4706 of 2021.

For Petitioner

: Mr.V.Raghavachari  
Senior Advocate  
for M/s.S.Thankira

For Respondent

: Mr.T.P.Manoharan  
Senior Advocate  
for M/s.E.Prabu for Caveator



## **ORDER**

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This Civil Revision Petition is filed challenging the order passed by the trial Court, dismissing the application filed by the petitioner/plaintiff, seeking amendment of plaint.

2. The petitioner herein filed a suit for permanent injunction restraining the respondent/defendant from interfering with his possession and enjoyment over the suit property and from evicting the petitioner except by due process of law.

3. According to the petitioner, he is carrying on the business of whole sale trade in iron and steel in the form of sheets and coils. Since there was dearth of space for operation of petitioner's business, the petitioner's younger son, M.Shankar purchased an extent of 1800 sq.ft of land in the suit survey number by sale deed dated 26.05.2005 under the guidance and suggestion of the petitioner, with a view to help of the petitioner. The respondent also purchased similar extent of 1800 sq.ft in the suit survey number. The petitioner's son purchased southern portion and respondent purchased northern



portion. Thus total extent of 3600 sq.ft was available with the family of the petitioner and respondent. As per the mutual understanding between the family members of the petitioner and the respondent, a conclusive arrangement was arrived at and the entire extent of 3600 sq.ft was given physical possession to the petitioner with an understanding that the petitioner could utilize the said lands for putting up a massive factory shed in order to establish his ever growing business and trade in iron and steel. Thus, the petitioner's son and the respondent handed over the entire extent of 3600 sq.ft of land to the petitioner for the purpose of putting up shed. After getting physical possession of the property, the petitioner, at his own cost, during the year 2006-2007, put up factory shed in the entire land with an extent of 3600 sq.ft. Thus the petitioner has been in possession and enjoyment of the entire extent of 3600 sq.ft of land from the year 2007.

4. It was also pleaded by the petitioner that the respondent had given a categorical statement on 06.09.2006 and 07.02.2007 that he would not in any manner claim or cause any interference with possessory right of the petitioner over the suit property, though portion of the same belongs to him. It is further stated by the petitioner that all of a sudden, the respondent gave out a threat of



dispossession as his father instigated him to alienate his portion of the suit property to third parties. It was further stated by the petitioner that he has been in absolute and uninterrupted possession of the suit property all along and hence, he could not be evicted without due process of law. Therefore, the petitioner was constrained to file a suit for permanent injunction as stated supra.

5. The respondent herein filed a written statement and denied various averments made in the plaint filed by the petitioner. It was his specific case that the father of the petitioner and grandfather of the respondent viz., Lakshmanan was engaged in the business of iron and steel for several decades. Due to his old age, he decided to hand over the business to his sons and as such he started three business under the name and style of M/s.Sri Lakshmi Steel, which was handed over to the eldest son Mariappan, M/s.New Star Enterprises and the same was handed over to petitioner and M/s.Renuka Traders and the same was handed over to the father of the respondent. During the course of the said business, several properties were purchased by the father of the petitioner in the name of family members either jointly and severally and on his advise, the above said sons have also subsequently partitioned the property by way of



respective settlements. Even though the business was carried on as proprietorship in the different names as stated supra, the brothers treated the business as joint family business and the income derived therefrom was shared equally by them. During the course of said joint family business, they had purchased properties in the name of their family members jointly and individually. In the course of such purchase, the petitioner and the respondent's father purchased the suit property in the name of petitioner's son and in the name of the defendant.

6. It was also stated that the entire property was leased out to the plaintiff by fixing monthly rent of Rs.10,000/- as per rental agreement dated 10.09.2008. The rent was shared by the respondent and the petitioner's son Shankar. Subsequently, there was a strain in the relationship of the parties. The petitioner engaged in criminal activities against the members of the respondent family and in this regard, FIR was filed. The petitioner also filed a suit in O.S.No.7396 of 2019 on the file of the IV Additional City Civil Judge, Chennai, to set aside the settlement deed executed by him in favour of his elder brother Mariappan. The petitioner also filed yet another suit against said Mariappan in O.S.No.2289 of 2020 on flimsy allegation and both the suits are



pending. It was also claimed by the respondent that the present suit has been filed by the petitioner on the allegation that the respondent has been attempting to dispossess him from the suit property at the instigation of his father to sell the share of the suit properties to 3<sup>rd</sup> parties. The said allegation was stoutly denied by the defendant and it was also claimed that the said allegation was made in order to create cause of action for maintaining a suit.

7. It was the specific case of the respondent that the suit property was let out to the plaintiff for the purpose of doing business on payment of rent. It was also claimed that the petitioner was not entitled to equitable relief of permanent injunction, when he was in arrears of rent for several years. On these allegations, the respondent sought for dismissal of the suit.

8. The trial in the suit is over and the matter is posted for arguments. At this stage, the instant application has been filed by the petitioner seeking amendment of the plaint, so as to include a prayer for specific performance. According to the petitioner, the respondent/defendant sold his portion of the suit property to the petitioner vide sale letter dated 07.02.2007 on receipt of Rs.10,00,000/- and agreed to execute a pucca sale deed and register the same



as and when requested by him. It was also stated that the said letter had been marked as Ex.A6 in the suit and the petitioner had already paid the total sale consideration of Rs.10,00,000/- to the respondent.

9. It was further stated that since the previous counsel for the petitioner failed to seek the prayer for specific performance, the present amendment application has been filed seeking to include a prayer for specific performance by directing the respondent/defendant to execute a sale deed in respect of his half share in the suit property and deliver possession of the same to the petitioner within the time stipulated by this Court. The petitioner also wanted to include a prayer for alternative relief of recovery of sale consideration of Rs.10,00,000/- allegedly paid by him with interest. The above said application was dismissed by the trial Court on the ground of limitation and also on the ground that the proposed prayer would change the very nature and character of the suit. Aggrieved by the said order, the petitioner has come before this Court.

10. The learned Senior counsel appearing for the petitioner would submit that the cause of action for the specific performance suit arose only on



17.03.2025, when petitioner was cross examined by the respondent by denying the letters dated 06.09.2006 and 07.02.2007. The learned counsel also submitted that when the suit was presented by the petitioner, there was no cause of action for the suit for specific performance and therefore, the rejection of the amendment application by the trial Court on the ground of limitation is untenable in law.

11. The learned Senior counsel also submitted that the previous counsel presented the plaint with prayer for bare injunction alone without the prayer for specific performance for the reasons best known to him and the petitioner is a layman not aware of the legal impact of the pleadings raised by his counsel and therefore, a liberal approach may be taken while considering the amendment application seeking to include the prayer for specific performance. The learned counsel further submitted that the petitioner has got possession of the property in part performance of sale agreement and therefore, there is no limitation for the petitioner to seek relief of specific performance.



12. In support of the said contention, learned Senior counsel relied on the following judgments of the Apex Court.

(i) *Shamrao Suryavanshi and another Vs. Pralhad Bhairoba Suryavanshi and others* reported in *2002 3 SCC 676*;

(ii) *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others* reported in *(2009) 10 SCC 84*;

(iii) *Jawahar Lal Wadhwa and another Vs. Haripada Chakroberty* reported in *(1989) 1 SCC 76*;

(iv) *Anand Surana Vs. A.M. Shaik Alavudeen and others* reported in *2012 SCC OnLine Mad 5014*;

(v) *Dela Gurudal Vanjari Vs. Uddhal Goverdhan Rathod* reported in *(2012) 3 Mah.L.J 940 = 2012 SCC OnLine Bom 167*;

(vi) *Hari Shankar Singhania and others Vs. Dr. Gaur Hari Singhania and others* reported in *(2002) 4 Mah.L.J 938 = 2002 SCC OnLine Bom 613*.

13. A perusal of the averment in the plaint would indicate that the petitioner clearly pleaded in paragraph No.17 of the plaint that the respondent/defendant attempted to dispossess him and also attempted to



alienate the suit property to third party as per the instigation of his father.

When the petitioner clearly averred in the plaint that the respondent/defendant

attempted to alienate the property, the said act of attempt to alienate the

property to the third party would amount to breach of sale agreement with the

petitioner, if any. Certainly, any attempt to alienate the property to third party

would amount to refusal to perform the alleged agreement with the petitioner.

Therefore, on the basis of the averment found in the plaint, it is very clear that

the cause of action for seeking specific performance was very well available on

the date of presentation of the plaint (i.e., 12.07.2021). The present

amendment application has been filed by the petitioner only on 21.07.2025 as

seen from the affidavit filed in support of the amendment application. Under

Article 54 of the Limitation Act, the suit for specific performance shall be filed

within three years from the date of repudiation of contract. In the case on

hand, the petitioner clearly admitted that the respondent attempted to alienate

the property to 3<sup>rd</sup> parties in the plaint itself, therefore, the cause of action for

filing the suit for specific performance started ticking from the date of

attempted alienation. Hence, the present application which is filed beyond the

period of three years is hopelessly barred by limitation on the face of the

averment found in the plaint. Therefore, the submission made by the learned



Senior counsel appearing for the petitioner, as if, the amendment application is within time is not acceptable to this Court. Further, it is settled law that when the prayer sought for by way of amendment is hopelessly barred by limitation, the prayer for amendment can be refused. The same can be gathered from ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others*** reported in ***(2009) 10 SCC 84***.

14. The petitioner on the one hand submits, the cause of action for specific performance started only on the date of cross examination of PW.1, wherein suggestion of defendants with regard to letters dated 06.09.2006 and 07.02.2007 were denied by him. On the other hand, in Ground No.7 in the memorandum of grounds of Civil Revision Petition, it was stated by the petitioner that the previous counsel failed to seek prayer for specific performance. If the cause of action for specific performance was not available on the date of suit, absolutely there is no need for the petitioner to say that previous counsel did not pray for specific performance for the reasons best known to him. Therefore, the grounds No.7 raised in the memorandum of ground is directly against the submission made by the learned senior counsel for the petitioner that cause of action for specific performance suit arose only when PW.1 was cross examined.



15. In ***Shamrao Suryavanshi*** case reported in **2002 3 SCC 676** cited by the learned senior counsel appearing for the petitioner, it was categorically held by the Apex Court that Limitation act bars the remedy but does not extinguish the defence. It was also stated that if the relief of specific performance is barred by limitation, the transferee cannot enforce the right by filing a suit for performance, however, if any suit is filed by the transferor seeking possession, the transferee is entitled to take the defence of part performance. The relevant observation reads as follows:

*“20. It is, therefore, manifest that the Limitation Act does not extinguish a defence, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if brought after the period of limitation, it is open to a defendant in a suit for recovery of possession brought by a transferor to take a plea in defence of part performance of the contract to protect his possession, though he may not be able to enforce that right through a suit or action.”*

16. Therefore, the citation relied on by the learned senior counsel appearing for the petitioner is not helpful to advance his case and in fact, it is in favour of the respondent. Further, it is pertinent to point out that by way of

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amendment the petitioner wants to include the following prayer:

*“aa) Directing the defendant to execute the sale deed in respect of the half share in the suit property and deliver the possession of the suit property to the plaintiff within a time to be stipulated by this Court failing which to execute the sale deed in respect of the B suit schedule property in favour of the plaintiff by this Hon’ble Court itself, delivery the possession of the suit property to the plaintiff.”*

17. Therefore, it is clear that the petitioner not only seeks specific performance by seeking execution of the sale deed, he is also seeking delivery of possession of the property. Therefore, the submission made by the learned senior counsel for the petitioner that the petitioner is in possession of the suit property in part performance of agreement is not acceptable one in the light of the prayer sought to be introduced by the amendment application.

18. In ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others*** reported in ***(2009) 10 SCC 84***, the Apex Court observed that the following factors shall be taken into consideration, while dealing with the application for the amendment, the relevant paragraph reads as follows:

*“63. On critically analyzing both the English and Indian cases,*



*some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.*

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case*
- (2) Whether the application for amendment is bonafide or mala fide*
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case and*
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. (emphasis supplied by this Court)*

19. As discussed earlier, the present prayer for specific performance is hopelessly barred by limitation. Therefore, the above mentioned case law cited by the learned senior counsel for the petitioner is also not supporting his case.



20. The present suit was laid by the petitioner on a specific pleading that the respondent attempted to dispossess the petitioner and attempted to alienate the properties to 3<sup>rd</sup> parties. It is a simple suit for injunction. In fact, the petitioner has not referred about any sale agreement in the body of the plaint. For the first time, only in the affidavit filed in support of the amendment application, he has referred about the alleged agreement or understanding. In such circumstances, the findings rendered by the trial Court that the amendment will change the very nature and character of the suit also appears to be correct. The foundational plea for specific performance is not at all available in the original plaint, it is only sought to be introduced by way of amendment.

21. In view of the discussion made by this Court earlier regarding the point of limitation and in the absence of foundational pleas, the judgments relied on by the learned Senior counsel for the petitioner in ***Jawaharlal Wadhwa, Anand Surana, Dela Gurudal Vanjari*** and ***Hari Shankar*** cases are not applicable to the facts of the present case.



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22. In view of the discussions made earlier, I do not find any error or illegality in the order passed by the trial Court. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**27.02.2026**

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To

The XV Assistant City Civil Court,  
Chennai.



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**S.SOUNTHAR, J.**

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**Pre-delivery order made in**  
**CRP.No.934 of 2026**

**27.02.2026**